

Reports of States

Republic of Korea (second periodic report)

Information submitted to the Committee

The Republic of Korea submitted its second periodic report to the Committee in May 2004¹. In great length, the report details the legislative advances made since the Presidency of Kim Dae-jung in 1998. While the report admits specific instances where the State has failed to protect its citizens from the abuse of torture, it discusses how perpetrators have been held accountable for their actions, and the institutional changes that have been implemented to prevent such actions from occurring again.

Of particular note is the recent creation of the National Human Rights Council that, among other tasks, is mandated to perform investigations and provide remedies for human rights violations. The report also provides statistics that show trends in the number of police interviews that have occurred before arrest, the number of detentions for violations of the *National Security Act*² and the number of compensation claims made against the Government.

The MINBYUN – Lawyers for a Democratic Society issued a shadow report, providing their own list of issues with regards to the Republic of Korea. Amongst their concerns was the *National Security Act*. Although used less frequently than previous governments, this Act continues to exist. They also expressed distress at the fact that a definition of torture is still yet to be codified in Korean legislation, citing potential scenarios where torture could be committed outside of the judicial or penal system where the perpetrator would be charged with the comparatively minor crime of assault.

In ratifying the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention)*, the Republic of Korea also made reservations concerning Articles 21 and 22 of the Convention, which relate to State communications and individual communications to the Committee.

Themes and Issues

The Committee's questions to the delegation, while covering a wide range of topics, primarily focused on legislative improvements, the treatment of immigrants and the risks that exist in the judicial system.

Legislative Improvements

The primary issue of contention for the Committee was the State's failure to adequately criminalise the specific act of torture. While various sections of the criminal code may offer a de facto protection against acts of torture committed by prison or investigative officials in their professional capacity, Committee members vigorously questioned the delegation on possible abuses from which their citizens may not be protected.³

The Committee also discussed the *National Security Act* at length. This law, which was frequently abused by the former authoritarian rule to suppress free speech, is still in active use by authorities in the Republic of Korea. While the number of arrests under this law has dramatically decreased since 1998, the United Nations Human Rights Committee (HRC) viewed this law as a violation of the *International Covenant on Civil and Political Rights*⁴.

The Committee was also curious to learn of any progress that had been made in relation to the reservations attached to Articles 21 and 22 of the Convention and wanted to hear the delegation announce their plans to immediately ratify these articles. The delegation announced that the Ministry of Justice supported the ratification

¹ CAT/C/53/Add.2

² The National Security Act is intended to "restrict anti-state acts that endanger national security and to protect [the] nation's safety and its people's life and freedom." The law was originally passed in 1948 and banned both communism and the recognition of North Korea.

³ Article 4

⁴ UN Doc CCPR/C/84/1119/2002

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of these articles, but the other Ministries still needed to give their approval. When further questioned by the Committee, the delegation stated that they could not foresee any objection to ratification and expected it to occur later in the year.

While the delegation originally argued that the authorities had sufficient legal instruments in place capable of punishing all forms of torture, they ultimately conceded, after extensive discussion with the Committee, that a specific definition of 'torture' should be included in the legislation. The delegation indicated that they would make recommendations to their Government accordingly.

It was also acknowledged that the current form of the *National Security Act* is unacceptable. However, the delegation indicated that there has been domestic debate on whether the legislation should be repealed or merely modified. While such debate has been underway, the delegation commented that the law has been invoked on rare occasions. This debate is the cause of the delay in complying with the HRC's concluding observations. The Committee members noted that this debate has been ongoing for almost six years and recommended that it be finalised as soon as possible.

Treatment of Migrants

The Committee members were alarmed by an NGO report regarding the recent mass arrests of illegal migrant workers following the implementation of the Employment Permit System⁵. They questioned the delegation on the use of detention centres and the subsequent treatment of migrants prior to deportation. In particular, the Committee was interested in a specific migrant worker who was deported to Nepal, despite his involvement in a Korean Labour Movement, which, according to NGOs, put him at risk of torture⁶.

The delegation confirmed that such migrants are detained, but insisted that these detention facilities are not prisons, as detainees could still receive visits, make telephone calls and engage legal counsel. They claimed that the allegations made by the NGOs were groundless and are yet to be confirmed. In regards to the Nepalese worker, the delegation maintained that they had not violated Article 3, as there was no reason to believe that he was at risk of torture. Not only did the deportee spend nine years solely involved in domestic Korean politics, which did not involve Nepal, but neither he nor the NGOs raised the possibility of torture with the Korean government before his deportation.

The Judicial System

The Committee also concerned itself with the dangers of torture that exist inside the judicial system itself. While the legislation offers specific protections against torture for people in custody, both the State and NGO reports gave examples of persons who have suffered physical, psychological and sexual assaults while in police custody. While, in many instances, the perpetrators of these crimes have been arrested, the Committee was concerned that punishing the offenders is merely a reactionary measure. The delegation was questioned on the rights of persons in custody, specifically, how long they can be detained before having their matter appear before a judicial authority, like a judge.

The delegation noted that the role of judges in the detention process had improved dramatically in recent years. Under the current law, more than 80 percent of arrests are reviewed by a judge prior to being formally charged. The Committee members expressed their concern about the period between detention and the time it takes for these charges to be made. Statistically, this is the most likely time for abuse to occur.

The Committee was also concerned about allegations made by Amnesty International, regarding the excessive use of restraints. The delegation commented that, as of June 2004, the Ministry of Justice has abolished the use of leather belts and facemasks for restraining purposes, although they did note that protective headgear is occasionally employed to protect the detainees from self-harm.

⁵ This system gave the Ministry of Labour a legislative structure to control and monitor migrant workers. It allows for the immediate detention of undocumented workers who have stayed for longer than four years, pending deportation.

⁶ In possible contravention of Art.3, which prohibits the expulsion, return or extradition of a person to a State where there are substantial grounds for believing that he would be in danger of being subject to torture'.

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The delegation also faced questions on the 'urgent arrest' system, which allows for a 48-hour period of detention without a warrant, citing the number of such arrests made daily, as provided by the NGOs. The delegation responded that the true number of arrests was almost a tenth of this figure. They also defended the 'urgent arrest' system, as it allowed for arrests to be made while a crime is still being committed. The Committee was assured that the system is heavily regulated to prevent abuse.

Conclusions and next steps

The main positive steps noted by the Committee included a list of promises to review sections of national legislation, such as the *National Security Act*, and the establishment of various human rights institutions⁷.

Throughout the course of the session, the delegation appeared to be extremely cooperative with the Committee members. They clearly addressed the issues that were put to them and clarified any additional follow up questions. The delegation even prepared a PowerPoint presentation, displaying the living conditions of South Korean prisoners. The Committee members noted with curiosity that, with the exception of one photograph, there were no prisoners present in these photographs.

The significant number, and gravity, of incidents involving torture were of considerable concern to the Committee. They instructed the delegation to give higher priority to the efforts to create a culture of human rights, by developing a zero tolerance policy towards torture offenders.

While the Committee commended the delegation on their oral assurances to modify the national legislation, they recalled that recommendations to modify the Criminal Code to include a definition of torture⁸ and to review the *National Security Act*⁹ had already been made in the previous session.¹⁰ These previous recommendations have not yet been adopted by the State.

The Committee also welcomed the oral assurances made by the delegation to study the possibility of persons who are removed or returned to countries where they face a real personal risk of torture upon their return.

The conclusions and recommendations made by the Committee were considerably less aggressive than previous appearances before treaty bodies. The Committee merely commending the delegation on their promises, rather than urging the State to put these promises into effect. The tone of the conclusions can be compared with the recommendations made by the Committee on Economic, Social and Cultural Rights in 2001, especially in regards to the *National Security Act* or the National Human Rights Commission¹¹, which contained strong recommendations to conform to the *International Covenant on Economic, Social and Cultural Rights*. The differences in the recommendations are possibly a result of the changes that have occurred in the Republic of Korea in the past five years or the highly cooperative nature of the discussions throughout the session.

⁷ The National Human Rights Commission and the establishment of human rights units or departments within the Ministries of Justice and National Defence, as well as the district public prosecutors office.

⁸ A/52/44 para.63

⁹ A/52/44 para.59

¹⁰ [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/b8f3da7f4ee902298025648900514097?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/b8f3da7f4ee902298025648900514097?Opendocument)

¹¹ [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.59.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.59.En?Opendocument)