



# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General  
16 February 2011

Original: English

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## Committee against Torture

Forty-fifth session

1-19 November 2010

### List of issues prior to the submission of the combined third to fifth periodic reports of the Republic of Korea (CAT/C/KOR/3-5)\*

### Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations.

#### Articles 1 and 4

1. With reference to the previous recommendations of the Committee (paras. 4 and 5)<sup>1</sup>, please provide information about the measures, if any, taken to amend the Criminal Code to include a specific definition of torture<sup>2</sup> and ensure that all aspects of torture are criminalized and punished in accordance with article 4 of the Convention. Has any other legislation been adopted or amended to include a prohibition of torture, as defined by article 1 of the Convention?

2. With reference to previous recommendations of the Committee (para. 6), please provide information on the progress of the State party in reviewing the National Security Law to ensure that it is in full conformity with the Convention, in particular as regards article 7 of the law,<sup>3</sup> and that arrests and detention under the law do not increase the potential for human rights violations.<sup>4</sup> Please provide an update on the progress and outcomes of discussions within the National Assembly to repeal or amend the law. Please also provide statistical information on the number of persons arrested under the law,

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\* The present list of issues was adopted by the Committee at its forty-fifth session, according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

<sup>1</sup> Unless otherwise indicated, paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee, published under symbol CAT/C/KOR/CO/2.

<sup>2</sup> Report of the Working Group on the Universal Periodic Review (A/HRC/8/40), para. 64, recommendation 10.

<sup>3</sup> Concluding observations of the Human Rights Committee (CCPR/C/KOR/CO/3), para. 18.

<sup>4</sup> A/HRC/8/40, para. 64, recommendations 4 and 33.

including the reason for their arrest, whether they are currently in detention and if so, where, and the status of their trial proceedings, if still ongoing.

## Article 2<sup>5</sup>

3. With reference to previous recommendations of the Committee (para. 7), please provide information on progress in efforts by the State party to promote a culture of human rights by ensuring that a policy of zero tolerance for violations is developed and implemented for all law-enforcement personnel and staff working in detention and correctional facilities.

4. With reference to the letter of the Rapporteur for follow-up to concluding observations dated 14 May 2010, please provide further clarification on the jurisdiction of the Hotline Center in comparison to relevant departments of the Ministry of Justice to which the Hotline Center forwards cases as necessary. Specifically, please clarify which body, if any, has authority to investigate cases that fall outside the jurisdiction of the Hotline Center. Also, please provide information on the punishments and remedies provided as a result of the investigations and trials of the 42 reported cases where “remedy (was) adopted” in 2008 and the 82 cases in 2009. In addition, please clarify what punishments were provided and what redress, including compensation or rehabilitation, was offered.

5. With reference to previous recommendations of the Committee (para. 9), please provide information on measures taken by the State party to guarantee that the fundamental legal safeguards for the rights of persons detained by the police are respected from the very outset of detention, including prompt access to legal counsel (CCPR/C/KOR/CO/3, para. 14), medical examination by independent doctor, and the right to inform a family member. Please inform the Committee of any restrictions that may be imposed on these rights and the reasons for such imposition. Please indicate if all persons detained are registered from the outset of detention, and if so please provide detailed information on the registration procedure and what information is included in it. With reference to the letter of the Rapporteur for follow-up to concluding observations dated 14 May 2010, please provide information on the number of cases where legal counsel’s participation in an interrogation may have been limited under article 243-2 of the revised Criminal Procedure Act, the reasons for such restriction and whether there were any complaints or allegations of abusive measures committed when the participation by the legal counsel was suspended.

6. With reference to previous recommendations of the Committee (para. 10), please provide information on progress made by the State party to ensure security of tenure for judges and to prevent interference in their judicial functions.

7. With reference to previous recommendations of the Committee (para. 11), please provide information on the legal and administrative measures taken by the State party to strictly regulate the use of the urgent arrest procedure, to prevent its misuse and to guarantee the rights of persons detained in this manner. Also, please provide an update on

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<sup>5</sup> The issues raised under article 2 could imply also different articles of the Convention, including but not limited to article 16. As general comment No. 2, paragraph 3, states: “the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter ‘ill-treatment’) under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. ... In practice, the definitional threshold between ill-treatment and torture is often not clear.” See further chap. V of the same general comment.

the progress in the adoption of relevant amendments to the Criminal Procedure Act by the National Assembly.

8. With reference to previous recommendations of the Committee (para. 16), please provide information on any specific jurisprudence where confessions or statements obtained as a result of torture have been excluded, precise data on the number of convictions under the National Security Law based only on confessions, and information as to whether any investigations are conducted into whether such confessions were coerced, and/or if anyone has been found guilty of torture in this connection. Have any measures been taken to amend or repeal the Security Surveillance Law?<sup>6</sup>

9. With reference to previous recommendations of the Committee (para. 17), please provide an update on progress made by the State party to reform its penal legislation (CCPR/C/KOR/CO/3, para. 11) to establish marital rape as a criminal offence.<sup>7</sup> Please provide detailed statistical data on complaints, investigations, prosecution, conviction and sentences imposed relating to domestic violence and sexual and gender-based violence, and on redress, including compensation provided to victims of such abuse. Are there safe houses or social rehabilitation centres for women who have been victims of domestic violence or sexual and gender-based violence? Please provide information on whether victims of such violence (including marital rape) have access to protection provided by the State.<sup>8</sup> Please provide information on awareness-raising and training activities on the issues of domestic, sexual and gender-based violence, that have been established by the State party for the public at large and in particular for legislators, the judiciary, law-enforcement personnel, in particular police officers, and health-service providers. Please provide an update on measures taken by the State party to adopt and implement legislation that criminalizes sexual harassment in the workplace and sets up mechanisms to monitor such implementation and to promote public awareness of the criminal nature of sexual harassment.<sup>9</sup> Also, please provide an update regarding efforts by the State party to increase awareness of the criminal nature of domestic violence, bring perpetrators to trial and conviction, strengthen counselling programmes, and increase the number of shelters and psychosocial support services for victims (E/C.12/KOR/CO/3, para. 24).

10. With reference to previous recommendations of the Committee (para. 18), please provide detailed statistical data, disaggregated by age and sex, on complaints, investigations, prosecutions, convictions and sentences imposed relating to the number of women and children trafficked, including for purposes of prostitution, entertainment and/or domestic servitude. Are adequate information, assistance and support for foreign women victims of human trafficking available, in particular for those with an irregular status?<sup>10</sup> If so, please provide detailed information on these services, including the number of women who have accessed them. Please provide an update on the efforts made by the State party to increase efforts at international, regional and bilateral cooperation with countries of origin, transit and destination in order to prevent trafficking (CEDAW/C/KOR/CO/6, para. 20).

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<sup>6</sup> A/HRC/8/40, para. 64, recommendation 5.

<sup>7</sup> Concluding comments of the Committee on the Elimination of Discrimination against Women (CEDAW/C/KOR/CO/6), para. 18; A/HRC/8/40, para. 64, recommendation 14.

<sup>8</sup> A/HRC/8/40, para. 64, recommendation 19.

<sup>9</sup> Concluding observations of the Committee on Economic, Social and Cultural Rights (E/C.12/KOR/CO/3), para. 17 (d).

<sup>10</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/KOR/CO/14), para. 16.

### **Article 3**

11. With reference to previous recommendations of the Committee (para. 12), please provide information on measures taken by the State party to ensure that the requirements of article 3 of the Convention apply when deciding on the expulsion, return or extradition of non-citizens or persons of Korean nationality who may be returned to areas outside the jurisdiction of the Republic of Korea. Has training on refugee protection been provided to relevant governmental officials and agencies, especially those working in border areas?

12. Since 2006, has the State party refused to expel, return or extradite any person on grounds that they would be in danger of being tortured? Please provide detailed information on the cases and States involved. Does the State party rely on diplomatic assurances when extraditing detainees to third countries? If so, please indicate the number and circumstances, what level this takes place at and what post-return monitoring mechanisms have been put in place.

### **Articles 5, 7 and 8**

13. Since the consideration of the previous report, please indicate whether the State party has rejected, for any reason, any request for extradition by another State of an individual suspected of having committed an offence of torture, and has started prosecution proceedings as a result. If so, please provide information on the status and outcome of such proceedings.

14. Please provide information on any steps taken by the State party to take the necessary legislative measures to establish its extraterritorial jurisdiction over the offences referred to in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography when such offences are committed by a national of the Republic of Korea or a person who has habitual residence in its territory, or when the victim is a national of the Republic of Korea.<sup>11</sup>

### **Article 10**

15. With reference to previous recommendations of the Committee (para. 7), please provide information on measures taken by the State party to intensify its efforts to reinforce human rights education, awareness-raising and training activities in general, and with regard to the prohibition of torture in particular provided to police and other officers. With reference to the letter of the Rapporteur for follow-up to concluding observations dated 14 May 2010, please provide information on the impact of the training programmes on the conduct of the police and other officers, including detention officers—has there been any decrease/increase in the number of complaints of abuse by such officers?

16. Please indicate if there are programmes to train medical and law enforcement personnel, including border control officers, in recognizing and treating physical and psychological torture injuries resulting from torture or cruel, inhuman and degrading treatment. Is the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) part of this training? Have any reports been produced that refer specifically to the Istanbul Protocol? How many persons have received such trainings, how are they assessed and what

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<sup>11</sup> Concluding observations of the Committee on the Rights of the Child (CRC/C/OPSC/KOR/CO/1), para. 39.

are their outcomes? Also, please provide information on the professional background and affiliation of the persons who have attended such trainings.

17. Please provide an update on support by the State party for programmes and information campaigns to prevent trafficking and on any assessment and evaluation of effectiveness made thereon. Also please provide information on the mandatory training on anti-trafficking legislation for law enforcement officials, prosecutors and judges and on any assessment and evaluation of their effectiveness (E/C.12/KOR/CO/3, para. 25).

### **Article 11**

18. With reference to previous recommendations of the Committee (para. 13), please provide information about the measures taken by the State party to improve conditions of detention and in particular to limit the use of “substitute cells”. Please provide information on the specific measures taken to alleviate overcrowding, including in substitute cells. Are female detainees in substitute cells monitored by male guards? In particular, please provide updated information on the new prisons whose completion was foreseen for 2009, enabling the closing of substitute cells in the Young-Wol, Mil-Yang and Hae-Nam police stations.<sup>12</sup> If the new prisons are completed and in use, please include information on the number of people being held in the new facilities, the number of persons held in substitute cells prior to the completion of the new facilities, and the number after. Please provide information about the number and type of incidents of sexual violence reported by female detainees. Is rape in prison prosecuted as an act of torture?

19. Please provide detailed statistical data on complaints, investigations, prosecution, conviction, and sentences imposed on prison staff regarding incidents of sexual violence reported by female detainees. With reference to the letter of the Rapporteur for follow-up to concluding observations dated 14 May 2010, please provide information on the research of the Ministry of Justice on the condition of substitute cells and whether independent bodies have access to these cells. In addition, please provide updated information on the status of the prison construction and reconstruction and whether measures have been taken to ensure that the conditions of detention in the still-existing substitute cells and in all detention facilities (para. 13) conform to international minimum standards. Has the construction of six new detention centres been completed? What is the status regarding the five additional centres which were planned to be built by 2018 (CAT/C/SR.714, para. 21)?

### **Articles 12 and 13**

20. With reference to previous recommendations of the Committee (para. 18), please provide data, disaggregated by age and sex, on complaints relating to torture and ill-treatment allegedly committed by law-enforcement officials, on related investigations, prosecutions, convictions and penal and disciplinary sentences issued in this regard, and on the redress including compensation offered to victims. With reference to the letter of the Rapporteur for follow-up to concluding observations dated 14 May 2010, also please provide information on the reasons for the increase in the number of allegations of human rights violations reported to the Human Rights Protection Team of the National Police Agency, from 10 in 2007 to 19 in 2008.

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<sup>12</sup> Comments by the Government of the Republic of Korea to the conclusions and recommendations of the Committee (CAT/C/KOR/CO/2/Add.1), para. 14.

21. With reference to previous recommendations of the Committee (para. 8 (a)), please provide information on measures taken by the State party to ensure that all allegations of torture and ill-treatment are promptly and thoroughly examined by an impartial authority,<sup>13</sup> and that all victims obtain redress and have an enforceable right to fair and adequate compensation. Please provide detailed statistical data on cases of torture and ill-treatment in detention facilities, disaggregated by crime committed, ethnicity, age and sex, on the number and type of complaints allegedly committed by law enforcement officials, on related investigations, prosecutions, convictions and on the penal or disciplinary actions applied and remedies provided to the victims.

22. Please provide information on the number of cases reported to the Torture Reporting Center set up by the National Human Rights Commission of Korea that was in operation from 28 June to 28 September 2010. Also, please provide information on any assessment of the results of its work and on any follow-up action envisaged.

23. Also with reference to previous recommendations of the Committee (para. 8 (b)), please provide an update regarding the adoption by the National Assembly of the bill to exclude or suspend the application of a statute of limitations to crimes against humanity (including torture).

24. Please provide information on the outcome of the investigation of the five police officers who were referred for prosecution by the National Human Rights Commission of Korea under the accusation of having illegally tortured suspects by employing inhumane methods in order to coerce confessions from them between 1 August 2009 and 31 March 2010.

25. Is there a complaints and investigation mechanism to look into allegations of abuse by migrant workers, particularly women falling under the E-6 visa scheme? Please provide information on the complaints mechanism, including whether migrants who allege abuse can access the complaints mechanism, particularly in the light of reports that in many instances such persons have little knowledge of their rights or the mechanisms available to them and allegations that employers often seize the passports and alien cards of such migrant workers. Please provide information on the number of complaints regarding sexual harassment and violence filed by female migrant workers, and an update on investigations, prosecutions, convictions if any, and redress for victims. In particular, please provide information on the outcome of investigations against the two police officers who used unnecessary force during and after the arrest of a female Chinese migrant worker in South Chungcheon Province on 8 April 2009, and how, if in any way, she has been compensated.

26. Please provide the Committee with information on the role of the National Human Rights Commission of Korea in protecting human rights. Specifically, please clarify how the independence of this body is ensured in practice, particularly with regard to its investigatory function. Please also clarify whether it is empowered to recommend or refer cases to prosecutor's offices.

## **Article 14**

27. With reference to previous recommendations of the Committee (para. 8 (c)), please provide information on any progress by the State party to establish comprehensive programmes for the treatment and rehabilitation (both physical and mental) of victims of torture and ill-treatment, including the right to fair and adequate compensation. Please

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<sup>13</sup> A/HRC/8/40, para. 64, recommendation 12.

provide information on the number of cases of compensation, including persons receiving rehabilitation, and the amounts provided.

28. Please provide information on any compensation and rehabilitation, including medical, psychological and legal support (E/C.12/KOR/CO/3, para. 25) provided to victims of trafficking as well as on the results of the studies recommended in paragraphs 14 and 15 of the Committee's previous concluding observations. Has the State party made full use of general recommendation No. 19 (1992) of the Committee on the Elimination of Discrimination against Women and has it eliminated the requirement of a victim's complaint in order to prosecute crimes of sexual violence (CEDAW/C/KOR/CO/6, para. 18)?

### **Article 15**

29. With reference to previous recommendations of the Committee (para. 16), please provide information on measures taken by the State party to ensure that statements made as a result of torture cannot be invoked as evidence in proceedings.

30. Also with reference to previous recommendations of the Committee (para. 16), please provide information regarding progress in the adoption by the National Assembly of relevant amendments to the Criminal Procedure Act which would place stricter conditions on the admissibility of written evidence in legal proceedings.

### **Article 16**

31. With reference to previous recommendations of the Committee (para. 14), please provide information on the steps taken by the State party to prevent and reduce the number of deaths in detention facilities, including through the adequate provision of and access to medical care and the establishment of suicide prevention programmes.

32. With reference to the letter of the Rapporteur for follow-up to concluding observations dated 14 May 2010, please provide information on whether the State party's analysis has found any link between the number of suicides and other sudden deaths in detention facilities and allegations of torture and ill-treatment. Were all of the suicides and other sudden deaths in detention facilities investigated? Was any evidence of abuse uncovered in the course of these investigations, and if so was anyone held accountable for any of these deaths? Please provide up-to-date information on these cases.

33. With reference to previous recommendations of the Committee (para. 15), please provide information on the measures taken by the State party to prevent ill-treatment and abusive measures in the military, including the practice of hazing. As recommended, has systematic research been conducted into the causes of suicides in the military and has there been an evaluation of the effectiveness of current measures and programmes, such as the ombudsman system, to prevent such deaths? Are military personnel provided with any psychological and mental health services? Have comprehensive programmes for the prevention of suicides in the military, such as awareness-raising, training and education activities for all military personnel, been conducted and/or evaluated?

34. Please provide an update on measures taken by the State party to prevent all forms of ill-treatment in all places of deprivation of liberty, and to prosecute perpetrators of such acts and punish them in a manner proportionate to the seriousness of the offences they have committed, while granting effective remedies, including compensation to victims. Please provide information on whether there have been any instances of use of disciplinary confinement, including manacles, chains and face masks, or any resort to "stacking" 30-day periods of isolation. Were any complaints in this connection made to the Torture Reporting

Center set up by the National Human Rights Commission of Korea? If so, were investigations initiated, and with what results?

35. Please provide information on the investigations, if any, carried out into the reported excessive use of force during the Candlelight protests of 2008. Reportedly over 1,000 persons were arrested in the course of these protests—please clarify how many of the arrested persons remain in detention, and under what charges. There have been reports that human rights defenders have faced arbitrary arrests and increased restrictions. Please also provide information on the protections provided to human rights defenders so that they may carry out their protective work effectively.

36. Please provide information on the legal rights of persons deprived of their liberty in the context of psychiatric care. Also, please provide information on specific measures taken by the State party to prevent all forms of ill-treatment in mental health hospitals and on remedies, including compensation afforded to any victims.

37. Please provide information on measures to amend relevant legislation to expressly prohibit corporal punishment in schools and at home and to implement educational measures promoting positive and non-violent forms of discipline.<sup>14</sup> How are these facilities monitored? Please provide detailed information.

38. Are migrants informed in a language that they understand that they are entitled to legal counsel (CAT/C/SR.714, para. 46)? Please provide information on whether the State party has decided to establish a service of legal assistance after having examined such services in other countries (*ibid.*, para. 58). Has special emphasis been placed on women and children when formulating policies to protect the rights of migrant workers?<sup>15</sup> Do the protection facilities in which undocumented migrant workers are detained prior to deportation meet international standards? Have any complaints been lodged regarding conditions in detention centres housing irregular migrant workers? Are asylum-seekers accommodated together with immigrants (CAT/C/SR.711, para. 81)?

### **Other issues**

39. Please indicate the current status of the State party's views regarding the ratification of the Optional Protocol to the Convention<sup>16</sup> and the establishment of an effective national preventive mechanism.<sup>17</sup>

40. Please provide updated information on measures taken by the State party to respond to any threats of terrorism and please describe if, and how, these anti-terrorism measures have affected human rights safeguards in law and practice and how it has ensured that those measures comply with all its obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005). Please describe the relevant training given to law enforcement officers; the number and types of persons convicted under such legislation; the legal safeguards and remedies available to persons subjected to anti-terrorist measures in law and in practice; whether there are complaints of non-observance of international standards; and the outcome of these complaints.

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<sup>14</sup> A/HRC/8/40, para. 64, recommendation 29.

<sup>15</sup> *Ibid.*, recommendation 15.

<sup>16</sup> *Ibid.*, recommendation 26.

<sup>17</sup> *Ibid.*, recommendation 22.

**General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention**

41. Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level, that have occurred since the previous periodic report, including any relevant jurisprudential decisions.

42. Please provide detailed information on the new political, administrative or other measures taken to promote and protect human rights at the national level since the second periodic report, including on any national human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.

43. Please provide any other information on new measures and developments undertaken to implement the Convention, and the Committee's recommendations, since the consideration of the previous report in 2006, including the necessary statistical data, as well as on any events that occurred in the State party and are relevant under the Convention.

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