



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

Distr.: General
30 May 2017

Original: English

Committee against Torture

Concluding observations on the combined third to fifth periodic reports of the Republic of Korea**

1. The Committee against Torture considered the combined third to fifth periodic reports of the Republic of Korea (CAT/C/KOR/3-5) at its 1524th and 1527th meetings (see CAT/C/SR.1524 and 1527), held on 2 and 3 May 2017, and adopted the present concluding observations at its 1538th and 1539th meetings, held on 11 May 2017.

A. Introduction

2. The Committee regrets the late submission, in 2016, of the combined third to fifth periodic reports, which made them four years overdue. The Committee appreciates having had the opportunity to engage in a constructive dialogue with the State party's delegation and the oral and written responses provided to the questions and concerns raised during its consideration of the report.

B. Positive aspects

3. The Committee welcomes the ratification of or accession to the following international instruments by the State party:

(a) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, in 2006;

(b) The Convention on the Rights of Persons with Disabilities, in December 2008.

4. The Committee also welcomes the State party's initiatives to revise its legislation in areas of relevance to the Convention, including in respect of the following:

(a) The amendments made in 2006 and 2007 to the Criminal Procedure Act providing, inter alia, for the application of the exclusionary rule (see article 308-2 of the Act), the right of legal counsel to be present during interrogations by representatives of investigating agencies, the expansion of the scope of cases in which public defenders shall be appointed and the imposition of stricter conditions regarding the admissibility of written evidence;

(b) The adoption in 2007 of the Act on the Punishment of Crimes within the Jurisdiction of the International Criminal Court, which covers certain types of torture and other forms of inhuman treatment that constitute crimes against humanity or war crimes

* Reissued for technical reasons on 14 June 2017.

** Adopted by the Committee at its sixtieth session (18 April-12 May 2017).



under the Rome Statute and which stipulates in article 6 that a statute of limitations shall not be applied to genocide and other crimes;

(c) The adoption of the Habeas Corpus Act, on 21 December 2007, and its amendment, in 2010;

(d) The amendments made in 2008 and 2016 to the Mental Health Act prohibiting, *inter alia*, violence and cruel acts in mental health facilities and tightening the procedures for the involuntary admission of psychiatric patients;

(e) The adoption in 2010 of the Act on the Protection of Children and Juveniles from Sexual Abuse;

(f) The adoption in 2012 of the Act for the Prevention of Suicide and the Creation of a Culture of Respect for Life;

(g) The amendment made in 2012 to article 297 of the Criminal Act changing the definition of “victim of rape” from “woman” to “person”;

(h) The amendment made in 2013 to the Criminal Act establishing trafficking in human beings as a crime with a view to implementing the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;

(i) The adoption in 2013 of the Refugee Act;

(j) The adoption in 2014 of the Act on Special Cases of Punishment for Child Abuse Crimes and its revision in 2016 expanding the list of professions whose practitioners are in contact with children and are obliged to report child abuse crimes.

5. The Committee further welcomes the initiatives of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including:

(a) The drawing up of the first and second national action plans for the promotion and protection of human rights, covering the periods 2007-2011 and 2012-2016 respectively, and the creation of the National Human Rights Policy Council to implement them, as well as the work being done with a view to adopting the third such action plan;

(b) The establishment in 2008 of the group home project for female victims of violence;

(c) The issuance on 19 May 2009, by the military, of the directive on unit management, *inter alia*, to prevent ill-treatment and abuse, including hazing, and the implementation since 2009 of the Suicide Prevention Programme in the military;

(d) The introduction in July 2010 of the Korea Information System of Criminal Justice Services for persons under arrest or in detention;

(e) The setting up in 2011 of the Women and Children Crime Investigation Division at the Seoul Central District Prosecutor’s Office, the subsequent establishment of similar entities in major cities by February 2017 and the designation by the courts of divisions charged exclusively with trials involving sexual crimes.

C. Principal subjects of concern and recommendations

Pending follow-up issues from the previous reporting cycle

6. The Committee takes note of the State party’s replies to its previous concluding observations and notes that its recommendations concerning the following issues have been partially implemented: reinforcing human rights education, awareness-raising and training activities for law enforcement and correctional facility staff (see CAT/C/KOR/CO/2, para. 7); amending the Criminal Procedure Act to guarantee the right of legal counsel to be present during interrogations and investigations (*ibid.*, para. 9); limiting the use of “substitute cells” and constructing new detention facilities (*ibid.*, para. 13); providing access to medical care and conducting suicide prevention programmes in detention facilities

(ibid., para. 14); and conducting systematic research into the causes of suicides in the military and establishing comprehensive programmes for the prevention of suicides in the military (ibid., para. 15).

Definition of torture

7. The Committee reiterates its concern that a definition of torture that contains all the elements of this crime as set out in article 1 of the Convention has not yet been incorporated into the State party's penal legislation. It is particularly concerned that torture is considered under different articles of criminal legislation and that those articles cover only the physical aspects of torture and only specific individuals in the investigation and trial processes. The Committee is also concerned that the penalties that can currently be applied are not commensurate with the gravity of the crime of torture (arts. 1-2 and 4).

8. **The Committee reiterates its previous recommendation (see A/52/44, para. 62, and CAT/C/KOR/CO/2, para. 4) that the State party should incorporate into the Criminal Act a definition of torture that makes torture a distinct crime and that includes all the elements covered in article 1 of the Convention, including the mental and psychological aspects of torture. It draws the State party's attention to paragraph 11 of its general comment No. 2 (2007) on the implementation of article 2 by States parties, which underscores the preventive effect of having the crime of torture defined as an offence in its own right. It also draws attention to paragraph 9 of that general comment, which states that serious discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity. The State party should revise its national legislation to ensure that acts of torture are offences under criminal law and that they are punishable by penalties commensurate with the gravity of the crime, as required by article 4 (2) of the Convention.**

Statute of limitations for acts of torture

9. While taking note of the adoption of the Act on the Punishment of Crimes within the Jurisdiction of the International Criminal Court, the Committee is concerned that the statute of limitations contained in article 6 of the Act may apply only to acts of torture that constitute crimes against humanity, the crime of genocide and war crimes under the Rome Statute.

10. **The State party should:**

(a) **Ensure that the absolute prohibition against torture is non-derogable and state that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture;**

(b) **Ensure that there is no statute of limitations for acts of torture, so that acts of torture and attempts to commit torture and acts that constitute complicity or participation in torture can be investigated without limitations and that those responsible can be prosecuted and punished.**

Fundamental legal safeguards

11. The Committee is concerned that persons deprived of their liberty do not enjoy the right to fundamental legal safeguards from the very outset of their detention, in particular in cases of urgent arrest conducted without a warrant. It is also concerned that detained persons may not: be informed of their right to remain silent, obtain a medical screening within 24 hours of arrest, be able to request and receive a medical examination by a qualified medical doctor within 24 hours of their arrival in a place of detention, have access to an independent doctor upon their request, be allowed to inform a family member or a person of their choice, be brought before a judge 48 hours after their arrest, and have access to legal counsel from the very outset of detention and during all stages of the proceedings against them, including for reasons of "good cause" established by the prosecution or police. It is further concerned that legal counsels' requests for participating in suspect

interrogations are “mostly granted” and that a meeting between a detainee and a lawyer was recorded using closed circuit television (arts. 2, 11-14 and 16).

12. The State party should take effective measures to guarantee that all detained persons, including prisoners on remand and those under police investigation, are afforded in practice all the fundamental legal safeguards from the outset of their deprivation of liberty, in accordance with international standards, including with respect to:

(a) **Being informed about the charges against them, both orally and in writing, in a language that they understand, and signing a paper confirming that they have understood the information provided to them;**

(b) **Requesting and receiving a medical examination by a qualified medical doctor within 24 hours of their arrival in a place of detention and having access to an independent doctor upon their request;**

(c) **Having access to legal counsel from the very outset of their deprivation of liberty and being able to consult with them in private, throughout the proceedings against them;**

(d) **Notifying a family member or any other person of their choice of their detention immediately after apprehension;**

(e) **Having their detention recorded immediately after arrest and ensuring that their lawyers, family members or other persons of their choice have access to the Korea Information System of Criminal Justice Services regarding their detention;**

(f) **Being brought before a judge within 48 hours of their apprehension.**

Excessive use of force by law enforcement officials

13. The Committee is concerned about:

(a) The excessive use of force by law enforcement officials during demonstrations such as the “candlelight rally” of 2008 and the “peoples’ rally” in 2015 and that such exercise of force was accompanied by the use of water cannons, tear gas, fire extinguishers, electrical discharge weapons (tasers), iron clubs, batons and shields;

(b) Reports that numerous persons were injured during the candlelight rally as a result of the excessive use of force and that law enforcement officials refused to grant some of the detained protesters access to medical assistance;

(c) The death on 25 September 2016 of Baek Nam-Gi, a 68-year-old farmer, from extensive brain injury as a result of being hit in the head by a blast from a high-pressure police water cannon during the peoples’ rally in Seoul on 14 November 2015 and the reported refusal of law enforcement agencies to launch an investigation into the excessive use of force by the police that led to Mr. Baek’s death;

(d) The reported excessive use of force, including the firing of water cannons and use of pepper spray (capsaicin) against the families bereaved by the Sewol Ferry accident during the one-year memorial assembly;

(e) Reports that some suspects are handcuffed during interrogation, despite the ruling of the Constitutional Court that such practice is unconstitutional (arts. 2 and 12-16).

14. The State party should:

(a) **Review the tactics used for the management of assemblies, including the use of water cannons, tear gas, fire extinguishers, electrical discharge weapons (tasers), iron clubs, batons and shields, to ensure that they are not applied indiscriminately and excessively or against peaceful protestors and that they do not result in an escalation of tension;**

(b) **Adhere to international standards in order to ensure that law enforcement officials receive professional training on the use of force and firearms**

and deploy adequately trained and experienced police and law enforcement officers to manage assemblies;

(c) **Ensure instruction and methodical guidance for police on the need to respect the principles of necessity and proportionality during police interventions, on the absolute prohibition of torture and other State obligations under the Convention and on the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;**

(d) **Provide information on the outcome of the investigations undertaken by the Prosecutor's Office and the National Police Agency against seven police officers for violating the Act on the Performance of Duties by Police Officers in relation to the death of Mr. Baek and inform the Committee about the outcome of any judicial proceedings;**

(e) **Investigate cases of excessive use of force against the families bereaved by the Sewol Ferry accident, prosecute those responsible and inform the Committee about the outcome of the proceedings;**

(f) **Provide all victims of excessive use of force by law enforcement officials with access to medical services, counselling and redress, including rehabilitation and compensation.**

National Security Act

15. The Committee reiterates its concern about the fact that persons continue to be arrested under the National Security Act and that some persons arrested under the Act have allegedly been subjected to arbitrary arrest and detention, as well as to coerced confessions. It remains concerned at the vague wording of article 7, which may give rise to violations of the Convention (arts. 2, 11 and 15-16).

16. **The Committee reiterates its previous recommendations and invites the State party to repeal or amend the National Security Act in order to ensure that it is in full conformity with the Convention and to ensure that arrests and detentions under the law do not increase the potential for human rights violations. The State party should ensure the humane treatment of persons arrested under the Act and that no confessions are made under duress.**

Detention of persons escaping from the Democratic People's Republic of Korea by the National Intelligence Service

17. The Committee takes note of the fact that persons escaping the Democratic People's Republic of Korea may be lawfully detained for up to six months but is particularly concerned at reports that such persons may be detained indefinitely by the National Intelligence Service. The Committee is also concerned that they can be detained in solitary confinement and without due process, including the right to legal counsel. It is further concerned that they may be deported to third countries where they risk being tortured if it is determined that they do not qualify for protection and where their rights to an independent review and to appeal the decision regarding deportation may not be guaranteed (arts. 2-3, 5, 7-8, 12-13 and 16).

18. **The State party should:**

(a) **Ensure that any person detained for reasons related to their escape from the Democratic People's Republic of Korea is deprived of their liberty for the shortest possible period and not beyond the established legal maximum;**

(b) **Ensure access to all fundamental legal safeguards, including to legal counsel during the entire length of detention, including during interrogation;**

(c) **Ensure that the duration and methods of interrogation and the conditions of detention comply with international human rights standards, while differentiating between, on the one hand, investigation processes to decide on protection and settlement for persons escaping the Democratic People's Republic of**

Korea and, on the other hand, the criminal investigation processes for violations of the National Security Act;

(d) Adopt clear and transparent procedures ensuring the right to appeal, with suspensive effect, decisions concerning the deportation of persons escaping from the Democratic People's Republic of Korea while they are being reviewed, in order to comply with its obligations under article 3 of the Convention;

(e) Provide updated information on the number of persons who have escaped the Democratic People's Republic of Korea, including those in detention, during the reporting period.

Independent complaints mechanism

19. The Committee is concerned at the low rate of acceptance of complaints relating to torture or ill-treatment by the National Human Rights Commission of Korea and by the relative hotline and at the lack of information regarding complaints lodged with the Human Rights Bureau of the Ministry of Justice and the Human Rights Division of the Ministry of National Defence (arts. 2, 11-14 and 16).

20. **The Committee invites the State party to:**

(a) Establish an independent and effective mechanism for addressing complaints of torture and ill-treatment in all places of deprivation of liberty;

(b) Facilitate the submission of complaints by victims of torture and ill-treatment, including by obtaining medical evidence in support of their allegations;

(c) Ensure in practice that complainants in all places of detention are protected against any ill-treatment or intimidation as a consequence of the complaint made or any evidence given;

(d) Ensure that all reports of excessive use of force by law enforcement officers and prison staff are investigated promptly, effectively and impartially by an independent mechanism with no institutional or hierarchical connection between the investigators and the alleged perpetrators, ensure that all persons under investigation for having committed acts of torture or ill-treatment are immediately suspended from their duties and remain so throughout the investigation, while ensuring that the principle of presumption of innocence is observed, punish those convicted and provide redress to victims.

Conditions of detention

21. The Committee is concerned about:

(a) Continued overcrowding in correctional facilities, the amount of living space available to each inmate, which does not meet international standards, and the insufficient number of prison staff;

(b) Insufficient access to medical care and to outside medical facilities by inmates;

(c) The frequent use of protective devices and restraints to punish inmates and about the fact that the duration of their use is decided by prison guards;

(d) The absence of age- and gender-disaggregated data on persons in places of deprivation of liberty, including prisons, during the reporting period (arts. 2, 11-13 and 16).

22. **The State party should:**

(a) Take specific measures to improve the material conditions in correctional facilities and reduce overcrowding with a view to bringing them in line with the international standards enshrined in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);

(b) Take urgent measures to increase the number of prison guards, hire additional medical personnel, further expand the room available to inmates in

accordance with international standards and enable the referral of inmates requiring specialized medical care to outside medical facilities;

(c) **Ensure that restraints are used only as a measure of last resort, for the shortest time possible and only when less intrusive alternatives for control have failed, and ensure the strict monitoring of the implementation of article 99 (2) of the Administration and Treatment of Correctional Institution Inmates Act;**

(d) **Consider using non-custodial measures and alternatives to detention in keeping with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);**

(e) **Provide age- and gender-disaggregated data on detainees covering the reporting period.**

Solitary confinement

23. The Committee is concerned that inmates are frequently placed in solitary confinement, as a disciplinary measure, for periods of up to 30 days, without strict medical monitoring and without the possibility of appeal (arts. 2, 11-13 and 16).

24. **The State party should:**

(a) **Amend current legislation in order to ensure that solitary confinement remains an exceptional measure of last resort, applied for a duration that does not exceed 15 days, and that it is imposed in line with international standards;**

(b) **Ensure that the detainees' due process rights, such as the right to an independent hearing and to appeal, are respected when subjecting them to solitary confinement and that the disciplinary committee acts with impartiality;**

(c) **Establish clear and specific criteria for decisions on isolation and ensure that renewing and prolonging disciplinary sanctions of solitary confinement is strictly prohibited**

(d) **Ensure that detainees' physical and mental condition is monitored daily by qualified medical personnel throughout the period of solitary confinement.**

"Substitute cells" in police stations

25. While taking note of the closure of several "substitute cells" in police stations and that only four remain in operation, the Committee is concerned at the poor material conditions, including overcrowding, extremely small investigation detention rooms and insufficient privacy of sanitary facilities, in particular for women, who are supervised by male staff (arts. 11-14 and 16).

26. **The State party should close the remaining "substitute cells", take urgent measures to bring conditions in still existing "substitute cells" in line with relevant international standards and ensure that female police officers supervise "substitute cells" in which women are detained until they are closed.**

Deaths in custody

27. The Committee is concerned about the high number of suicides and sudden deaths in correctional facilities. It is particularly concerned that a large number of deaths in custody is due to the absence of adequate medical treatment for inmates suffering from diseases and that autopsies may not always be carried out and therefore cannot be used as evidence in criminal and civil cases. The Committee is also concerned about the very high number of persons in pretrial detention who have committed suicide that may be the result of coercive investigation procedures by police and prosecutors (arts. 2, 11-14 and 16).

28. **The State party should:**

(a) **Conduct an in-depth study into the causes of suicides and sudden deaths in correctional facilities and take all other measures necessary to reduce the number of suicides and sudden deaths;**

(b) **Provide prompt access to adequate and specialized medical care, including in outside medical facilities, to all inmates who need it;**

(c) **Ensure that all cases of suicides or sudden deaths in custody, including suicides of persons under investigation by police and prosecutors, are investigated promptly, thoroughly, effectively and impartially, prosecute those responsible for violations of the Convention, including persons suspected of having committed acts of torture, physical or psychological ill-treatment and wilful negligence and, if found guilty, punish them in accordance with the gravity of their acts;**

(d) **Ensure independent forensic examinations in all cases of death in custody, provide autopsy reports to the family members of the deceased and, if requested, permit them to commission independent autopsies;**

(e) **Ensure that the courts in the State party accept the results of independent forensic examinations and autopsies as evidence in criminal and civil cases;**

(f) **Provide the Committee with data on all deaths in custody, disaggregated by the facility in which the deceased was detained, the age and sex of the victim and the outcome of the inquiry into the deaths in custody, as well as data on any redress provided to relatives, and inform the Committee of any investigation undertaken during the period under review into deaths alleged to be the result of torture, ill-treatment or wilful negligence.**

Death penalty

29. While noting the effective moratorium on the application of the death penalty since 1997, the Committee is concerned that death sentences continue to be imposed by courts and that there were some 61 persons on death row at the end of 2016 (arts. 2, 4 and 16).

30. **The Committee invites the State party to:**

(a) **Consider abolishing the death penalty and ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;**

(b) **Commute all death sentences to prison terms, ensure that prisoners who were formerly on death row benefit from the same regime as all other prisoners and guarantee their basic rights and needs in accordance with international standards.**

Involuntary hospitalization in psychiatric institutions

31. The Committee is concerned:

(a) At reports that large numbers of persons with mental and psychosocial disabilities who do not present a threat to themselves or others are placed involuntarily in psychiatric institutions;

(b) That the grounds for involuntary hospitalization are excessively broad and that the Constitutional Court has ruled that article 24 (1) and (2) of the Mental Health Act is unconstitutional since the provisions contained therein do not serve as a proper legal basis for minimizing the infringement of a mentally ill patient's personal freedom;

(c) That procedural safeguards regarding involuntary placement in psychiatric institutions are insufficient and inadequate (arts. 2, 10-14 and 16).

32. **The State party should:**

(a) **Ensure that involuntary psychiatric hospitalization is strictly necessary, proportionate, applied as a measure of last resort and under the effective supervision and independent monitoring of judicial organs;**

(b) **Consider amending the Mental Health Act with a view to bringing it fully into line with the Constitution;**

(c) **Ensure effective legal safeguards for persons hospitalized involuntarily in psychiatric institutions, including the rights to effective appeal and to be heard in person by the judge, the judicial tribunal or the board ordering the hospitalization;**

(d) **Ensure that the court always seeks the opinion of a psychiatrist who is not attached to the psychiatric institution admitting the patient and that any involuntary hospitalization in psychiatric institutions is monitored by an outside body that is independent of the health authorities and that is mandated to carry out such monitoring;**

(e) **Establish an independent complaints mechanism and counsel in psychiatric institutions, effectively and impartially investigate all complaints of violations of the Convention, bring those responsible to justice and provide redress to victims.**

Corporal punishment against children

33. The Committee is concerned that corporal punishment of children remains permitted in the home, in schools and in alternative care and day-care settings, in particular in orphanages and child welfare facilities, especially outside the capital city (arts. 2, 4 and 16).

34. **The State party should amend and enact legislation so as to explicitly and clearly prohibit corporal punishment in all settings, including orphanages and child welfare facilities, in all parts of the country, and take the measures necessary to prevent such punishment.**

Abuses in the military

35. The Committee is concerned at reports of a large number of cases of violence and abuse, including sexual, physical and verbal abuse, in the military, which has sometimes resulted in deaths. It is also concerned at the small number of such cases that have resulted in indictments. In addition, the Committee is concerned about the use of “guardhouse detention” as a disciplinary measure, by which a soldier can be detained for 15 days without a warrant, based only on the decision of the commanding officer. It is also concerned about repeated crackdowns on gay soldiers on the grounds that they have violated article 92-6 of the Military Criminal Act, which criminalizes consensual sexual relations between same-sex adults (arts. 2, 4, 11-14 and 16).

36. **The State party should:**

(a) **Reinforce measures to prohibit and eliminate violence and abuse, including sexual, physical and verbal abuse, in the military and ensure the prompt, impartial and thorough investigation of all allegations of abuse and deaths in the military in order to demonstrate zero tolerance for ill-treatment and torture of military personnel;**

(b) **Establish the office of military ombudsman as an independent entity to monitor military units and conduct investigations into allegations of abuse and violence in the military;**

(c) **Promptly investigate all cases of death in the military and establish the liability of direct perpetrators and those in the chain of command, prosecute and punish those responsible with penalties that are consistent with the gravity of the act committed and make the results of such investigations public;**

(d) **Ensure the independence of military judicial officers engaged in the promotion and protection of human rights;**

(e) **Put an end to the “guardhouse detention” of soldiers, without a warrant and without judicial review;**

(f) **Consider repealing article 92-6 of the Military Criminal Act and take all measures necessary to punish violent actions against lesbian, gay, bisexual, transgender and intersex persons in the military;**

(g) **Provide redress and rehabilitation to victims, including through appropriate medical and psychological assistance, in accordance with the Committee's general comment No. 3 (2012) on the implementation of article 14.**

Violence against women, including domestic and sexual violence

37. While noting the steps taken by the State party to address violence against women, including domestic and sexual violence, the Committee is concerned:

(a) At the wide prevalence of violence against women in the State party, at the low number of complaints and prosecutions, which does not correspond to the actual number of cases occurring in the State party, and at the absence of data;

(b) That marital rape has not been included as a separate punishable offence in the Criminal Act;

(c) At the conditional suspension of charges against perpetrators of domestic violence in exchange for education and counselling that may amount to acquittal and fails to adequately protect the victims (arts. 2, 12-14 and 16).

38. **The Committee recommends that the State party:**

(a) **Take the legislative measures necessary to strengthen protection against domestic violence; in addition, the Committee reiterates its recommendation that the State party introduce marital rape, defined as non-consensual sexual relations between spouses, as a specific criminal offence with appropriate sanctions;**

(b) **Ensure that all allegations of violence against women, including domestic and sexual violence, are registered by the police and promptly, impartially and effectively investigated and that the perpetrators are prosecuted and punished;**

(c) **Ensure that victims of domestic violence benefit from protection, including restraining orders, and have access to medical and legal services, including counselling, redress and rehabilitation, as well as to adequately funded shelters throughout the country.**

Violence against migrant workers

39. The Committee is concerned that migrant workers suffer abuse, including sexual violence, and ill-treatment by employers, including the confiscation of their personal documents. It is concerned that migrant workers are not sufficiently informed or fear lodging complaints and that female migrant workers are unable to leave abusive employers who have not been judged guilty of abuse by a court (arts. 2, 12-14 and 16).

40. **The Committee urges the State party to:**

(a) **Provide legal protection to migrant workers, including female migrant workers, against exploitation, ill-treatment, abuse and confiscation of personal documents, and guarantee they have access to justice;**

(b) **Consider amending labour legislation with a view to allowing migrant workers to change employment within a reasonable amount of time;**

(c) **Ensure that migrant workers have access to a helpline in a language they understand and to interpreters, that they are provided with information regarding possibilities to lodge complaints against those responsible for violence, that they are able to change places of employment in cases of exploitation and abuse and that they have access to medical care, redress, including compensation, and government-funded shelters.**

Asylum seekers and migrants

41. While welcoming the adoption of the Refugee Act and the hosting of a large number of refugees and asylum seekers by the State party, the Committee is concerned about:

(a) The implementation of article 5 of the Enforcement Decree of the Refugee Act, which outlines the grounds for not referring an applicant for asylum to refugee status

determination procedures and about the quality of those procedures, as well as about the fact that implementation of that provision may result in forcible deportation;

(b) The absence of a legally prescribed maximum duration for immigration detention and the immigration detention of minors;

(c) The reported overcrowding and poor material conditions in immigration detention facilities, including at points of entry and in departure waiting areas, when applicants file complaints for not having been referred for refugee status determination (arts. 2-3, 11-13 and 16).

42. **The Committee invites the State party to:**

(a) **Consider revising article 5 of the Enforcement Decree of the Refugee Act with a view to removing the grounds for non-referral to asylum procedures and ensure that an effective appeal mechanism exists with regard to negative decisions and that appeals have a suspensive effect;**

(b) **Establish a legally prescribed maximum duration of immigration detention, avoid detaining immigrant minors and apply non-custodial measures to minors;**

(c) **Eliminate overcrowding and improve material conditions in immigration detention facilities, including at points of entry and in departure waiting areas.**

National human rights institution

43. The Committee is concerned about:

(a) Reports that the relevant legislation does not have provisions to ensure a clear, transparent and participatory selection and appointment process for the members of the National Human Rights Commission of Korea;

(b) Reports that the Commission's human and financial resources have been reduced, thereby putting its independence at risk;

(c) The fact that the description of the mandate and activities of the Commission correspond to those of a national preventive mechanism despite the fact that the State party has not yet ratified the Optional Protocol to the Convention (art. 2).

44. **The State party should:**

(a) **Amend legislation to ensure a clear, transparent and participatory process for the selection and appointment of members of the National Human Rights Commission of Korea;**

(b) **Establish an independent committee to nominate candidates and to guarantee the independence, diversity and functional immunity of the members of the Commission, in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles);**

(c) **Ensure that the Commission has adequate human and financial resources;**

(d) **Strengthen further the Commission's monitoring functions in all places of deprivation of liberty and act on the recommendations contained in the Commission's annual report;**

(e) **Ratify the Optional Protocol to the Convention in order to establish a national preventive mechanism based on a legislative act, in accordance with international standards. The mechanism should have all the resources necessary to fully carry out its mandate independently and effectively, in conformity with the provisions of the Optional Protocol to the Convention.**

Training

45. The Committee is concerned at the absence of specific training for public officials on the absolute prohibition of torture and at the lack of training programmes for recognizing and treating injuries resulting from torture and ill-treatment.

46. **The State party should:**

(a) **Make training on the provisions of the Convention and the absolute prohibition of torture mandatory for all public officials coming into contact with persons deprived of their liberty, including law enforcement personnel, in particular those conducting urgent arrests;**

(b) **Consider introducing training programmes on non-coercive investigation techniques;**

(c) **Ensure that the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) is made an essential part of the training of all medical professionals and other public officials working with persons deprived of their liberty;**

(d) **Collect information on the training of law enforcement personnel and other public officials in a systematic manner and develop and implement specific methodologies to assess the effectiveness of the training and its impact on the reduction of the incidence of torture.**

Redress for victims of torture and ill-treatment

47. The Committee:

(a) While welcoming the agreement reached at the meeting of Ministers for Foreign Affairs of Japan and the Republic of Korea held on 28 December 2015 and taking note that 38 victims of sexual slavery during the Second World War are still alive, is concerned that the agreement does not comply fully with the scope and content of its general comment No. 3 and that it fails to provide redress and reparation (including compensation and the means for as full a rehabilitation as possible) or to ensure the right to truth and assurances of non-repetition;

(b) Is concerned that victims of excessive use of force by law enforcement officials, such as persons participating in peaceful rallies, may not enjoy the right to redress, including compensation and rehabilitation for injuries sustained during the rallies and ill-treatment treatment suffered during and after arrest;

(c) Is also concerned at the dissolution of the Sewol Ferry Special Investigation Committee and the absence of compensation to the families of victims of more than 300 persons from the Sewol Ferry;

(d) Is further concerned at the absence of information concerning the compensation lawsuit filed on 22 March 2016 by the family of Mr. Baek, who died of injuries (arts. 2, 12-14 and 16).

48. **The State party should:**

(a) **Ensure that all victims of violations of the Convention obtain redress, including rehabilitation, and have an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible, by formulating a detailed rehabilitation programme. The Committee draws the attention of the State party to general comment No. 3, in which the Committee explains the content and scope of the obligations of States parties to provide full redress to victims of torture and recommends amending the domestic legislation accordingly;**

(b) **Ensure that the above-mentioned rehabilitation programme offers specialized rehabilitation services that are appropriate, available and promptly accessible, in accordance with general comment No. 3, and that access is not conditional on the filing of formal administrative or criminal complaints;**

(c) Establish a programme for monitoring and evaluating the impact of the rehabilitation programme and collect data on the number of victims and their specific rehabilitation needs;

(d) Revise the agreement of 28 December 2015 between Japan and the Republic of Korea in order to ensure that the surviving victims of sexual slavery during the Second World War are provided with redress, including the right to compensation and rehabilitation, and that they are guaranteed the right to truth, reparation and assurances of non-repetition, in keeping with article 14 of the Convention;

(e) Provide the Committee with information on redress, including the right to compensation and rehabilitation, provided to the families of the victims of the Sewol Ferry accident, the family of Mr. Baek and any other victims of violations of the Convention.

Follow-up procedure

49. The Committee requests the State party to provide, by 12 May 2018, information on follow-up to the Committee's recommendations on the outcome of investigations by the Prosecutor's Office and the National Police Agency in relation to the death of Mr. Baek, on the outcome of any proceedings in relation to the Sewol Ferry accident, on the closing of remaining "substitute cells" and on the establishment of the office of the military ombudsman (see paras. 14 (d) and (e), 26 and 36 (b)). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.

Other issues

50. The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet party.

51. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

52. The State party is invited to submit its next periodic report, which will be the sixth, by 12 May 2021. For that purpose, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, submit to the State party a list of issues prior to reporting. The State party's replies to that list of issues will constitute its sixth periodic report under article 19 of the Convention.
