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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 267th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 13 November 1996, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.267/Add.1.

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of the Republic of Korea (CAT/C/32/Add.1) (continued)

1. At the invitation of the Chairman, Mr. Hwang, Mr. Cho, Mr. Yuh, Mr. Kwon, Mr. Lim, Mr. Park, Mr. Shin, Mr. Noh, Mr. Kang and Mr. Kim (Republic of Korea) took places at the Committee table.

2. The CHAIRMAN invited the delegation of the Republic of Korea to reply to the questions asked by the Committee at the preceding meeting.

3. Mr. HWANG (Republic of Korea) said he would first like to inform the Committee that the Government of the Republic of Korea had decided to make a contribution of $20,000 to the United Nations Voluntary Fund for Victims of Torture for 1996, which was twice its 1995 contribution.

4. The CHAIRMAN expressed his deep appreciation to the Government of the Republic of Korea for its decision.

5. Mr. HWANG (Republic of Korea) said that he would deal first with the implementation of the National Security Law. The Korean authorities and Korean people believed that the NSL was essential to ensure the country's security and guarantee its system of liberal democracy in the face of the military threat to the Korean peninsula. The recent discovery of a North Korean submarine on the east coast of the Republic of Korea was an indication of the national security problem facing the country. Nevertheless, since misuse of the legislation might lead to violations of human rights, the Government had amended some of its more controversial provisions and would see to it that the application of the Law was strictly limited to safeguarding national security, while respecting fundamental human rights.

6. Although the Government commended efforts to promote human rights, it could not accept the distortions and exaggerations of some non-governmental organizations (NGOs). One example was the interpretation of article 37, paragraph 2, of the Constitution of the Republic of Korea, which must always be understood in the light of article 10 of the Constitution. Some had also misinterpreted article 6 of the Constitution and the lex posteriori rule, in contradiction to Korean legal precedents. He also had reservations about the Amnesty International report, which appeared to be a replica of a report produced by a group of Korean organizations known for their biased views. During their visit to Korea in September, the Amnesty International representatives had not even contacted Government officials and had therefore not heard their version of the allegations or listened to their views. Mr. Chung-ryol Park, who had been presented as a victim, had been able to contact his lawyer freely, and the physician who had examined him on 7 December 1995 at counsel's request had found no evidence of torture.

7. Korean legislation had no provisions on the definition of torture, but under the Constitution, the Criminal Code and special laws, the exercise of force against another person, such as acts of violence or cruelty, were

subject to punishment, regardless of whether they resulted in severe pain and suffering. The concept of those punishable acts was much broader than the concept of torture as defined in the Convention, covering even attempted torture and other cruel, inhuman or degrading treatment. All acts of violence or cruelty committed by a public official in the performance of his or her duties were subject to punishment. The legal provisions were reflected in and clarified by case-law. In 1985, for example, the Supreme Court had ruled that withholding food or preventing a person from sleeping were acts of cruelty.

8. The duration of pre-trial detention was not determined arbitrarily by the investigating agencies but specified by a judge. In principle, the period of detention did not exceed 10 days; it could be extended on approval from the judge if necessary for reasons related to the investigation. It was a general practice that the investigating agency sent the case to the Public Prosecutor's Office within five days of the start of the detention and that the Public Prosecutor's Office completed the investigation within one week after receipt. The Public Prosecutor's Office discouraged extensions of the detention period, and the percentage of cases requiring a detention period of more than 10 days had not exceeded 8.5 per cent of the total in 1995. The reason why the detention period was longer for National Security Law cases involving acts of espionage and the formation of anti-State organizations was that, in most cases, those crimes were committed clandestinely for an extensive period of time both at home and abroad and involved many people. As a detention warrant was issued only when there was sufficient evidence that a crime had been committed, there was little chance of violating human rights. In 1995 persons arrested had been acquitted in only 0.2 per cent of cases, which indicated that it was rare for innocent individuals to be placed under arrest or detention.

9. In principle a lawyer was not entitled to be present during interrogations, but if it was considered evident that the lawyer's presence would not compromise the interrogation or the procedure as a whole, the lawyer's presence might be permitted. Notwithstanding that restriction, the right to communicate with defence counsel was fully guaranteed. Incommunicado detention was not allowed under any circumstances. Under articles 87 and 200 of the Penal Procedure Code, on arrest or detention of a suspect, the place, time and reason for the arrest were notified in writing to defence counsel or family members without delay. Article 12, paragraph 4, of the Constitution and article 34 of the Penal Procedure Code provided that anyone arrested or detained had the right to seek defence counsel immediately. In exceptional cases and for the needs of the investigation, however, the investigating agency, after notifying the defence counsel, could defer the suspect's interview with counsel until after the completion of the investigation, on-the-spot inspection or search. In accordance with article 87 of the Penal Procedure Code, any arrested person was entitled to a medical examination at any time after the arrest or detention; a suspect was allowed to be examined by a medical doctor of his or her choice.

10. Relatives of the arrested person were notified of his or her arrest without delay after the person was taken into custody. An official who did not observe that rule would be prosecuted for abuse of authority. The Minister of Justice and the court were the authorities competent to decide whether or not a person should be sent back to his/her country of origin

because he/she would be in danger of being tortured. For evaluating the risk of torture incurred by a person who was the subject of an extradition or expulsion measure, the authorities relied on information made available by the person or defence counsel, on reports on the human rights situation of a specific country and, if necessary, on information provided by Korea's overseas missions.

11. Concerning the implementation of article 4 of the Convention, from 1 January 1995 to 31 August 1996 a total of 291 complaints of acts of cruelty had been handled by the investigation agencies. Eleven cases had led to indictments, in 29 the charges had been dropped, 176 suspects had been found not guilty for lack of evidence, 32 investigations had been suspended and 43 remained under investigation. During the same period, a total of 17 cases of acts of cruelty by prison officials had been reported; in 12 cases the persons had been found not guilty, and 5 were still being investigated. When a prosecution or investigation was suspended or a person acquitted, the alleged victim could contest the decision by appealing to a superior office of the Public Prosecutor or by requesting a ruling from the court, or through a constitutional petition to the Constitutional Court.

12. The Committee had asked about the recent rise in the number of people charged under the National Security Law. There had been approximately 400 such cases in 1990, 122 in 1993 and 224 in August 1996; the latest increase was due to the fact that the Republic of Korea had recently opened a number of investigations into illegal organizations.

13. The statute of limitations was five years for acts committed by public officials in violation of article 125 of the Criminal Code in cases of minor violence and cruelty and three years for similar crimes committed by ordinary citizens. The statute of limitations for crimes of torture causing injury, either physical or mental, was 7 years; it was extended to 10 years if death occurred and 15 years if the death was premeditated.

14. With regard to the application of article 10 of the Convention, judges' training emphasized the inadmissibility of evidence obtained through torture, and judges were requested to pay special attention to complaints of torture. Although special programmes for the prevention of torture were not available in medical colleges, there were programmes on the prohibition of unethical acts or human rights violations. The Korea Doctors' Association was working on the adoption of a set of Moral Principles for Doctors. Forensic doctors received systematic training on how to identify the causes of injuries; they also received training through frequently held seminars and workshops.

15. Concerning disciplinary action against prisoners, the size of cells for prisoners subjected to disciplinary action varied between 1.75 m^2 and 5.7 m^2. There were no “dark cells”. Disciplinary measures never included violence or acts of cruelty and were carried out only if the prisoner was diagnosed by a doctor as being in good health. The prisoner's condition was monitored by a doctor during the disciplinary action. Most of the 22 prisoners who had been serving sentences for over 20 years were former secret agents who had not repented and therefore were not entitled to amnesty; five amnesties had been declared since 1993. There was no discrimination against the prisoners in question.

16. The Government of the Republic of Korea did not provide any rehabilitation programmes or services for torture victims. It provided compensation, however, which enabled victims to receive the medical treatment or psychological assistance of their choice. During the period from January 1992 to July 1996, 29 claims had been filed by victims of acts of torture or cruelty. In 9 cases the Court had ruled in favour of the plaintiff, in 2 cases the complaint had been rejected and in the remaining 18 cases final judgement was pending.

17. It had been asked whether the Republic of Korea intended to withdraw its reservations in respect of articles 21 and 22 of the Convention. The basis for the reservations was the fear that articles 21 and 22 of the Convention would be used for political purposes by organizations or individuals having close contacts with Governments or organizations hostile to the Republic of Korea. It was against the background of relations between North and South Korea and North Korea's belligerence towards South Korea that the decision to make the reservations had been taken. On the other hand, the acceptance by the Republic of Korea of the Committee's competence in the framework of article 20 of the Convention bore witness to its willingness to respect the Convention.

18. Unfortunately, he could not provide detailed replies to all the questions raised, but he assured the Committee of his Government's desire to pursue the dialogue, which was a constructive one. The Republic of Korea was very aware of its responsibilities as a democratic State and would use the Committee's questions and criticisms to improve the situation further.

19. The CHAIRMAN thanked the delegation of the Republic of Korea for its replies and invited the members of the Committee to request any final clarifications.

20. Mr. PIKIS said that he was concerned about the concept of repentance; decisions to release prisoners should be made on the basis of objective criteria only.

21. Mr. HWANG (Republic of Korea) explained that the criteria for the release of prisoners were laid down in the legislation on the administration of criminal justice; he would see to it that the Committee received a more detailed written reply at a later date.

22. The delegation of the Republic of Korea withdrew.

The meeting was suspended at 3.55 p.m. and resumed at 4.55 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of the Republic of Korea (continued): Conclusions and recommendations of the Committee

23. Mr. ZUPANCIC (Country Rapporteur) read out the following draft conclusions and recommendations of the Committee on the initial report of the Republic of Korea:

"The Committee considered the initial report of the Republic of Korea (CAT/C/32/Add.1) at its 266th and 267th meetings, held on 13 November 1996 (see CAT/C/SR.266 and CAT/C/SR.267), and adopted the following conclusions and recommendations.

A. Introduction

1. The Committee welcomes the detailed and timely report of the Republic of Korea, which on the whole conforms to the Committee's guidelines. The Committee also thanks the State party for its responses to the concerns expressed by the Committee.

B. Positive aspects

1. The Committee welcomes the positive changes, since 1993, towards improving and enhancing human rights and achieving the minimal international standards, demonstrated, inter alia, by the State party's ratification of a series of international treaties concerning human rights, its willingness to build a society characterized by respect for human dignity and its willingness to move towards the democratization of society.

2. The Committee notes that some relevant laws, regulations and institutions have already been amended in the spirit of human rights enhancement.

3. It is encouraging that the civilian Government granted amnesty to and restored the rights of a large number of citizens and thus contributed to the more liberal political climate.

4. The Committee notes with satisfaction the efforts of the Republic of Korea to expand the scope of legal aid available to the economically underprivileged.

5. The Committee is also encouraged that, at least in a few cases, public officials who have tortured prisoners have been convicted and that, in some cases, courts have ruled confessions obtained during interrogations to be inadmissible as evidence.

6. The Committee also appreciates the frankness of the report, which shows the Republic of Korea's consciousness of the problems that remain to be solved and its awareness of the need for further improvements to be made with regard to inadequate and unacceptable practices and institutions.

7. The Committee notes with satisfaction that the Republic of Korea has concluded mutual judicial assistance treaties on criminal matters with Australia and Canada, and signed such treaties with France and the United States.

C. Factors and difficulties impeding the application of the provisions of the Convention

1. The Committee is aware of the security problems and the tense situation on the Korean peninsula.

2. The Committee has tried to take this fact into consideration in formulating its conclusions and recommendations. However, it must be emphasized that no exceptional circumstances can ever provide a justification for failure to comply with the terms of the Convention.

D. Subjects of concern

1. The Committee is concerned that the Republic of Korea has not incorporated a specific definition of the crime of torture in its penal legislation in terms consistent with the definition contained in article 1 of the Convention.

2. The Committee notes with deep concern that continued reports from non-governmental organizations show that many political suspects still go through the 'torture procedure' during interrogation, in an attempt to extract confessions from them. The sleep deprivation practised on suspects, which may in some cases constitute torture and which seems to be routinely used to extract confessions, is unacceptable.

3. The Committee is also concerned that the legal system facilitates long periods of interrogation for suspects before they are charged.

4. The Committee is equally concerned at the State party's continued failure promptly and impartially to investigate and prosecute those responsible for acts of torture and ill-treatment. It is unacceptable that only formal complaints of the victims of torture are investigated.

5. While taking into account that the implementation of the National Security Law is the result of security problems on the Korean peninsula, the Committee emphasizes that the Republic of Korea must ensure that the provisions of the National Security Law are not implemented arbitrarily. The vagueness of its provisions gives rise to a great danger of arbitrariness.

6. The report of the Republic of Korea mentions a single specific case concerning the obtaining of redress for a crime of torture. The Committee expresses its concern that the existing procedures for obtaining redress or compensation are not effective.

7. It is a matter of concern that suspects may be detained for up to 10 days without a remand order or any form of approval by the courts.

E. Recommendations

1. The Republic of Korea should enact a law defining the crime of torture in terms consistent with article 1 of the Convention.

2. The national laws should be further reviewed in the light of the Convention and protection of human rights in general.

3. Education of police investigators, public prosecutors, other law enforcement personnel and medical personnel regarding the prohibition against torture should be fully included in their training, in accordance with article 10 of the Convention, with special emphasis on the definition of torture as contained in article 1 of the Convention and on the criminal liability of those who commit acts of torture.

4. An independent governmental body should take over the inspection of detention centres and places of imprisonment. Public prosecutors, who are also part of law enforcement personnel, which may itself be subject to investigation of the crime of torture, should not be the main inspection figure.

5. The Committee recommends that the allegations of ill-treatment which have been brought to the Committee's attention be duly investigated and that the results of such investigations be transmitted to the Committee.

6. The 30- or 50-day maximum period of detention in police premises for interrogation purposes before the suspect is charged is too long and should be shortened.

7. The Committee recommends that the presence of counsel be permitted during interrogation, especially since such presence would be in furtherance of the implementation of article 15 of the Convention.

8. The Committee hopes that the Republic of Korea will review its reservation and make the declarations concerning articles 21 and 22 of the Convention."

24. Mr. HWANG (Republic of Korea) said that his country's authorities would endeavour to take the Committee's recommendations fully into account.

25. The CHAIRMAN thanked the delegation of the Republic of Korea for its cooperation.

26. The Korean delegation withdrew.

The public part of the meeting rose at 5.10 p.m.