



Ia2.54.2

**PERMANENT MISSION OF THE REPUBLIC OF KOREA  
GENEVA**

**INITIAL REPORT OF THE  
REPUBLIC OF KOREA**

**on**

**The Convention Against Torture And  
Other Cruel, Inhuman Or  
Degrading Treatment  
Or Punishment**

**Geneva, 10 February 1996**

## INDEX

	Para.	Page
<b>INTRODUCTION</b> .....	1 - 9	1
<b>PART I : GENERAL INFORMATION</b>		
A. Relevant Provisions of the Constitution and Laws concerning the Prevention of Torture .....	10 - 17	4
Protection of the Right of Foreigners .....	18 - 19	7
B. The Relationship between the Convention and Korean Domestic Laws .....	20 - 24	8
C. Instruments for Human Rights Protection .....	25	10
The Court .....	26 - 30	10
The Constitutional Court .....	31 - 32	11
Martial Courts .....	33 - 34	12
Other Instruments for Human Rights Protection .....	35 - 36	13
D. Measures which can be Taken by Individuals Alleging Injury from Torture .....	37 - 44	15
E. The Right to Counsel .....	45 - 48	17
Public Legal Officer System .....	49 - 51	18
F. Investigating Agencies and Correctional Facilities.....	52	20
The Public Prosecutor .....	53 - 55	20
Judicial Police Officials .....	56	22
Correctional Facilities .....	57 - 59	24
Military Investigative Agencies .....	60	26
G. Other Significant Circumstances for Consideration.....	61	26
Population, Economic Structure and Educational Level .....	62 - 65	26
Security on the Korean Peninsula .....	66 - 68	28
 <b>PART II : INFORMATION IN RELATION TO ARTICLES IN PART I OF THE CONVENTION</b>		
Article 2		
Paragraph 1 .....	69 - 72	31
Caution to Those Who Engage in Investigations ....	73 - 74	32
Principles of the Presumption of Innocence and the Right to Refuse to Answer Questions .....	75 - 78	33
Issuance of Warrants, Interrogation of Suspects and the Examination of the Legality of Arrest and Confinement .....	79 - 83	34
Inspection of Detention Places .....	84 - 87	36
Quasi-Indictment, Appeal and Reappeal and Constitutional Petitions .....	88 - 91	39
Restrictions on Evidence .....	92	40

	<b>Para.</b>	<b>Page</b>
Paragraph 2 .....	93 - 95	41
Paragraph 3 .....	96 - 99	42
Article 3 .....	100 - 104	44
Article 4 .....	105 - 115	47
Article 5 .....	116 - 119	57
Article 6		
Paragraph 1 .....	120 - 126	59
Paragraph 2 .....	127 - 129	63
Paragraph 3 .....	130 - 134	64
Paragraph 4 .....	135 - 136	65
Article 7		
Paragraph 1 .....	137	66
Paragraph 2 .....	138 - 141	66
Paragraph 3 .....	142 - 146	67
Article 8		
Paragraph 1 .....	147 - 150	69
Paragraphs 2 and 4 .....	151 - 153	71
Article 9 .....	154 - 157	71
Article 10		
Paragraph 1 .....	158 - 166	73
Paragraph 2 .....	167 - 172	77
Article 11 .....	173 - 180	84
Article 12 .....	181 - 186	87
Article 13 .....	187 - 198	89
Article 14 .....	199 - 204	95
Article 15 .....	205 - 210	98
Article 16 .....	211 - 215	102
CONCLUSION .....	216 - 221	104

## INTRODUCTION

1. The Republic of Korea, on 9 January 1995, deposited with the Secretary-General of the United Nations documents of accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (referred to hereafter as the Convention), and the Convention took effect in the Republic of Korea on 8 February of the same year.
2. This Initial Report for the Convention is written, pursuant to Article 19, Paragraph 1, with regard to the measures which the Republic of Korea has adopted to fulfill the obligations of the Convention as it acceded to this Convention, and any achievements in fulfilling the said obligations.
3. The Republic of Korea is a democratic Republic, centered around a presidential system based on the principle of checks and balances. Sovereignty resides with the people. The Korean Government is composed of three branches, which are legislative, executive, and judiciary. The Government is obligated to guarantee, to the fullest extent, the fundamental freedoms of all individuals. It shall honor international obligations set forth in treaties and respect the generally accepted rules of international law. The President is elected through direct balloting by the people for a term in office of five years, and he is ineligible for reelection.
4. In order to guarantee human rights, drafting and establishing relevant laws and institutions are important. But the strong will of the people and the Government towards enhancing human rights is the most crucial element. Laws and institutions, however beneficial they may be, hold no significance for the enhancement of human rights if unbolstered by the will of the people and the Government. In this regard,

the launching of the civilian Government of the Republic of Korea by the Korean people in February 1993 was an important milestone towards improving and enhancing human rights. Firmly rooted in the people's courage and hopes for democracy, this move to establish a civilian Government was boldly made despite the many adversities caused by the division of the Korean peninsula and authoritarian rule.

5. The civilian Government put an end to three decades of authoritarian rule. Based on the support and approval of the people, the Government continues to build a society characterized by respect for human worth and dignity, guarantees of each citizen's creativity and freedom, and acceptance of diversity in society. These efforts are made in order to secure the freedoms and equality of all people, and to enable them to lead dignified, peaceful and active lives in society.
  
6. The civilian Government granted amnesty and restored the rights of a total of 44,659 citizens on four different occasions, including in March 1993, when the greatest number of pardons was issued since the foundation of the Republic of Korea. The pardons freed most inmates who had been imprisoned for violating public peace and security (including espionage from North Korea), with the exception of those who could not be tolerated under the newly established liberal democratic system. Also, the civilian Government continues to deliberate the issue of physical detention and the prevention of torture. It is perceived that physical detention is the most powerful legal measure in a democratic society which restricts the guarantee of personal liberty, effecting both the one who is detained and those around him. Therefore, prudent and cautious measures must be applied to cases of physical detention. Moreover, the Government has made every effort to devise legal and institutional mechanisms to further guarantee human rights, including increasing defense counsel visitation rights and expanding the scope of legal aid available to the economically underprivileged. These mechanisms are being perfected instituting severe

punishment for those who violate the standards of the investigation process.

7. Furthermore, the Government endeavors to guarantee decency in all aspects of human life, including housing, education, culture, medical care, a clean environment, and the right to pursue happiness. Among the important measures that have been taken are the introduction of allowances for the unemployed, the expansion of medical insurance and national pension policies, the extension of welfare expenditures to the handicapped and the elderly, and legislation for protecting the environment, etc.
8. In addition, the Republic of Korea is in the midst of achieving great economic, social and cultural reforms. It is doing its utmost to contribute to the smooth functioning of a democratic society where justice prevails. The goal to establish a solid democracy by ensuring a system of local self-government, a substantial expansion of political rights through integrated election laws, and promoting economic fairness through a real-name business system for real estate and finances.
9. The Government of the Republic of Korea, in working out this Initial Report, has referred to the General Guidelines on the Form and Content of Reports of Contracting Parties which the Committee Against Torture adopted in its first meeting on 20 April 1988. Part 1 of this report states general information, including all provisions of the Constitution and laws regarding the prevention of torture, the relationship between the Convention and domestic laws, instruments of human rights protection, measures that individuals claiming damage from acts of torture can take, the right to legal counsel, and factors that affect the prevention of torture. Part 2 of this report describes legislative, judicial and administrative measures which relate to the implementation of the provisions in Articles 2 to 16 of the Convention.

## PART 1

### GENERAL INFORMATION

#### A. Relevant Provisions of the Constitution and Laws concerning the Prevention of Torture

10. The first Constitution of the Republic of Korea was promulgated on 17 July 1948. Following several amendments, the current Constitution was promulgated on 25 February 1988. The amended Constitution was founded upon a procedure reflecting the ardent aspirations and consent of the people. It contains provisions for strengthened guarantees of the entire scope of fundamental human rights. As the superior organizing and ruling principle of the State, the Constitution has played a great role not only in political, economical and social developments, but also in improving human rights.
  
11. Human rights are guaranteed by the Constitution of the Republic of Korea. Article 10 of the Constitution of the Republic of Korea 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." In addition, Article 37, Paragraph 1 provides that "Freedoms and rights of citizens shall not be neglected on the grounds that they are not enumerated in the Constitution." This stipulation indicates that all citizens of the Republic of Korea are protected from all forms of torture. Related to Article 2, Paragraph 2 of the Convention, Article 37, Paragraph 2 of the Constitution of the Republic of Korea states that "The freedoms and rights of citizens may be restricted by law only when necessary for national security, the maintenance of law and order or for public welfare. Even when such restrictions are imposed, no essential aspect of freedoms or rights shall be violated." Thus, the violation of fundamental human rights through torture, or any means, cannot be justified by any reason.

12. Article 12, Paragraphs 2 and 7 of the Constitution of the Republic of Korea provide respectively that "No citizen shall be tortured or compelled to testify against himself in criminal cases," and that "In a case where a confession is deemed to have been made against a defendant's will due to torture, violence, intimidation, unduly prolonged arrest, deceit, etc., or 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, nor shall a defendant be punished by reason of such a confession." Therefore, the Constitution prohibits torture and cruel treatment or punishment, and provides that confessions obtained or resulting from torture cannot be admitted as evidence of guilt. This stipulation safeguards defendants from such violations.
13. In accordance with these articles, laws and regulatory statutes contain more detailed provisions guaranteeing constitutional rights and prohibiting torture and other cruel, inhuman and humiliating treatment and punishment.
14. In order to ensure the Constitutional provisions which prohibit torture, it is provided that any public official who commits an act of torture, cruel treatment, or inhuman punishment shall be severely punished (details are found in the comments in relation to Article 4 of the Convention).
  - (a) A person who, in performing or assisting in activities concerning a judicial trial, prosecution, police investigation 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. In cases of unlawful arrest and confinement or death or injury resulting from those acts, the offender shall receive aggravated punishment.



- (b) In cases of acts of torture committed by other public officials, the offenders shall be punished for acts of violence, intimidation, bodily injury, false arrest, illegal confinement and cruel treatment of those who are under their protection or supervision, according to the substance of their acts. Offenders, shall receive aggravated punishment if the acts are committed at night by two or more persons, or if the use of deadly weapons is involved.
  - (c) Specifically, in cases in which acts of torture are committed by any staff member of the National Security Planning Agency, provisions subject the offenders to aggravated punishment.
- 15. In addition, when public officials participate in such acts of torture, the officials and their seniors are not exempt from prosecution, apart from penal punishment, or from discipline by those who are entitled to appoint them. Offenders shall bear civil liability for their acts (details are found in the comments in relation to Article 4 and Article 14 of the Convention).
- 16. Past experience suggests that most acts of torture in the Republic of Korea are principally committed by public officials to extract information or confessions from individuals. In this regard, provisions guaranteeing the right not to answer questions and the inadmissibility of confessions obtained through torture or other unlawful forms of coercion as evidence help to prevent such acts of cruelty as torture (details are found in the comments in relation to Article 2, Paragraph 1 and Article 15 of the Convention).
  - (a) The provisions of the Constitution (Article 12, Paragraph 2) and the Penal Procedure Code (Article 200, Paragraph 2 and Article 289), which stipulate the right of the suspect or the accused not to answer questions also guarantees the right of refusal to answer questions even when threatened by such compulsive measures as torture.

(b) The Constitution (Article 12, Paragraph 7) and the Penal Procedure Code (Article 309) make clear that if the confession of a suspect or an accused defendant which was obtained in the investigative offices is suspected to have been made involuntarily by means of torture, violence, threat or unduly prolonged arrest, or if the confession has no other supportive evidence, it cannot be admitted as evidence in Court. Therefore, the results of acts of torture are nullified.

17. Apart from all these provisions, other institutional devices such as cautionary provisions urging the protection of human rights by investigating officials, a public prosecutor's inspection of detention places, a process of appeal and reappeal, constitutional petitions, quasi-indictment procedures, arrest and detention warrants, and requests for the courts to examine the legality of arrest or detention may also be regarded as mechanisms to prevent acts of torture both directly and indirectly (details are found in the comments in relation to Article 2, Paragraph 1 of the Convention).

#### **Protection of the Rights of Foreigners**

18. In principle, the fundamental human rights guaranteed by the Constitution of the Republic of Korea apply equally to foreigners who do not have citizenship of the Republic of Korea. In this regard, Article 11, Paragraph 1 of the Constitution provides that "there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status." The concept of social status does not only mean an inherent status which is determined from birth, but also designates whatever measures are used in the social evaluation of persons. Furthermore, all prohibitions of discrimination provided in the Constitution are enumerated simply for illustrative reasons. Discrimination is never permissible merely because the cause was not delineated specifically in the Constitution as prohibited.

19. Citizenship of the Republic of Korea is required in order to be privileged to certain rights; for example, the right to vote and the right to be elected to public office. Nevertheless, most rights are equally guaranteed to all foreigners who reside or sojourn temporarily within the territory of the Republic of Korea. Thus, foreigners enjoy the same protection concerning torture as that of nationals of the Republic of Korea, as prescribed by the Constitution and relevant laws. However, in cases in which a foreigner claims damages against the Republic of Korea, the State is held liable only if a mutual guarantee exists between the home State of the foreigner and the Republic of Korea (Article 7 of the National Compensation Act).

**B. The Relationship between the Convention and Korean Domestic Laws**

20. Article 6, Paragraph 1 of the Constitution of the Republic of Korea provides that "Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea." The Convention has the same effect as domestic laws following Executive ratification and the promulgation of the Convention, with the consent of the National Assembly. Additional legislative measures are not necessary. Therefore, when conflicts between domestic laws and the Convention arise, the *Lex posteriori* rule and the principle of the precedence of special law shall be applied.
21. The Constitution and domestic laws of the Republic of Korea do not conflict with the Convention. However, due to the special situation between the Republic of Korea and North Korea on the Korean peninsula, Article 21 (Right of State Parties to send communications) and Article 22 (Right of individuals to petition for injuries inflicted by torture) of the Convention were selectively deferred by the Republic of Korea when joining the Convention. Nevertheless, as the Government of the Republic of Korea has sanctioned the Optional Protocol to the International Covenant on Civil and Political Rights, allowing torture victims to send communications to Human Rights Committees for damage and injuries. There are no barriers to demands to

international organizations for redress by torture victims.

22. In addition, the Government of the Republic of Korea has acceded directly or indirectly to human rights covenants dealing with torture. Examples include the International Covenant on Civil and Political Rights, the Optional Protocol to the International Covenant on Civil and Political Rights, the four Geneva Conventions of 1949 concerning the protection of victims of armed conflict, the two Additional Protocols of 1977 to the Geneva Conventions, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, the Convention on the Prevention and Punishment of the Crime of Genocide and the International Convention on the Elimination of All Forms of Racial Discrimination, etc.
23. The Republic of Korea also respects and observes United Nations declarations and standard rules such as the Universal Declaration of Human Rights, the Declaration on the Protection of Women and Children in Emergency and Armed Conflict of 1974, the Standard Minimum Rules for the Treatment of Prisoners, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Code of Conduct for Law Enforcement Officials, etc.
24. The Government of the Republic of Korea also supports the activities of the Special Rapporteurs of the United Nations Commission on Human Rights concerning issues of torture.

C. **Instruments for Human Rights Protection**

25. As mentioned above, the Convention has the same effect as the domestic laws of the Republic of Korea, without necessitating additional legislative measures. Therefore, the Convention should be observed by all state agencies, including the judiciary branch, investigative agencies, and the agencies responsible for executing punishment.

**The Court**

26. The Court is the instrument for guaranteeing the fundamental rights of the people by granting them redress of rights infringed upon by state power. The fundamental rights of people are preserved by the guarantee of the right to a trial provided in the Constitution.
27. The Constitution of the Republic of Korea guarantees all individuals the right to a trial by judges qualified under the law (Articles 27 and 101 of the Constitution).
28. Judicial power is vested in the Supreme Court, which is the highest court of the State, and other courts at specified levels (Article 101, Paragraph 2 of the Constitution). The Constitution also provides that "Judges shall rule independently according to their consciences and in conformity with the Constitution and the laws" (Article 103 of the Constitution). Therefore, judges should rule independently from various social interest groups and be unswayed by public opinion, not to mention the executive and legislative government branches.
29. Qualifications for judges are determined by law in order to prevent abuse of judicial power by the Executive (Article 101, Paragraph 3 of the Constitution). The Chief Justice of the Supreme Court is appointed by the President with the consent of the National Assembly; the Supreme Court Judges are appointed by the President on the

recommendations of the Chief Justice and with the consent of the National Assembly; and other judges are appointed by the Chief Justice with the consent of the Conference of Supreme Court Justices. Therefore, the independent administration of judicial affairs is assured (Article 104 of the Constitution). No judge shall be removed from office except by impeachment or a sentence of imprisonment or a more severe punishment (Article 106, Paragraph 1 of the Constitution).

30. In cases in which fundamental rights are infringed upon by torture, etc., the Courts may sentence violators/offenders as prescribed by law. Courts further contribute to guaranteeing fundamental rights of the people by awarding appropriate compensation to the victims against state agencies which committed torture, both preventing illegal acts such as torture and providing redress to the victims.

#### **The Constitutional Court**

31. The Constitutional Court is the instrument for adjudicating petitions relating to the Constitution. Such adjudication guarantees fundamental rights. Any person whose fundamental rights were infringed upon due to the exercise or non-exercise of public power may request redress from the Constitutional Court. In addition, the Constitutional Court plays an effective role as the organ for guaranteeing fundamental rights by making an adjudgment on whether any law involving the infringement of fundamental rights is unconstitutional. The Constitutional Court takes charge of the following matters: (1) adjudgment on whether or not any law is unconstitutional upon the proposition of the Court; (2) adjudgment on an impeachment; (3) adjudgment on the dissolution of a political party; (4) adjudgment on competence disputes between state organs, between a state organ and a local government, and between local governments; and (5) adjudgment on constitutional petitions as prescribed by law.

32. The Constitutional Court is composed of nine adjudicators qualified to be court judges. They are appointed by the President, three from persons selected by the National Assembly and three from persons nominated by the Chief Justice (Article 111, Paragraphs 2 and 3 of the Constitution). No adjudicator of the Constitutional Court shall be expelled from office except by impeachment or a sentence of imprisonment or heavier punishment (Article 112, Paragraph 3 of the Constitution). This provision safeguards the adjudicators' ability to decide according to their consciences in conformity with the Constitution as its guarantors.

### **Martial Courts**

33. In consideration of the special nature of the military in the Republic of Korea, Article 27, Paragraph 2 of the Constitution provides that martial courts may be established as special courts, distinct from the standard judicial system, and that their organization, authority, and the qualifications of their judges shall be determined by law. The Martial Court Act confers upon martial courts the jurisdiction over persons in active military service, or employees of the military forces who have special status, and over nationals and foreign aliens who violate some provision of military penal law within the territory of the Republic of Korea, including crimes involving important classified military information and prisoners of war (Article 2 of the Martial Court Act). Martial Courts also have jurisdiction, in principle, over those who commit acts of torture while in active military service or employed by military forces, regardless of whether the crime is committed within or outside the territory of the Republic of Korea.
34. Martial Courts are established within the military and have jurisdiction over crimes concerning military matters. Thus, they have special status in terms of establishment and jurisdiction. However, their administration is similar to that of general Courts, thereby guaranteeing fairness and justice.

- (a) Cases in which martial courts have handed down judgments, defendants may appeal to the Supreme Court, the highest court in the nation. They may also request the Constitutional Court for redress of their rights through constitutional petitions regarding the exercise of public power by a military prosecutor.
- (b) Military judges and prosecutors are appointed from among military legal officers who have the same qualifications as judges of the general Courts and whose statuses are guaranteed.
- (c) The Martial Court Act and other acts have almost the same provisions as the Penal Procedure Code, from investigation and trial to pronouncement of a sentence. Thus the procedural code is not much different from that of a general penal one (in cases in which the Martial Court Act provides the same stipulations as the Penal Procedure Code when referring to institutions of the Republic of Korea in relation to each article of the Convention, statements regarding the Martial Court Act are omitted).

#### **Other Instruments for Human Rights Protection**

35. The Republic of Korea prevents acts of cruelty, including torture, by imposing responsibilities concerning the guarantee of human rights on public prosecutors who take charge of the investigation and prosecution of crimes.

- (a) The Human Rights Division, which is a part of the Ministry of Justice of the Republic of Korea, deals solely with human rights affairs and is composed of three public prosecutors and an assistant. The division oversees human rights protection, legal aid and observance of the spirit of law and order. The Human Rights Division is particularly concerned with the following: laying out and implementing a master plan regarding the defense of human rights;



conducting research on laws and institutions in relation to human rights; cooperating with other ministries regarding the defense of human rights; campaigning for human rights issues; reviewing proposals to accede to international conventions concerning human rights and legal questions involved in implementing the conventions domestically.

- (b) As a measure to protect and improve the fundamental rights of individuals, consultation offices for human rights are established in each district public prosecutor's office and branch office throughout the nation. Furthermore, public prosecutors in charge of human rights affairs are appointed to collect information on cases involving human rights violations, and to place criminal cases or petitions involving the infringement of human rights under special administration.

- 36. Responsibilities are also imposed on the judicial police officers who take charge of investigations, to prevent them from infringing human rights. Beginning in 1982, police stations received complaints regarding partial or improper investigation or acts of cruelty, reinvestigating and correcting them. From May 1993, report centers for human rights violations have been established in inspection rooms of the National Police Office, District Police Offices and the Marine Police Office, and in offices of police superintendents. This report centers file and deals with human rights violations, such as acts of violence or acts of cruelty committed during investigations. Moreover, beginning in January 1992, heads of investigation divisions in the National Police Office and District Police Offices throughout the nation have been appointed as human rights protectors, educating investigators on human rights protection during investigations and conducting inspections of sites which are vulnerable to human rights violations, such as detention centers, and promoting measures for human rights protection. From December 1994, police superintendents have conducted interviews with suspects in police detention centers prior to being committed to jail, hearing their complaints personally to ensure that

no doubt exists concerning partial investigations or acts of cruelty.

**D. Measures which can be Taken by Individuals Alleging Injury from Torture**

37. According to the Constitution and relevant laws, various measures of redress are available to individuals who allege violation of their human rights such as injuries inflicted by torture. This report deals with general measures of remedy having to do directly or indirectly with torture, which is one form of infringement upon fundamental human rights.

38. **Petition:**

In general, individuals who allege violation of their fundamental human rights through acts of torture committed by government officials/agencies may seek redress by means of petition according to Article 26 of the Constitution. The result is reparation for damages and disciplinary action or punishment of the public officials involved. Detailed procedures can be found in Article 6 through Article 8.

39. **Quasi-appeal:**

Those protesting against confinement or seizure by a prosecutor or a judicial police official, or demanding restoration of seized articles, may request revocation or change (Article 417 of the Penal Procedure Code). Accordingly, in cases in which detention becomes a form of torture, or acts committed in association with that detention constitute torture or other atrocious, inhumane or humiliating treatment, the injured parties may request its revocation or change to the Court.

40. **Redress for damages incurred by the infringement of rights:**

Those who are injured by wrongful acts committed during the performance of official duties have the right to claim damages, according to the National Compensation Act and Civil Code (Article 29, Paragraph 1 of the Constitution). Furthermore, in cases in which a public prosecutor does not seek indictment of a criminal suspect arrested

or detained, or if the Court acquits the accused, the suspect or the accused has the right to claim penal compensation against the Government according to the Penal Compensation Act (Article 28 of the Constitution).

41. **Request for aid by criminal victims:**

The Constitution of the Republic of Korea provides for the rights of criminal victims to claim aid from the Government. Article 30 of the Constitution provides that "Citizens who have suffered bodily injury or death due to criminal or other acts may receive aid from the State as prescribed by law." The Aid to the Criminal Victims Act, which entered into force from 1 July 1988, provides detailed methods and procedures of receiving government aid.

42. **Complaint and accusation:**

When fundamental rights are infringed upon by public officials' acts of torture, the victim has the right to request the public prosecutor's office or the police to rectify the wrongful act. The individual may also demand an investigation or prosecution procedure by means of complaint or accusation regarding wrongful detention or torture. To support those complaints or accusations institutionally, the laws of the Republic of Korea provide the procedure of applying for a ruling (Articles 260 to 265 of the Penal Procedure Code, Articles 301 to 306 of the Martial Court Act), and procedures of appeal or reappeal to a higher public prosecutor's office.

43. Furthermore, victims may lodge complaints and accusations based on the provisions of the Criminal Execution Act, the Juvenile Agency Act, and the Military Criminal Execution Act.

44. Detailed explanations of methods and procedures of redress will be provided in each statement concerning the provisions of the Convention.

E. The right to Counsel

45. Although the rights of victims of torture are guaranteed under domestic and international law, it is difficult for those who do not have knowledge of law to claim for damages/redress without the assistance of counsel. The Penal Procedure Code guarantees the right to counsel for the suspect or the accused in order to protect against atrocities such as torture (Article 29 and Article 30 of the Penal Procedure Code). Without notification of the right to counsel, the suspect or the accused cannot be arrested or detained (Articles 209, 72, 88, 200-5 of the Penal Procedure Code), and the right to interview and communicate with counsel is provided in the Code (Article 34 of the Code). Moreover, in cases in which the suspect is a minor, elderly (over 70), deaf, mute and mentally or physically handicapped, destitute, etc., the Court may elect the counsel *ex officio* (Article 33 of the Code).

46. The Government of the Republic of Korea is implementing a Judicial Aid Program which provides free legal consultation, assistance with court costs, and free procuration for those who do not have knowledge of law or cannot afford counsel. Korea Legal Aid Corporation (hereafter KLAC), established on 1 September 1987, is operated with the financial support of the State. Currently, KLAC has 51 headquarters, offices and branches, providing legal aid for farmers and fishermen, laborers whose monthly earnings are under 1 million Won (equivalent to US\$ 1,250), and small-scale businessmen. The record of achievements for the past three years is as follows:

- o legal consultations : 303,234 cases 1992; 342,049 in 1993; 344,364 in 1994.
- o aid in lawsuits : 28,321 cases in 1992; 34,625 in 1993; 37,729 in 1994.

47. The number of those passing the bar examination in the Republic of Korea has increased to three hundred per year since 1981. Some are appointed as judges or public prosecutors, and others become lawyers. As of July 1995, despite the fact that the country's population stands at 46 million, the total number of lawyers is approximately 3,700, indicating a grave shortage of lawyers, considering the economical and social development of the Republic of Korea. As a result, citizens do not have easy access to lawyers. This means that there is a limit on the extent to which individuals may exercise their rights guaranteed by law. Also, despite its achievements, KLAC also has its own limits. It did not extend its services to farming and fishing areas, barely providing criminal aid. The KLAC could not expand legal aid objectives because the fees of lawyers who belonged to KLAC were relatively low, and the working conditions were poor (in the Republic of Korea, as mentioned before, the number of lawyers is absolutely limited, and most of them work in big cities where fees are relatively high).
48. However, in 1995, two revolutionary measures were adopted to expand the right to counsel. One was to increase the number of those who passed the bar exam from 300 to 500. The other was to adopt the Public Judge Advocate System.

#### **Public Legal Officer System**

49. Given the special circumstances of confrontation between the North and South, nationals of the Republic of Korea are required to carry out military obligations. The Public Legal Officer System allows those who completed the Judicial Academy (the status of lawyer is conferred upon those completing the two-year Judicial Academy training courses after passing the bar exam), but are not yet elected as judge advocates due to incomplete military obligations, to be appointed as public legal officer to engage in legal aid, with the exception of those who are appointed as military legal officers. The Public Legal Officer System allows qualifiers, who have not yet completed their military service, to become lawyers engaged in community

service in place of carrying out their military obligations. Even countries that do not prescribe such legally required military obligations may adopt this system, because it may be said that obligatory services of the legal profession for society are required for some time, regardless of social status and appraisal: the stronger the rule of law becomes, the higher the social status and appraisal of the legal profession.

50. Serving as a public legal officer is a form of military service. To guarantee successful service, public legal officers are given the status of officials. Considering their specialized characteristics, they belong to the Ministry of Justice, and the minister appoints and supervises them collectively. Duties of public legal officers are mainly to provide legal aid, to serve as defense counsel appointed by the Government and agencies of the Government in cases of public and administrative suits. An idea is being considered to have them engage in law-related fields at the local Government level if the number of public legal officers increases. Public legal officers serve at legal aid corporations or public prosecutors' offices. To ensure expert legal services in farming and fishing regions, they are appointed to courts and public prosecutors' offices where there are no lawyers at all or no lawyers solely in charge of legal aid.
  
51. The introduction of the Public Legal Officer System made it possible to provide expert legal services for farmers and fishermen. It provided actual legal aid, solving the problem of legal consultations by non-legal professionals. The scope of legal aid was also expanded to penal procedural aid as well as the expansion of legal aid objectives. The Republic of Korea has been criticized for noncommittal defense counsel being appointed by the Government due to the low fees. The Public Legal Officer System overcame this problem with the obligatory engagement of legal specialists in lieu of military obligations. As a result, suspects and the accused may interview and communicate with legal experts easily, thus safeguarding them from injury by torture, and allowing torture victims easier access to civil and penal procedures.

## **F. Investigating Agencies and Correctional Facilities**

52. Institutionally and historically, the typical agencies in which torture or other cruel, inhuman or humiliating treatment or punishment can be committed are investigating agencies and correctional facilities. Therefore, before discussing the measures concerning the implementation of the Convention and improvements, general references have been made to the investigative agencies and the correctional facilities.

### **The Public Prosecutor**

53. The public prosecutor is the agent who contributes to the implementation of criminal justice, being involved in every step of the criminal procedure, from the investigation of crimes to the execution of judgments. In other words, the public prosecutor is the one who presides over investigations, directs and supervises judicial police officials, and independently determines whether or not to institute a public prosecution after completing the investigation. In addition, he has broad authority, on the one hand as a party against the accused in public trials requesting the court for due application of laws and regulations, and on the other hand as director over the execution of criminal judgment when the judgment has become final.
54. As mentioned above, while the office of the public prosecutor is an instrument of the executive branch of government, in fact it is a quasi-judicial organ which is closely related to judicial power and is under the obligation to act only on truth and justice. The requisite qualifications to be appointed as public prosecutor are the same as those of a judge (Article 29 of the Public Prosecutor's Office Act) and his/her status is guaranteed (Article 37 of the above Act). That is, he shall not be subject to dismissal, suspension of office or reduction of salary unless he is impeached or sentenced to imprisonment without hard labor or more severe punishment, or if he is subject to disciplinary measures.

55. In the Republic of Korea, the public prosecutor is the one who presides over investigations and the judicial police officials are his auxiliary agencies (Articles 195 and 196 of the Penal Procedure Code; Article 4, Paragraph 2 of the Public Prosecutor's Office Act). By granting the right of directing investigations to the public prosecutor, who has the same qualifications as a judge and whose status is guaranteed, fairness can be assured and investigations of illegal activities may detect unlawful acts such as torture more easily, thus enhancing guarantees of human rights during investigations.

(a) The public prosecutor directs and supervises judicial police officials, the relationship between them during investigations, and grants authority and control to the public prosecutor. Therefore, the public prosecutor has the right to direct the judicial police officials during investigations, both general and specific, and they shall obey any official order issued by the competent public prosecutor in the criminal investigation (Article 53 of the Public Prosecutor's Office Act). Provisions (b) through (d) institutionally ensure the right of the public prosecutor to direct judicial police officials.

(b) Issuance of detention or arrest warrants and search and seizure warrants can only be requested by the public prosecutor. In other words, either the public prosecutor personally requests a warrant, or the public prosecutor requests a warrant on behalf of the judicial police officers and, if granted, the warrants are issued by the competent court judge (Article 200-2, Paragraph 1; Article 201, Paragraph 1; and Article 215 of the Penal Procedure Code). In addition, only the public prosecutor has the right to terminate an investigation, and he may also order the police officers to immediately transfer cases to the public prosecutor's office (Article 198-2, Paragraph 2 of the above Code).



- (c) If a judicial police officer commits any unjust act in the performance of his duties, the chief public prosecutor of the district public prosecutor's office may order him to suspend the investigation of the case concerned and request the person having the competence to appoint a replacement. The person having the competence to appoint shall comply with the request for a replacement unless he presents any justifiable reason not to (Article 54 of the Public Prosecutor's Office Act).
  
- (d) There is a difference of probative value between the protocol prepared by the public prosecutor and that prepared by the judicial police officers (Article 312 of the Penal Procedure Code), and a judicial police official shall notify the chief public prosecutor of the district public prosecutor's office or the branch office regarding investigations outside his jurisdiction (Article 210 of the above Code). There are also some special provisions, stipulating the inspection of detention places by the public prosecutor (Article 198-2 of the above Code); the right of permission concerning urgent arrests (Article 200-3, Paragraph 2 of the above Code); the obligation of a judicial police official to notify the chief public prosecutor of the district public prosecutor's office or of the branch office regarding the investigation (Article 11 of the Rules concerning the Performance of the Judicial Police Officials); and the obligation to relay relevant information (Article 12 of the above Rules).

### **Judicial Police Officials**

- 56. Judicial police officials consist of general judicial police officials and special judicial police officials.

- (a) General judicial police officials include judicial police officers and judicial police assistants. Investigators, police administrative officials, police superintendents, police captains and police lieutenants shall investigate crimes as judicial police officers under the authority of a public prosecutor (Article 196, Paragraph 1 of the Penal Procedure Code; Article 46, Paragraph 2 of the Public Prosecutor's Office Act; and Addendum Article 6 of the Police Service Act). Police sergeants and patrolmen shall assist in the investigation of crimes as judicial police assistants under the authority of a public prosecutor or a judicial police officer (Article 196, Paragraph 2 of the Penal Procedure Code). Also, other judicial police officers may be appointed in accordance with the law (Paragraph 3 of the same Article).
- (b) Judicial police officials who take charge of investigations in special areas are called special judicial police officials. These special officials shall perform the duties of judicial police officials regarding forestry, maritime affairs, monopoly, taxation and other special circumstances. The extent of the duties shall be prescribed by law (Article 197 of the Act Concerning Persons Who Perform the Duties of Judicial Police Officials and the Extent of Their Duties). Special judicial police officials are characterized by the fact that the extent of their authority is restricted in terms of the regions and subject matter of their duties, even though they possess the same authority and status as general judicial police officials.
- (c) Some staff members of the National Security Planning Agency, appointed by the director of the Agency, may perform the duties of judicial or military judicial police officials in the following circumstances (Article 16 of the National Security Planning Agency Act):

- Crimes concerning insurrection and foreign aggression as delineated in the Criminal Code, and crimes concerning mutiny and illegal use of military codes as defined by the Military Criminal Code.
- Crimes delineated in the Military Secret Protection Act and in the National Security Act (excluding crimes defined in Articles 7 and 10 of the Act).
- Other crimes concerned with the duties of the staff of the National Security Planning Agency.

### **Correctional Facilities**

57. Correctional facilities refer to state facilities in which punishment by deprivation of freedom, such as penal servitude, imprisonment, or detention are carried out, as well as facilities in which criminal suspects, the accused, and persons sentenced to death are held. In the Republic of Korea, the head of the correctional facilities is the Minister of Justice, and he has been appointed from among those employed in the office of the public prosecutor or the judge. The current Minister of Justice has a record of serving as a Supreme Court Justice. In addition, the office of the head of the Correction Bureau, the highest office responsible for the practical affairs of correctional facilities, is held by a public prosecutor. Such a structure reflects the will of the Government of the Republic of Korea to prevent human rights violations such as torture in correctional facilities and towards respecting human rights. Moreover, as will be mentioned later, patrol examinations by the Minister of Justice or inspection tours by a public prosecutor contribute to improving the actual conditions of the criminal suspects and legitimacy regarding execution of punishment.

58. The Institute for Examining the Classification of Juvenile Criminals is entrusted with classifying juvenile criminals between the ages of 12 and 14 who do not comply with the legitimate supervision of the guardian. The Institute conducts the examinations necessary to decide on protective measures, based on the specialized knowledge of psychiatry, psychology, pedagogy, sociology, etc., and it notifies the court of the results. The term of trust shall not be longer than one month, and may be extended only once by court decision if considered necessary. If results of the examinations demonstrate that protective measures are necessary for some juveniles, a judge for the Juvenile Department may transfer the youths to a juvenile reformatory for a short term, according to Article 32, Paragraph 1, Subparagraph 6 of the Juvenile Act, or transfer them to a juvenile reformatory without mentioning a length of term. If the transfer is for a short term, it shall not be longer than six months, but it may be extended once within that six-month period (Articles 32 and 33 of the Juvenile Reformatory Act). Even in these cases, as will be mentioned later, the director of a juvenile reformatory or the director of the Institute for Examining the Classification of Juvenile Criminals may conduct interviews with juveniles under protection at any time, to hear about their treatment or their personal affairs, ensuring the observance of due process (Article 10 of the Juvenile Reformatory Act).
59. Protective custody facilities are established and run by the Protection of Society Act, holding in custody facilities criminals who have the potential to repeat the offense and criminals for whom special education, amelioration and treatment are deemed necessary, assisting their rehabilitation to society and protecting society. Regarding protective custody, the Penal Procedure Code and the Criminal Execution Act are applicable unless prescribed otherwise, ensuring the protection of those who are under protective custody (Article 42 of the Protection of Society Act).

## **Military Investigative Agencies, etc.**

60. As for the cases mentioned earlier in paragraph 33 of military public prosecutors and military police officers who engage in the investigation of criminals, facts about the crimes and the evidence, most of the procedures are similar to penal ones. Furthermore, the military prison is a facility which, unlike the general prison, holds military convicts and unconvicted prisoners. It is regulated by the Military Criminal Execution Act and the Military Prison Ordinance. However, most provisions are the same as those of the Criminal Execution Act.

### **G. Other Significant Circumstances for Consideration**

61. To have a correct understanding of all the relevant measures for preventing torture in the Republic of Korea, there should exist, above all, an objective perception of the changes in economic and social conditions. This is especially true regarding the educational level of the people and the confrontational circumstances between the North and South.

### **Population, Economic Structure, and Educational Level**

62. Changes in the population, the economic structure, and the improvement of the educational level throughout this country have brought new meaning to the concept of human rights. As the people have been enlightened to new aspects of human rights, they have come to protest actively against unjust treatment by the state power, including torture.
63. The population of the Republic of Korea was 44,450,000 as of the end of 1994, and the population density is 447.3 persons per square kilometer. As in other developing countries, the rapid increase in population was once considered a serious social problem, but the rate of increase in population dropped significantly as a result of

successful family planning movements and the people's increased awareness of the population issue. For example, the rate of population increase in 1994 was 0.90 percent. Furthermore, one of the most outstanding features in the demographic structure is the continuous increase in numbers of young people with high education levels, as demonstrated by the 1994 census which showed that the proportion of people under 25 years of age was 42.8 percent of the whole population. The working age population, signifying persons over 15 years of age, has increased from 20,900,000 in 1975 to 33,200,000 in 1994.

64. The economic structure has undergone much transformation resulting from more than 30 years of economic growth. In 1966, the year in which the first 5-year economic development plan ended, the first industry was credited with earning 34.8 percent of the GNP, the second industry 20.5 percent, and the third industry 44.7 percent. However, by 1994, the proportions of each industry had changed to 7.3 percent, 42.7 percent, and 50.0 percent, respectively. Presently, the Republic of Korea is a fast-industrializing country with upper-middle level incomes. In addition, the GNP in 1962 was 2.3 billion dollars and the GNP per capita was 87 dollars. By 1994 the GNP had increased to 376.9 billion dollars and the GNP per capita to 8,483 dollars. Therefore, the Republic of Korea is considered to have recorded one of the highest rates of economic growth during the last quarter century. Such economic growth is promoted by the fact that the Republic of Korea adopted an export-oriented industrial strategy based on a large and well-educated labor force. The Republic of Korea is one of the top ten steel-exporting countries in the world. Other major industries in the Republic of Korea are the semiconductor, electronics, shipbuilding, automobile, and chemical industries.
65. Primary education has become compulsory since the enactment of the Education Law in 1949. Since 1970, virtually the entire population has received primary education, and 99 percent of them have entered middle schools. 98 percent of middle school graduates enter high schools, and 51.4 percent of high school graduates enter

universities. In the Republic of Korea, virtually everyone is literate, except for some in the elderly population (under Japanese colonial rule before 1945, the right of education was restricted to a few) and those with mental handicaps. In addition, as most people have received or are receiving secondary or higher education, the consciousness of the Korean people about rights and their demands for redress against the infringement of their rights are next to none in the world.

### **Security on the Korean Peninsula**

66. Although the cold war has come to an end and a new era of detente has begun, security on the Korean peninsula remains unstable.
  
67. Recognizing that North Korea is a member of the national community and a partner in reunification efforts towards bringing peace to the Korean peninsula through dialogue and cooperation, the Government of the Republic of Korea has continually made efforts to hold talks with North Korea, even under circumstances of military confrontation. For example, the Government of the Republic of Korea has sent substantial amounts of rice to North Korea as humanitarian aid. It also returned Mr. In-mo LEE, a long-term communist convict, to North Korea in the spirit of detente. However, North Korea, which provoked the tragic Korean War, has not given up its desire to conquer the Republic of Korea by force. In 1968, the North sent armed espionage agents to the Republic of Korea on a mission to attack the Blue House, which is the presidential residence. In the 1983 bombing in Rangoon, Myanmar, it killed leading figures of the Government of the Republic of Korea visiting the country. Moreover, in 1987 it blew up a KAL airplane, killing 155 civilians on board. Apart from these acts of terrorism, the North has relentlessly made efforts to overthrow the Government of the Republic of Korea by organizing espionage groups, and has been attempting to instigate the insurrection of the people against the government through official broadcasts.

68. The division of the Korean peninsula between North and South is an undeniable factor which may serve to restrict the exercise of fundamental rights in the Republic of Korea, but it cannot justify the violation of essential aspects of the rights of the people. Therefore, acts which violate essential aspects of fundamental rights such as torture are not permissible in the Republic of Korea under any circumstances. Moreover, the civilian government is making efforts to guarantee and improve the rights and freedoms of the people, despite the present conditions and security concerns on the Korean peninsula. Notwithstanding, the division of the Korean peninsula often leads to distortions of the truth, ignoring objective appraisals about human rights conditions in the Republic of Korea.



## PART 2

### INFORMATION IN RELATION TO ARTICLES IN PART I OF THE CONVENTION

#### Article 2

##### Paragraph 1

69. The ideals of the Universal Declaration on Human Rights and the Convention on torture prevention are realized in the legal system of the Republic of Korea through provisions prohibiting torture and cruel and inhuman treatment or punishment.
70. Direct and indirect provisions of legislative, executive and judicial measures for torture prevention are included in the Constitution of the Republic of Korea, such as:
- (a) We the people of Korea, proud of a resplendent history and tradition .... pledge to ensure security, liberty, and happiness for ourselves and for future generations forever .... (Preamble to the Constitution);
  - (b) 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 (Article 10 of the Constitution);
  - (c) All citizens shall enjoy personal liberty. No person shall be arrested, detained, searched, seized, or interrogated in an unlawful manner. No person shall be punished, placed under preventive restrictions or subject to involuntary labor except as provided by law and through lawful procedures (Article 12, Paragraph 1 of the Constitution);

- (d) No citizen shall be tortured or be compelled to testify against himself in criminal cases (Article 12, Paragraph 2 of the Constitution);
- (e) In a case where 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 where a confession is the only evidence against a defendant in a formal trial, such confessions shall not be admitted as evidence of guilt, nor shall a defendant be punished by reason of such confessions (Article 12, Paragraph 7 of the Constitution);
- (f) Freedoms and rights of citizens shall not be neglected on the grounds that they are not enumerated in the Constitution (Article 37, Paragraph 1 of the Constitution);
- (g) The freedoms and rights of citizens may be restricted by law only when necessary for national security, the maintenance of law and order or for public welfare. Even when such restrictions are imposed, no essential aspect of the freedoms or rights shall be violated (Article 37, Paragraph 2 of the Constitution).

71. In addition, the Constitution provides for the issuance of warrants (Article 12, Paragraph 3 of the Constitution); the rights to prompt assistance of counsel (Article 12, Paragraph 4 of the Constitution); notification of detention and appointment of defense counsel (Article 12, Paragraph 5 of the Constitution); examination of the legality of confinement (Article 12, Paragraph 6 of the Constitution); the presumption of innocence (Article 27, Paragraph 4 of the Constitution); the right to demand compensation for unfair detention (Article 28 of the Constitution); and the right to make claims for damages to the State (Article 29 of the Constitution), in order to prevent unfair detention and torture during legal confinement.

72. In accordance with such Constitutional provisions, laws and regulatory statutes further delineate principles and methods of preventing torture. With regard to Article 2, Paragraph 1 of the Convention, much reference has been centered on principal institutions to prevent torture.

#### **Caution to Those who Engage in Investigations**

73. The Penal Procedure Code orders those who engage in investigations to respect the human rights of a suspect or other persons, prohibiting illegal acts such as torture. That is to say, a public prosecutor, judicial police officials or others involved in an investigation shall maintain secrecy in order not to violate the personal rights of a suspect or other persons, and shall not infringe the rights of others in the course of an investigation (Article 198 of the Penal Procedure Code).
74. There have been assertions of human rights violations committed by staff members of the National Security Planning Agency while investigating communist elements. Such allegations have led to the creation of a new provision to prohibit the abuse of authority. These new provisions are an expression of the will of the Government to prevent torture and other violations of human rights by the staff of the National Security Planning Agency. That is to say, the revision of the law completed on 5 January 1994 prohibits staff members of the National Security Planning Agency from arresting or detaining a person, compelling a person to do something that is not required of him, or obstructing a person from exercising his rights. In case a member of the National Security Planning Agency violates these obligations, he shall be subjected to punishment heavier than for other public officials who violate human rights while conducting investigations (Articles 11 and 19 of The National Security Planning Agency Act).

## **Principles of the Presumption of Innocence and the Right to Refuse to Answer Questions**

75. In accordance with the provisions of the Constitution, Article 275-2 of the Penal Procedure Code provides that the accused shall be presumed innocent until he is adjudged to be guilty, thereby prohibiting unfavorable treatment such as physical detention and torture.
76. The right to refuse to answer questions derives from the privilege against self-incrimination in common law, and it designates the right of a suspect or the accused not to answer the questions of the Court or investigative agencies in public trials or investigations. The right to refuse to answer questions is a humane safeguard against confessions compelled by torture.
77. On the basis of Article 12, Paragraph 2 of the Constitution which provides that "No citizens shall be tortured or be compelled to testify against himself in criminal cases," the Penal Procedure Code provides for the right of the accused or a suspect to refuse to answer questions.
- (a) In cases which require an investigation, a public prosecutor or a judicial police officer may request the suspect to appear for interrogation. The suspect must be notified in advance that he may refuse to answer questions, and an accused may refuse to answer inquiries by the public prosecutor or judicial police officer (Article 200, Paragraph 2 and Article 289 of the Penal Procedure Code).
- (b) The protocol of the interrogation of a suspect shall be shown to him for inspection or read to him. In case the suspect demands an amendment, deletion or change, the statement of the change shall be recorded therein (Article 224, Paragraph 2 of the above Code).