148. As mentioned in relation to Article 4 of the Convention, a person who, in performing or assisting in activities concerning judgment, prosecution, police or other functions involving physical restraint, commits an act of violence or cruelty against a criminal suspect or against another person while in the performance of his duties, shall be punished by penal servitude not exceeding five years and suspension of qualifications not exceeding ten years. Moreover, a person who arrests or imprisons another by abusing his official authority shall be under aggravated punishment of penal servitude not exceeding seven years and suspension of qualifications not exceeding ten years. Furthermore, a person who commits such crimes, thereby causing injury, shall be punished by penal servitude for a minimum of one year, and if his actions cause the death of a person, he shall be punished by penal servitude for three years to life. In sum, the laws of the Republic of Korea provide for penal servitude for a definite term, a minimum of one year for acts of torture and attempted acts of torture, as well as for all types of cruel and inhuman or degrading treatment or punishment.

149. The Extradition Act of the Republic of Korea provides that extradition may be requested only in cases in which extraditable crimes correspond to capital punishment, imprisonment with or without hard labor for life, or more than one year under the laws of the Republic of Korea and the requesting State (Article 6 of the Extradition Act). Thus, acts of torture or attempted acts of torture are included in the scope of extraditable crimes.

150. The Republic of Korea has concluded extradition treaties with Australia, Canada and Spain, signed such treaties with the Philippines, Chile, Brazil and Argentina, and initialed extradition treaties with Paraguay, Mexico and Thailand. The said treaties on extradition entered into with the above states consider acts of torture or attempted acts of torture as extraditable offenses.

Paragraphs 2 and 4

151. Since the Extradition Act of the Republic of Korea allows extradition to any states under the reciprocity principle (Article 4 of the Extradition Act), with the objective of responding to and aiding international cooperation against crimes, inasmuch as Article 8, Paragraph 2 of the Convention does not pertain to the ROK, Article 8, Paragraph 3 of the Convention is applicable to the Republic of Korea.

152. In cases in which an extradition treaty is not concluded between the Republic of Korea and another state, if it is guaranteed that the said state requesting extradition of a criminal will comply with a request by the Republic of Korea for extradition with respect to the same type of crime such as torture, the criminal shall be extradited for public prosecution, trial, or execution of sentence.

153. The Republic of Korea observes Article 8, Paragraph 4 of the Convention.

Article 9

154. Based on the treaties of mutual judicial assistance, the domestic laws of the Republic of Korea comply with Article 9 of the Convention by providing the best available support, such as offering evidence concerning penal procedures for crimes of torture.

155. The International Judicial Cooperation on Criminal Cases Act, which provides the scope and procedures for mutual assistance concerning criminal investigations or trials following a request to or from any foreign State, allows mutual assistance on any identical or similar kind of criminal case under the reciprocity principle, even though these cases are not specified in the treaties concluded (Article 4 of the International Judicial Cooperation on Criminal Cases Act).

156. The International Judicial Cooperation on Criminal Cases Act guarantees the best available support of the Republic of Korea on criminal matters of torture by enumerating the following procedures:

(a) The Minister of Foreign Affairs shall, upon receiving a request for mutual cooperation pertaining to an investigation of a criminal case from a requesting State, send the written request for mutual cooperation to the Minister of Justice together with related materials and his opinions (Article 14 of the above Act).

(b) If the Minister of Justice deems, after receiving the written request for mutual cooperation, that it is reasonable to comply with the request, he shall (1) send related materials to the chief of the district public prosecutor's office as sufficient for mutual cooperation and order him to take any measures necessary for mutual cooperation; and (2) order the head of the correctional facility to take any measures necessary for transferring the person, if the person named in the request is serving a sentence in a correctional facility (Article 15 of the above Act).

(c) The chief public prosecutor, who has received the order as mentioned above, shall instruct any public prosecutor under his control to collect materials necessary for mutual cooperation or to take other necessary measures (Article 16 of the above Act).

(d) In order to collect materials necessary for mutual cooperation, the public prosecutor may demand to personally consult any person connected with the proceedings in order to ascertain his opinions; to entrust any person with an appraisal, interpretation or translation; to demand the owner, holder or keeper of documents or other relevant materials to submit them; to inquire of any public office, public or private organization about the facts thereof; or to demand such office or organization to make a report on necessary and

relevant matters. If it is required for mutual cooperation, the public prosecutor may conduct any search and seizure or verification through a warrant issued by a judge at his request. Furthermore, if the evidence, etc., to be delivered to the requesting State is presented to the Court, the public prosecutor shall obtain the decision of the Court to the effect that it permits the delivery of any evidence thereof. The public prosecutor may direct judicial police officials to make the necessary investigation.

(e) In a case in which the arrested suspect is a foreigner, the Minister of Home Affairs may, with the aid of international criminal police organizations, conduct inquiries into any previous conviction(s) of the suspect, seek facts and the certification of any information necessary for investigating the suspect, and request the relevant materials (Article 38 of the International Judicial Cooperation on Criminal Cases Act).

157. For reference, the Republic of Korea has concluded mutual judicial assistance treaties on criminal matters with Australia and Canada, and signed such treaties with the United States of America and France.

Article 10

Paragraph 1

158. The objectives of education in the Republic of Korea are stipulated in Article 1 of the Education Act, the fundamental legal statute on education in the Republic of Korea. The Education Act provides that "Education aims, under a humanitarian ideal, to enable all nationals to bring their characters to perfection and to possess the capacity to lead independent lives and the temperament of good citizens, and thereby to devote themselves to the development of democracy and to contribute to the realization of an ideal of human prosperity" (Article 1 of the Education Act). In

accordance, the Republic of Korea has instituted an education system for all nationals. Pursuant to this ideal, all nationals are educated at the level of elementary education, in human worth and value, and in the institutions that are relevant to them. Through this education process, it is recognized that every citizen of the Republic of Korea has the right to be protected from acts of torture or other cruel and inhuman or degrading treatment or punishment.

159. The Government of the Republic of Korea has made every effort to inform and educate all nationals on the contents of the Convention, while it urged accession to the Convention. The Ministry of Justice published and distributed a collection of materials regarding the Convention before the accession of the Republic of Korea to the Convention. In addition, the Convention was ratified with an assembly of opinions from relevant Ministries, an affirmative decision in the State Council, and with the consent of the National Assembly, the representative organ of the nation. Following its ratification, the Convention was immediately promulgated. The Government of the Republic of Korea deposited an instrument of accession with the United Nations on 9 January 1995. The national press reported the significance of the Convention to the nation on 8 February 1995, the date the Convention became effective for the Republic of Korea.

160. The Government capitalized once more on an opportunity to encourage the observance of law, explaining to the citizens the contents of the Covenant for Human Rights and of the Convention. Residents in some small cities and farming and fishing towns were introduced to and educated about the contents of the Convention through summer legal service activities undertaken by college students. In November 1995, the Republic of Korea's accession to the Convention and its relevant Convention were included in a volume titled Law and Living (90,000 copies published), an introductory book on the subject of law for citizens. Copies were distributed throughout the nation. Those who had contributed to endorsing and promoting human rights were honored on 10 December 1995, in conjunction with the

Universal Declaration of Human Rights Day, which is celebrated annually in the Republic of Korea. Also on that day, the significance of the accession to the Convention was publicized in the national press. Moreover, a "Human Rights Week" was established in early December 1995, with many activities including answering questions regarding human rights and declaring to the nation that the Convention for torture prevention had become effective in the Republic of Korea.

161. The various investigative agencies of the Republic of Korea, such as the Public Prosecutor's Office and the National Police Agency, educate their officers and investigators on issues which regard arrest, detention and treatment of a subject and which concern the observance of due process for human rights protection and the treatment of the suspect in accordance with the principle of the presumption of innocence as prescribed in Article 27, Paragraph 4 of the Constitution. More specifically, one of the objectives of educating investigators is the "enhancement of the ethics of investigators to be staunch protectors of human rights". This requires them to complete such courses as "investigative agents and their reform of mentality", "investigations and human rights", and "ethics for investigators". These measures are intended to eliminate any potential human rights violations which might occur during the legal process, such as acts of torture or violence. Education of ethics and principles is carried out in order to enhance consciousness of human rights. Education of laws and regulations such as the Penal Procedure Code and the Rules for Investigating Crimes encourages investigators to strictly observe due process as prescribed in law. In sum, the education of human rights is carried out in many aspects.

162. On the other hand, the confrontational circumstances between the two Koreas have given rise to some negative reports concerning the human rights record of the National Security Planning Agency, which are contrary to the established facts. Iregardless, the National Security Planning Agency is often engaged in educating those who conduct and take part in investigations, especially concerning matters such

as prohibiting torture and observing due process, in order to protect human rights without exception and to eliminate any doubts regarding possible human rights violations.

(a) The National Security Planning Agency has established an "Intelligence Training Institute", an educational institution for investigative practices, teaching the importance of human rights to intelligence agents as well as to police officials and military agents who are in charge of affairs associated with human rights. It has also made substantial progress in solving human rights problems.

(b) Courses at the Institute are divided into elementary, intermediate and specialized levels. Lectures on torture prevention are given in each course. Provisions related to human rights, such as those concerning torture as found in the Constitution, the Criminal Code and the Penal Procedure Code, are also taught. Moreover, emphasis is placed on the fact that agents of the National Security Planning Agency are subject to punishment with aggravated penalties if they commit such crimes as false arrest, illegal confinement, obstruction of another person from exercising his right, and abuse of official authority. Furthermore, in order to prevent violations of human rights, all rules and directives which stress that the human rights of a suspect must be respected are taught at the institute.

163. Every soldier of the Republic of Korea, through regular and special instructions on military laws, is continuously educated on both the meaning and significance of his obligation to defend the country and the necessity to respect the human rights of the people. Moreover, those who are involved in military investigative agencies, including military prosecutors, are continuously being educated on the endorsement of human rights, either through independent efforts or under the supervision of higher or outside authorities. Furthermore, in military exercises, military legal officers, who

have the same qualifications as lawyers, provide special education programs focusing on international laws, such as the Geneva Convention, Relative to the Treatment of Prisoners of War. Every soldier is made aware that acts of cruelty such as torture are significant violations of international laws of war.

164. As for the public officials who supervise inmates in prisons or in juvenile reformatories, and for other public officials as well, educational programs are provided at the time of their appointment, and periodically thereafter. These programs are devised in such a way as to ensure that officials respect the human rights of inmates, including the prohibition of torture. The goal of such programs is the complete abolition of human rights violations.

165. Public officials who control immigration are educated to comply with all the relevant provisions and rules in the Immigration Control Act, in dealing with and regulating illegal alien residents or controlling foreigners under protection. This helps to guarantee that no human rights violations or unfair treatment will occur. Thus, guidelines and principles which regulate immigration control are fair and ethical.

166. The Republic of Korea supports the activities of human rights organizations, including the Korean Bar Association and the Korean League for International Endorsement of Human Rights, towards educating people on human rights. The Republic of Korea protects and guarantees education of torture prevention by the said organizations.

Paragraph 2

167. Article 198 of the Penal Procedure Code provides that investigations by a public prosecutor, judicial police official or others concerned with investigation shall maintain secrecy in order not to violate the personal rights of a suspect or other person(s). They shall not interfere with the rights of others in the course of an investigation, or draw the attentions of and heed those who engage in investigations.

168. Based on the Constitution and the Penal Procedure Code, the Ministry of Justice has issued Rules Concerning the Performance of Judicial Police Officials (by order of the Ministry of Justice), and Article 3 of the Rules provides that a judicial police official shall bear in mind that "he shall make efforts to be trusted by the people, as his mission is to protect the freedom and rights of the people." In addition, Article 7 of the Rules states that "a judicial police official shall take care to maintain secrecy in investigating a crime, in order to avert the existence of any obstacles to the investigation. He shall also take care not to defame the honor of a suspect, an accused or other concerned parties", ensuring that a judicial police official will not commit acts of torture or other cruel and inhuman or degrading treatment or punishment against a suspect, etc., in the process of investigation.

169. The National Police Agency has issued various instructions, making every effort to ensure human rights protection.

(a) **Rules for Investigating Crimes** (Instructions of the National Police Agency No. 57):

In a case in which a police officer investigates a person, he shall respect the human rights of the person and perform his duty in a fair and faithful manner (Article 2, Paragraph 2). In doing so, he shall observe relevant laws and regulations, including the Penal Procedure Code, ensuring that he will not unreasonably infringe upon the rights and freedoms of the person he is investigating (Article 3). As for those who are investigated as criminal suspects and held temporarily while arrest warrants are requested, their names shall be recorded on a register of criminal suspects, and police officers shall be conscientious and diligent in protecting their human rights. This helps to prevent possible incidents of flight, self-imposed injury or suicide (Article 138). During investigations, officers shall not incorporate measures such as torture, acts of violence, intimidation, unduly prolonged arrest, deceit or

others which would cast doubt on the voluntary nature of the confession obtained (Article 167).

(b) **Rules for Holding and Convoying Suspects** (Instructions of the National Police Agency No. 62):

Regarding suspects who are detained (or detainees), police officers shall try their best to guarantee the human rights of detainees by treating them fairly (Article 2). The chief of a police station and the person in charge of the detention place shall cultivate and supervise warders to refrain from using profane language and from acting cruelly toward the detainees. They shall also be vigilant in protecting the human rights of the detainees. Furthermore, tools such as truncheons and clubs are prohibited in detention centers (Article 40).

(c) **Rules for Convoy Police Officers Working in Branch Offices** (Instructions of the National Police Agency No. 61):

Chiefs of police stations who have competence over branch offices shall efficiently manage agents in the branch offices in order to diligently guarantee the human rights of suspects by treating them with due fairness (Article 4).

(d) **Manual for Police Affairs** (8-4, managing detention places, endorsement and refinement of the human rights of detainees):

(1) Prohibition of profanity and acts of cruelty: In detention centers, tools such as truncheons, handcuffs and ropes that physically bind detainees are prohibited. The persons in charge of the detention centers shall educate and supervise police officers not to use profanity

or act cruelly toward the detainees, guarding the human rights of the detainees.

(2) Discreet detention: In detaining a suspect, the chief of the relevant department shall directly review the written records of the investigation and take the appropriate measures.

(3) Establishment of the period for endorsement of human rights: A period of emphasis on human rights is established and celebrated every December, in addition to the opening and closing ceremonies of the Declaration of Universal Human Rights Day.

170. In January 1994, the National Security Planning Agency Act was amended, stipulating that staff members of the National Security Planning Agency are obligated to refrain from arresting or detaining a person, compelling him to perform a duty which is not required of him, or obstructing him from exercising his rights, stressing the observance of due process in the performance of their duties. The amended Act also provides that Agency members shall be placed under heavier punishment if they violate these obligations. Furthermore, the National Security Planning Agency has issued various statutes and directives in order to ensure the prohibition of torture.

(a) The Statute for Investigative Officers Related to Their Duties (wholly amended in January 1994) urges the staff of the National Security Planning Agency to perform their duties under the following creed:

"We shall try our best to protect the fundamental rights of the people and to perform our duties with integrity and fairness in order that people will trust us. We shall always observe all the relevant laws and regulations in investigating crimes in order that people will voluntarily assist us."

In addition, the statute provides that the staff shall aid suspects in receiving a medical examination during investigation, and that they shall guarantee the suspects interviews with counsel, a person who desires to serve as counsel, relatives and others, as far as possible, institutionally eliminating any possibilities for the staff to commit acts of torture against the suspects.

(b) Through the Rules for Examining Suspects and other guidelines, taking persons who are suspected of crimes to police stations through coercive measures is prohibited, except for flagrant offenders. In principle, examination of detained suspects shall be made during working hours. Also, such measures as refining language used during the examination have been adopted to eliminate high-handed examination practices. In sum, the National Security Planning Agency is making every effort to establish fair and judicious investigative practices which do not infringe upon the human rights of suspects.

171. In accordance with the Regulation for Military Personnel Related to Their Duties, which is the fundamental guideline for military personnel who live in barracks, the Republic of Korea prohibits the abuse of official authority. It also prohibits private sanctions in Articles 14 and 15, respectively, ordering that military personnel must refrain from any form of private sanction at any time, including assault, violent language and acts of cruelty. It also obliges commanders to direct and supervise their subordinates to refrain from assault, violent language and other acts of cruelty under the pretext of instructing military discipline and living in military barracks.

172. The Ministry of Justice has established and put into practice several regulations, with the objective of preventing torture against inmates and enhancing their human rights.

(a) Standing Rules for Guard Duty (Instruction of the Ministry of Justice No. 293, 26 November 1993): If a staff member is responsible for guarding inmates, he shall closely observe the following instructions:

(1) He shall respect the character of the inmates and strive in preserving their honor. He shall not abuse his official authority under the pretext of performing his guard duty and maintaining discipline.

(2) He shall try to be fair and impartial in treating the inmates, and he shall neither harbor prejudices, become overcome with resentment, nor give special treatment, such as the granting of favors.

It is prohibited to impose additional duties or labor on inmates, other than those which are in accordance with laws and regulations. Private sanctions are also unlawful (Article 16). Disciplinary tools shall be used only by an order of the head of the prison or his representative. However, if the need to utilize such tools is urgent, making it impossible to obtain the necessary orders beforehand, the tools may be utilized immediately, on condition that the actions will be subsequently authorized by the prison director (Article 17). Investigation of persons who have committed illegal acts, and examination of persons who breach order and discipline shall be conducted according to the instructions of the head of the security department, particularly heeding the following (Article 97):

During investigation, *mens rea* of the criminal shall be made clear, the circumstances of the crime, his attitudes/disposition following the crime, etc. However, investigators must never compel confessions. If the person under investigation denies his guilt regarding the commission of the crime, the investigators shall prove

the facts by collecting evidence if possible.

(b) Rules Regarding Discipline and Punishment of Inmates (Order of the Ministry of Justice No. 411, 11 August 1995): If an inmate is to be investigated due to disciplinary violations, a prison officer shall observe the following procedures, ensuring that there will be no infringement upon the human rights of the inmate under investigation (Article 7):

(1) If the officer discovers that an inmate has committed an act violating disciplinary regulations, he shall immediately report the violation to the prison director or to his representative and take measures in accordance with the orders of the director or representative.

(2) The inmate under investigation shall be allowed sufficient opportunity to make a statement, and the investigation shall proceed with impartial procedures and objectivity of evidence. In addition, actions against the inmate based on prejudice or assumption are prohibited.

(3) The investigation shall be conducted in the investigation room where a prison officer in charge of the investigation is in office, apart from the others.

(c) Directive for Holding Juvenile Inmates in the Juvenile Reformatory (Instruction of the Ministry of Justice No. 265, 1 June 1992):

(1) In supervising juvenile inmates, the head of a juvenile reformatory shall not treat them with prejudice, discriminate against them, commit acts of cruelty and other uncivil treatment which might cause the juvenile inmates to experience restlessness, fatigue, discord or

frustration. The head of the reformatory shall also devise and implement comprehensive measures for preventing incidents of assault, disturbance or escape (Article 19).

Article 11

173. The Republic of Korea has various institutional devices for the systematic review of institutions, regulations, directives, means and practices regarding investigative, adjudicative and executive procedures. The petition rights of the people and the inspection system of detention places are very useful devices for conducting systematic reviews of procedures regarding crimes of torture.

174. All citizens shall have the right to petition in writing to any government agency under the conditions prescribed by law (Article 26 of the Constitution).

(a) All citizens, including victims of some governmental measures, have the right to submit petitions to government authorities regarding the following: (1) redress of damages; (2) demand for correction of irregularities committed by a public official, or for disciplinary action against or punishment of a public official; (3) enactment, amendment or repeal of laws, orders or regulations; (4) operation of public institutions or facilities; and (5) any other matters which fall under the authority of public organizations (Article 4 of the Petition Act). Therefore, all citizens may submit petitions requesting authorities to address institutions, examine regulations, directives, means and practices regarding acts of torture.

(b) The State shall be obligated to examine all petitions (Article 26 of the Constitution). In addition, Article 89, Subparagraph 15 of the Constitution provides that examination of petitions pertaining to executive policies which are submitted or referred to the Executive shall be referred to the State

Council for deliberation. Furthermore, the Petition Act obligates all government offices to accept and examine petitions faithfully, fairly and promptly, and to notify the petitioner of the results thereof (Article 9 of the Petition Act). Such notification enhances the efficiency of the petitions systems.

(c) In addition, persons may submit petitions to the National Assembly, with the introduction of an Assemblyman. Petitions to the National Assembly shall be examined by a competent committee, and a petition which is accepted by the National Assembly but deemed necessary to be settled by the Government shall be transferred to the Government with the opinion of the National Assembly. In such cases, the Government shall settle the petition and report without delay the results of the settlement to the National Assembly (Articles 123 and 126 of the National Assembly Act).

(d) No person shall be treated with discrimination nor forced to suffer any consequences because he has filed a petition (Article 11 of the Petition Act).

175. On 7 January 1994, the Republic of Korea enacted the Fundamental Act Relating to Administrative Regulations and Civil Appeals Affairs, allowing persons to file civil appeals against administrative agencies, so that illegal or unjust acts may be eliminated through institutional improvements.

(a) A person may file a civil appeal against administrative agencies in relation to illegal, unfair or negative actions and unreasonable regulations of administrative agencies which infringe upon the rights of the people or are inconvenient or burdensome to the people. Therefore, questions regarding torture may also be the subject of civil appeals.

(b) Administrative agencies shall address civil appeals before all else (Article 9, Paragraph 1 of the Fundamental Act Relating to Administrative Regulations and Civil Appeals Affairs). If they reject the appeal, or deem it impossible to accept the appeal, the administrative agencies shall notify appellants of the fact, with legal and factual reasons for the decision indicated in the notification (Article 12, Paragraph 1 of the above Act), as administrative agencies cannot reject petitions for institutional improvements on unreasonable grounds.

(c) Furthermore, questions related to torture may, according to the circumstances, be the subject of applications for consultation, investigation and addressing of civil appeals submitted to the Committee for Treatment of National Difficulties, under the authority of the Prime Minister (Article 15 of the above Act).

176. Specifically, the Criminal Execution Act provides that in a case in which an inmate or detainee pending trial protests against his treatment, he may file a petition with the Minister of Justice and with public officials who conduct patrol examinations (Article 6, Paragraph 1 of the Criminal Execution Act). It is also provided that public officials shall handle an application of a detainee according to the orders of the person responsible for the matter, after addressing it promptly and reporting it to him. Officials are also obligated not to reject applications by inmates on unreasonable grounds in relation to their treatment (Article 27 of the Standing Rules for Guard Duty).

177. Juveniles under protection who are held in a juvenile reformatory who have objections regarding their treatment may submit petitions to the Minister of Justice (Article 11 of the Juvenile Reformatory Act). Even persons who are held in detention places such as military prisons may make petitions to the General Chiefs of Staff or patrol inspectors if they wish to protest against their treatment (Article 4

of the Military Criminal Execution Act).

178. In all immigration control offices, consultation rooms are established for complaints by foreigners. Therefore, if aliens who have illegally entered the Republic of Korea request consultations for their grievances, immigration officers shall comply with their requests in a faithful manner, and they shall cooperate with competent governmental agencies in settling the matter within a short time, making efforts to protect the human rights of foreigners.

179. As mentioned in paragraphs 85 and 86, inspection of detention places in investigative agencies by a public and military prosecutor (Article 198-2 of the Penal Procedure Code, Article 280 of the Martial Court Act) and inspection of prisons by prosecutors and judges, both public and military (Article 5 of the Criminal Execution Act, Article 3 of the Military Criminal Execution Act, Article 10 of the Juvenile Reformatory Act) contribute much to improving institutions, regulations, directives, and practices in relation to the issue of torture.

180. In addition, the Ministry of Justice, the Public Prosecutor's Office, the National Police Agency and prisons have established their own inspectors' rooms and employed persons in charge of planning, resulting in continuous improvements and the elimination of inappropriate practices and institutions.

Article 12

181. All relevant laws of the Republic of Korea guarantee the immediate and unbiased investigation by public prosecutors or judicial police officers of cases where there are reasonable grounds to believe that acts of torture have been committed.

182. Circumstances which prompt investigations of torture crimes include arrest of flagrant offenders, autopsies, questioning, investigation reports, rumors, and persons' complaints, accusations, self-denunciation, petitions, reports of crimes, etc. Regardless, if there are reasonable grounds to suspect the commission of a crime, investigative agencies shall conduct an investigation into the crime, the facts of the crime and the evidence.

183. To assure fairness in investigations, a public prosecutor, who has the same qualifications as a judge and whose status is guaranteed, presides over the investigations. Investigators, police administrative officials, police superintendents, police captains or police lieutenants shall investigate crimes as judicial police officers under the authority of the public prosecutor. In addition, police sergeants or patrolmen shall assist in the investigation of crimes as judicial police assistants under the authority of a public prosecutor or judicial police officers.

184. Furthermore, to assure fairness in investigations, the Penal Procedure Code provides for the right to refuse to answer questions (Article 200, Paragraph 2 of the Penal Procedure Code), the right to interview with a defense counsel (Article 34 of the above Code), the right to be notified of arrest and detention (Articles 200-5, 209 and 87 of the above Code), and the right to interview the accused detainee and to apply for defense counsel (Articles 200-5, 209, 89, and 90 of the above Code).

185. In particular, the National Security Planning Agency Act strictly provides that staff members of the National Security Planning Agency who take charge of investigations shall respect the above-mentioned rights of the accused (Article 11, Paragraph 2 of the National Security Planning Agency Act).

186. In order to facilitate prompt investigation, the Penal Procedure Code empowers a public prosecutor to command and direct the investigation, thus allowing him to preside over the investigation (Article 195 of the Penal Procedure Code) and limits the detention period either by a prosecutor or by a judicial police officer (Articles 202 and 203 of the above Code). Civil complaints of the detainee, as mentioned in relation to Article 11 of the Convention, also guarantee prompt investigations.

Article 13

187. Laws of the Republic of Korea ensure the safeguarding of petitions or accusations by victims of torture and observe Article 13 of the Convention by protecting the victims from unreasonable treatment or intimidation as a consequence of their petitions, accusations or any evidence given.

188. A person who has been injured as consequence of an offense may file a complaint with investigative agencies (Article 223 of the Penal Procedure Code). Legal counsel of a person who has been injured may file a complaint independently; on the death of the injured party, his spouse or any of his lineal relatives or brother or sister may file a complaint (Article 225 of the above Code); and a complaint may be lodged or withdrawn by proxy (Article 236 of the above Code). Any person who believes that an offense has been committed may lodge an accusation. If a public official, in the course of his duty, believes that an offense has been committed, he shall lodge an accusation (Article 234 of the above Code).

189. A complaint and accusation shall be filed with a public prosecutor or judicial police officer, in writing or orally. On receipt of an oral complaint or accusation, a public prosecutor or a judicial police officer shall draw up a protocol (Article 237 of the above Code). In a case in which a complaint or accusation has been lodged, the public prosecutor must decide whether or not to institute a public prosecution, withdraw public prosecution, or send the case to a public prosecutor of another public

prosecutor's office, and the public prosecutor shall inform the complainant or accuser in writing of the reasons thereof within seven days after the said decision has been made (Article 258, Paragraph 1 of the above Code). If it has been decided not to institute a public prosecution, the public prosecutor shall, upon the request of the complainant or accuser, promptly inform him of the reasons thereof in writing within seven days (Article 259 of the above Code).

190. Once a complaint or accusation against an offender is lodged, the public prosecutor and the judicial police officer must promptly initiate an investigation.

(a) In a case in which a public prosecutor investigates a crime based on a complaint or accusation, he shall determine whether or not public prosecution shall be instituted within three months after the complaint or accusation has been made (Article 257 of the above Code).

(b) According to the Penal Procedure Code, when a judicial police officer receives a complaint or accusation, he shall promptly investigate the matter pertaining thereto and transfer the relevant documents and evidence to a public prosecutor (Article 288 of the above Code). In addition, according to the Rules Concerning the Performance of Judicial Police Officials, in case of an investigation by a judicial police official based on a complaint or accusation, the investigation shall be completed within two months. If it is not completed within two months, it shall come under the direction of the public prosecutor of the competent district public prosecutor's office or the branch office (Article 39 of the Rules Concerning the Performance of Judicial Police Officials).

191. In particular, when a complaint is filed at a police station, an investigation is immediately initiated under special regulations as delineated below:

(a) When a person files a complaint, the police station shall receive it for investigation, without regard to jurisdiction. Necessary civil complaint documents brought in directly by the complainant shall be registered at the civil complaints room, then shall be handed over to the competent department of the police station. The key officers shall appoint an investigator to write up a supportive protocol without delay, and they shall sign the protocol, in order to avoid the inconvenience of a repeated process in writing up the protocol (Manual for Police Affairs, 8-2).

(b) Despite limitations on time periods as prescribed in relevant laws, a case based on an accusation is expeditiously settled within a month of the date on which the accusation was lodged, unless a time extension is necessary (Article 66 of the Rules for Investigating Crimes).

(c) Once the investigation is completed, the civil complainant must be immediately informed of the results thereof. If handling of the case is delayed, the civil complainant is to be updated promptly on the current situation (Manual for Police Affairs, 8-2).

192. For the protection of the complainant, etc., crimes such as murder, bodily injury, acts of violence, intimidation, false arrest and illegal confinement are punished with aggravated penalties. Moreover, compensation is paid to the complainant according to legal provisions.

(a) A person who commits murder (Article 250, Paragraph 1 of the Criminal Code) as revenge against another person for providing testimony, evidence, or serving as a witness in a trial or investigation, is punished by death or

penal servitude for ten years to life. In addition, a person who commits murder with the objective of suppressing a complaint or accusation, or who prevents the provision of truthful evidence or testimony, or creates false evidence or testimony in the course of a trial, shall receive the same punishment as delineated above (Article 5, Paragraph 1 of the Act Concerning Aggravated Punishment Against Specified Crimes).

(b) A person who commits crimes of bodily injury (Article 257, Paragraph 1 of the Criminal Code); violence (Article 260, Paragraph 1 of the above Code); false arrest or illegal confinement (Article 276, Paragraph 1 of the above Code); or intimidation (Article 283, Paragraph 1 of the above Code) in order to accomplish the above-mentioned purposes, is punished by penal servitude for a minimum of one year (Article 2 of the above Act). The death of a person resulting from the above crimes shall be punished by penal servitude for three years to life (Article 3 of the above Act).

(c) Any person who forces an interview with or threatens to use force upon someone who holds crucial evidence, or upon a relative or family member without just cause, is punished by penal servitude not exceeding three years or fines not exceeding three million Won (Article 4 of the above Act).

(d) Compensation shall be given to victims of crimes committed in connection with the provision of essential evidence of testimony in the course of his or another person's trial and/or investigation, or compensation may be given to the victim's family (Article 3, Paragraph 1 of the Act Concerning Aid to Criminal Victims).

193. In particular, in cases of acts of torture committed in crimes of rape, indecent acts by compulsion, or murder, special measures are taken by the public prosecutor to protect the witness(es) (Article 7 of the Special Case Act Concerning Punishment Against Specified Serious Crimes).

(a) If it is recognized that a witness of a rape, indecent act, or murder committed by two or more people or through the use of deadly weapons, is in danger of being physically harmed or his life threatened by the accused or other persons, the public prosecutor may request the chief of the competent police office the necessary measures to protect the witness (Paragraph 1 of the above Article).

(b) The witness and the chief judge may request of the public prosecutor such measures as mentioned above (Paragraphs 2 and 3 of the above Article).

(c) The competent chief of the police station which receives such requests from the public prosecutor shall immediately take the essential measures to protect the witness. In addition, the public prosecutor shall be informed of what measures are taken (Paragraph 4 of the above Article).

194. As mentioned above in paragraphs 88 and 91, should the public prosecutor decide not to institute a public prosecution, the victim may fully exercise his rights of objection through appeal and reappeal, constitutional petition and request of ruling, heightening the significance of the victim's right to lodge an accusation.

195. A person who objects to certain conditions of confinement which were effected by a public prosecutor or a judicial police officer may demand a court to address the matter in order to prevent confinement as a means of torture (Article 417 of the Penal Procedure Act).

196. On the other hand, current laws enable torture victims to file petitions in accordance with the relevant legal procedures. Furthermore, no person shall suffer any consequences because he has filed a petition (Articles 4 and 11 of the Petition Act). He is also able to institute civil complaints (Article 3 of the Fundamental Act Concerning Administrative Regulation and Civil Complaint Affairs). Inmates and unconvicted prisoners may also file petitions, and authorities shall not treat them unjustly merely because they have submitted petitions (Article 6 of the Criminal Execution Act, Article 8 of the Enforcement Ordinance concerning the above Act). Juveniles under protection in a juvenile reformatory may file petitions in matters of unfair treatment (Article 11 of the Juvenile Reformatory Act).

197. Due to the unique characteristics of the military, in which every order requires perfect obedience among the hierarchy of ranking officers, the concealment of acts of torture or cruelty is a possibility in the military. In order to prevent these illegal acts of violence, the system of accusation and petition is reinforced in the following manner:

(a) According to Article 300 of the Martial Court Act, if a military prosecutor decides not to indict a criminal, he shall explain to the complainant the reasons of non-indictment. As mentioned above in paragraph 89, if the military prosecutor decides not to prosecute, the complainant may apply to the High Martial Court for a ruling.

(b) Complaints by a soldier to his military barracks or to a higher military institution are accepted without revealing the soldier's identity. A person who witnessed or suffered injuries from acts of cruelty or torture is able to file an accusation anonymously. These measures contribute to the prevention of crimes such as torture in the military.

(c) If a complainant is dissatisfied with the circumstances of a case handled by the military prosecutor or the military judicial officer in relation to confinement, etc., he may request for the matter to be addressed to the competent martial court (Article 466 of the Martial Court Act).

(d) Even persons who are held in detention centers such as military prisons may, in protest of their treatment, file a petition with the General Chiefs of Staff or patrol inspectors (Article 4 of the Military Criminal Execution Act).

198. Since the Republic of Korea has acceded to the International Covenant on Civil and Political Rights and its Optional Protocol, victims of torture may send communications to organizations of the United Nations.

Article 14

199. The Republic of Korea observes Article 14 of the Convention which ensures that a victim of torture or his inheritor has the right to claim justified penal compensation according to the law.

200. In a case in which a criminal suspect or an accused person who has been placed under detention is not indicted as provided by law or is acquitted by a Court, he shall be entitled to claim just compensation from the State under the conditions prescribed by law (Article 28 of the Constitution).

(a) The Penal Compensation Act provides the procedural details. A suspect who has been tortured while under some form of detention and subject to the decision by a public prosecutor not to institute a public prosecution, or a victim who has been injured as a consequence of torture and acquitted by a verdict of not guilty in his trial, shall have the right to claim compensation from the State (Articles 1 and 26 of the Penal Compensation Act), and his

inheritor may also have the same right to claim said compensation (Articles 2 and 28 of the above Act).

(b) To guarantee just compensation, when the Court has to calculate the amount of compensation, loss of possible benefits, mental pains, physical injury, intent or fault of the police, the prosecution, the Court and other agencies, all circumstances shall be considered (Article 4, Paragraph 2 of the above Act).

201. In a case in which a person has sustained damages due to an unlawful act committed by a public official in the course of performing official duties, he may claim just compensation from the State or public organization under the conditions prescribed by law. In this case, the public official concerned shall not be immune from liabilities (Article 29, Paragraph 1 of the Constitution).

(a) The National Compensation Act provides details concerning the compensation procedure. A victim who has suffered detention as a form of torture may claim compensation in accordance with the National Compensation Act (Article 2 of the National Compensation Act).

(b) The National Compensation Act provides that in the case of the deprivation of another person's life, compensation shall be given to the victim's inheritor (Article 3, Paragraph 1 of the above Act).

(c) The current National Compensation Act also provides details concerning medical care, medical treatment, survivor compensation, compensation for suspension of work, and consolation payments which guarantee just compensation (Article 3 through 3-2 of the above Act).

In particular, the Courts of the Republic of Korea calculate losses of potential profits according to the Hoffman method, guaranteeing just compensation.

(d) In a case in which the victim is a foreigner, he may claim compensation from the Government of the Republic of Korea only if a mutual guarantee exists.

(e) In case liability is not recognized, even if torture has been committed, the victims of torture may claim compensation from the public officials according to the provisions of the Civil Code.

202. Article 30 of the Constitution provides that citizens who have suffered bodily injury or death due to the criminal acts of others may receive aid from the State under the conditions prescribed by law. The Act Concerning Aid to Criminal Victims provides more details of this provision. A criminal victim may also receive adequate remedies from the State, and claim just compensation. In case of the death of the victim, his family may claim the compensation.

203. On the other hand, if a Court convicts a person of bodily injury, aggravated injury, or death or injury from violence, the Court may order, *ex officio* or through application by the victim or his inheritor, compensation for physical damages and medical fees as a consequence of the crimes (Article 25 of the Special Case Act Concerning the Precipitation of Lawsuit Procedure). Accordingly, victims of torture and other similar acts may be granted compensation without depending on general civil procedures.

204. The Government of the Republic of Korea is cognizant of Article 14, Paragraph 2 of the Convention, which states that there shall be no barriers to the rights of victims or other persons to claim compensation which is permitted under national law.

Article 15

205. The Constitution and the laws of the Republic of Korea provide that if a confession is deemed to have been made against the defendant's will due to torture, the confession shall be inadmissible as evidence of guilt. Confirmation of this provision is also found in the case laws of the courts.

206. The Constitution and the Penal Procedure Code provide that in a case in which a confession is deemed to have been made against a defendant's will due to torture, violence, intimidation, unduly prolonged arrest, deceit or etc., or in a case in which a confession is the only evidence of a defendant's culpability, such a confession shall not be admitted as evidence of guilt, nor shall a defendant be punished by reason of such a confession (Article 12, Paragraph 7 of the Constitution and Article 309 of the Penal Procedure Code). Furthermore, Article 317 of the Penal Procedure Code provides that oral statements given by an accused person or a person other than the accused shall not be admitted as evidence unless the statements are made voluntarily, and a document which contains the said oral statements shall not be admitted as evidence unless it is proved that they were made voluntarily (Article 317 of the Penal Procedure Code).

207. A protocol prepared by a public prosecutor which contains the statement of a suspect or of any other person, or a protocol containing the results of inspection of evidence, prepared by a public prosecutor or a judicial police officer, may be introduced into evidence, if the genuineness thereof is established by the person who made the original statement at a preparatory hearing or during the public trial (Article 312, Paragraph 1, the body of the above Code): provided that a protocol containing the statement of the defendant, who was a suspect, may be introduced into evidence only in a case in which the statement was made under such circumstances as to guarantee its truth, regardless of statements made at a preparatory hearing or during public trial by the defendant (Article 312, Paragraph 1, the proviso of the above Code). A

protocol containing the interrogation of a suspect and prepared by investigation authorities other than the public prosecutor may be used as evidence only if the defendant who has been a suspect, or the defense counsel, verifies the contents of the protocol at a preparatory hearing or during public trial (Article 312, Paragraph 2 of the above Code). In sum, current laws provide institutional mechanisms which prevent confessions deemed to have been made against the defendant's will from being admitted as evidence. Furthermore, a protocol containing the interrogation of a suspect by judicial police officers may not be used as evidence without the defendant's consent, and a protocol containing the interrogation of a suspect by a public prosecutor may be used only if the statement was made under such circumstances as to guarantee its truth.

208. The principal case law of the Supreme Court concerning the nullification of the probative value of evidence is as follows:

(a) Assertion by the accused that his confession to the investigation authorities was made against his will due to the use of torture may not seem believable. However, under special circumstances in which neither specific motivation for the crime nor clues to the investigation can be found, in which his statement of confession lacks objective rationality, and in which the material evidence of the crime does not correspond in general with the confession, there may be grounds to suspect that the confession of the accused was compelled through acts of violence and other measures, even though the original cause of his confession to the investigation authorities was not related to acts of torture as the accused asserts (Supreme Court, rendered on 26 April 1977, Judgment 77 DO 210).

(b) Although the confession is not coerced during investigation in the presence of a public prosecutor, it shall not be admitted if the confession was obtained through torture by other investigation authorities, thus the suspect's

involuntary disposition is maintained through to the stage of the public prosecutor's investigation (Supreme Court, rendered on 13 October 1981, Judgment 81 DO 2160; rendered on 24 June 1983, Judgment 83 DO 497; rendered on 24 November 1992, Judgment 92 DO 2409).

(c) The accused stated that he had been tortured by a judicial police officer during his statement in the courtroom and denied the voluntary nature of the confession and the statements, even submitting a medical certification of his claims. He also asserted the falsity of his confession and statement at the stage of the public prosecutor's investigation, but the assertion was rejected. Under these circumstances, the statement on a protocol containing interrogation of the accused can hardly be regarded as credible (Supreme Court, rendered on 31 January 1989, Judgment 88 DO 680).

(d) Article 309 of the Penal Procedure Code provides that any confession of an accused extracted by torture, violence, intimidation or after unduly prolonged arrest or detention, or which is suspected to have been made involuntarily by means of fraud or other methods, shall not be admitted as evidence of guilt. Furthermore, cases of illegal acts which infringe upon the suspect's freedom to make a statement, as enumerated in the above article, shall, in principle, be deemed exceptional. Credibility of a confession shall be judged in consideration of the objective rationality of the contents of the statement, the motivation or the reason that led to the confession, circumstantial evidence other than the confession, and whether or not there exist any discrepancies or conflicts between other facts and the confession (Supreme Court, rendered on 26 May 1985, Judgment 82 DO 2413).

(e) The accused was detained at the police station during the investigation by a public prosecutor, and when interrogated by the public prosecutor at the outset he denied his crime. However, after the second interrogation session, he confessed to the crime without specific reasons. Afterward, in his first court appearance, the accused again denied having committed the crime. Furthermore, witnesses testified that, while interviewing the accused, they learned that he had been tortured, saw his wounds, received a note in which he asked them to file a complaint of his sufferings, and that he had been ill during the entire night following the investigation. Under these circumstances, the confession of the accused is deemed to have been made involuntarily as a consequence of torture. Therefore, the admissibility of the confession as evidence is denied (Supreme Court, rendered on 13 March 1984, Judgment 84 DO 36).

209. In addition, the Constitution and the Penal Procedure Code provide that in a case where a confession is the only evidence against a defendant in a formal trial, such a confession shall not be admitted as evidence of guilt (Article 12, Paragraph 7 of the Constitution, Article 310 of the Penal Procedure Code). These provisions prohibit compulsive investigations by methods such as torture.

210. The Penal Procedure Code provides that when it is established by a final judgment that an offense has been committed, in connection with official functions, by a public prosecutor or judicial police officer who participated in the institution of a public prosecution or in the investigation which formed the basis of the public prosecution, a request for reopening procedures may be made (Article 407, Subparagraph 7 of the Penal Procedure Code). This indicates that when a final judgment proves that persons who participated in investigations have committed crimes of torture, victims of torture may request the reopening of procedures.

Article 16

211. The Republic of Korea recognizes that the concept of cruel and inhuman or degrading treatment or punishment is not as significant as that of torture; however, all the above acts are regarded as violations of human worth and dignity and human rights.

212. The obligation in the first sentence of Article 16, Paragraph 1 of the Convention is realized in Article 10 of the Constitution which provides that "all citizens shall be assured of human worth and dignity and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals."

213. The Government of the Republic of Korea has taken various measures to prevent the occurrence of cruel and inhuman or degrading treatment or punishment.

(a) In principle, it is the duty of the authorities to execute all relevant measures and disciplines to prevent cruel and inhuman or degrading treatment or punishment by public officials, etc., and to ensure that officials under their direction and supervision abide by the said measures and disciplines.

(b) As mentioned in relation to Article 4 of the Convention, various provisions concerning the punishment of acts of violence or cruelty or bodily injury committed by a public officer and concerning disciplinary action against them may apply to cruel and inhuman or degrading treatment or punishment as well as to acts of torture, under Article 1 of the Convention.

(c) As mentioned in relation to Article 14 of the Convention, a victim injured as a consequence of torture or other cruel and inhuman or degrading acts by a public official, etc., may claim civil compensation from the State, etc.

(d) Public officials, especially those who are engaged in investigative agencies such as police officers or prison officers, have an obligation to observe the law in the performance of their duties, being instructed to use minimum force and respect the human rights of those under protection, so that cruel and inhuman or degrading treatment or punishment is prevented.

214. The above sections alluding to Articles 10, 11, 12 and 13 of the Convention may also refer to cruel and inhuman or degrading treatment or punishment under Article 16 of the Convention. The laws of the Republic of Korea contain a series of provisions corresponding to the second sentence of Article 16, Paragraph 1 of the Convention.

215. The Government of the Republic of Korea recognizes that the role of the Convention is to prevent cruel and inhuman or degrading treatment or punishment, and to prevent any breach of the provisions of international conventions or domestic laws in relation to issues of extradition or deportation.

CONCLUSION

216. The Republic of Korea, since its foundation in 1948, has continually strived to guarantee and protect the lives of the people. These efforts have been undertaken while confronting the problems of economic poverty and threats to national security resulting from the division of the North and South.

217. Human rights conditions in the Republic of Korea have been greatly improved, compared to those in the past authoritarian era. Since the launch of the civilian Government in February 1993, great steps have been made towards achieving international standards. With regard to the prevention of torture and other cruel, inhuman or degrading punishment, relevant laws, regulations and institutions have been amended and improved. In this regard, the cases in which four investigative police officers have been arrested and respectively sentenced to penal servitude, ranging from one-and-a-half years to three years, as well as the award of State's compensation to Mr. Geun Tae KIM of 45 million Won, reflects the will and desire of the Republic of Korea to eliminate torture.

218. However, the Republic of Korea has yet to solve some problems with regard to human rights. The Government of the Republic of Korea recognizes that guarantees of human rights cannot be achieved within a short time, and that there remains much to be accomplished. Human rights progress should accompany all developments in society. Therefore, the continuous efforts of the entire community are necessary to achieve human rights guarantees.

219. Given this recognition, the Government of the Republic of Korea is doing its best to improve upon inadequate and unacceptable practices and institutions. Such efforts are believed to be an absolute necessity if the Republic of Korea