

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

HUMAN RIGHTS COMMITTEE 88TH SESSION REPUBLIC OF KOREA, 3RD REPORT

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Information submitted to the Committee

On 10 February 2005, the Republic of Korea submitted its third periodic report¹ before the Human Rights Committee. The report outlines measures² implemented since the submission of its second report, such as acts on gender and the creation of the National Human Rights Commission, and provides general comments and explanations regarding the inclusion of the *International Covenant on Civil and Political Rights* (the Covenant) into domestic law.

¹ CCPR/C/KOR/2005/3, 21 February 2005.

<http://daccessdds.un.org/doc/UNDOC/GEN/G05/404/54/PDF/G0540454.pdf?OpenElement>.

² The main measures listed were the enactment of the Act on Gender Discrimination and Relief, the establishment of a Ministry of Gender Equality, the adoption of the Act on Restoration and Compensation of Persons Involved in the Democratisation Movement, the Special Act on Inquiries into Suspicious Deaths, and finally the creation of a National Human Rights Commission.

NGOs³ submitted parallel reports to the Committee. Key issues included conscientious objection to military service, freedom of assembly, restrictions in the establishment of trade unions, torture, discrimination against migrant workers as well as failure in implementation of several of the previous Committee recommendations.⁴

During the session with the delegation the Committee asked about the nature of consultation and selection of NGOs for participation in drafting the report. The Republic of Korea did not respond directly but stated that in the future it would create an open forum when drafting the next State report that will allow participation from a range of NGOs.

The Republic of Korea ratified the Optional Protocol to the *International Covenant on Civil and Political Rights* on 10 April 1990. The State made reservations to Article 14(5) and Article 22⁵. Article 14(5) states that everyone should have the right to appeal by a higher tribunal and Article 22 states the right to freedom of association and the right to join a trade union with the provision that State legislation cannot prejudice these rights. The grounds for reservations to both the articles given by the Republic of Korea are that the applicability of the Covenant should be made 'in conformity with the provision of domestic legislation, included in the Korean Constitution'.⁶

Themes and issues⁷

The delegation of the Republic of Korea was led by Mr Kim Chong-Hoon, Director General of the Human Rights Bureau from the Ministry of Justice and was made up of an impressive 22 members.⁸ The Committee applauded the diversity of the delegation that included representatives from State ministries, the National Policy Agency, the National Youth Commission and the Korean mission, and special mention was made to the four women that were present. The list of issues was not available in all of the official UN languages and as a result the delegation summarised its replies.

General measures of implementation

The Committee asked for clarification on the status of the Covenant in the court proceedings. The Republic of Korea claimed that the Covenant held superior authority in courts and that the Covenant was cited before the courts. However, it noted that in practice decisions made in domestic law were largely based on national legislation and the Constitution.

The Committee enquired into how recommendations and requests made by the National Human Rights Commission (NHRC) are implemented into legislation. The delegation responded that the Government were not bound to the recommendations and referred to statistics in the written replies. After repeated questioning

³ Parallel reports were submitted by: Amnesty International, Conscience and Peace Tax International, Korean Confederation of Trade Union, and Mynbyun Lawyers for a Democratic Society in collaboration with the Korean Human Rights Organization Network composed by 38 human rights organization All NGO reports are on the OHCHR website at: <http://www.ohchr.org/english/bodies/hrc/hrcs88.htm>.

⁴ CCPR/C/79/Add.122,4 May 2000:

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/1f3186f9f8a65114802568ef003766a5?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/1f3186f9f8a65114802568ef003766a5?Opendocument).

⁵ The Article 14(5) and Article 22 of the Convention can be found on the OHCHR website at:

<http://www.ohchr.org/english/law/ccpr.htm>.

⁶ The text of Republic of Korea's reservations is available at: http://www.ohchr.org/english/countries/ratification/4_1.htm.

⁷ An unofficial press release on the session is available at:

[http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/BF4C951C6E5E7C15C125721300423369?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/BF4C951C6E5E7C15C125721300423369?OpenDocument).

⁸ A full list of members of the delegation from the Republic of Korea can be found at:

<http://www.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/list-Korean88.pdf>.

on the composition of the NHRC the delegation explained that there were 11 members, four of them women, and stated that more detailed information would be provided in due course.

The Committee raised concerns that the Republic of Korea had not implemented their previous recommendations to withdraw reservations to Article 14(5) and 22. In particular the Committee asked how the articles contrasted to domestic legislation and the delegation explained that there were no longer any conflicts between Article 14(5) of the Covenant and domestic law⁹ and stated that they were still waiting for approval from the National Assembly. In their concluding observations¹⁰ the Committee invited the State party to withdraw both reservations.

Counter-terrorism

On counter-terrorism the Committee raised the issues of the definition of terrorism in domestic legislation and wiretapping. The Committee questioned if counter-terrorism laws respected the provisions of the Covenant. Referring to the written replies on counter-terrorism related laws,¹¹ Committee members asked what the definition of terrorism was according to the Republic of Korea. The delegation stated that there is no specific definition for terrorism within domestic legislation and in the concluding observations the Committee recommended that the definition of 'terrorist acts' should be introduced.

The Committee asked if the proposed laws on counter-terrorism included interception of communications and the measures to prevent abuse of such practise. In response the delegation informed that wiretapping could be used for investigations by official agencies but only after authorisation from a judge and that any allegations of abuses are investigated.

Non-discrimination

The Committee asked for more information regarding the measures to protect disabled workers. The Committee appreciated the adoption of quota levy-system for disabled workers¹² and asked if it was applied to government agencies, which the delegation confirmed. In the case of violations the Republic of Korea informed that sanctions took place and fines were imposed. The Committee also asked for more statistics and the delegation explained that the information had not been updated but would be provided soon.

One Committee member wondered if there was a 10% quota for females in the army. The delegation stated that there was no quota imposed for the number women in the army, that women served on a voluntary basis and no restrictions existed on the roles in which they are employed. The Committee questioned if there were restrictions on homosexuals joining the army. The delegation denied the existence of any restrictions and emphasised that there were guidelines on the equal treatment of homosexuals but did not go into further detail.

⁹ The delegation detailed that the single trial system could be established only with the proclamation of martial law which could be considered a 'time of public emergency' as stated in Article 4 of the Covenant.

¹⁰ CCPR/C/KOR/CO/3/CRP.1, 31 October 2006: http://www.ohchr.org/english/bodies/hrc/docs88/ccpr_c_kor_co_3_crp1.doc.

¹¹ The written replies set out that proposals regulated the establishment of meetings on national counter terrorism policies, there had been organisation of a 'Counter Terrorism Centre', there were plans for counter-terrorism measures to protect government facilities and on damages compensation. It added that any provisions on interception of communications and deportations should respect the requisites provided by the Criminal Procedure Act and the Communications Privacy Protection Act.

¹² The quota levy-system, introduced by 'The Employment Promotion and Vocational Rehabilitation of Disabled Person Act' states that company with over 50 employees, are obliged to hire disabled for at least 2% of their workforce.

Gender equality

The Committee inquired into the abortion of female foetuses, the patriarchal family head system,¹³ discrimination in relation to birth registration, and discrimination against women at work.

On abortion practises the delegation stated that according to the *Medical Treatment Act* the identification of the sex of the foetus is strictly prohibited and that more than 1,000 medical professionals had been punished for being involved in such practice. On the family head system it stated that in March 2005 the National Assembly had approved the Civil Code amendment and that a system giving rights to the individual would enter into force on 1 January 2008.¹⁴ The Committee asked if a child was able to request use of his mother's family name to which the delegation explained that this was possible if it was deemed beneficial to the child's welfare and decided in a legally binding pre-marriage agreement. Furthermore, the delegation explained that since 1997 restrictions on illegitimate children accessing inheritance were abolished.

The delegation explained that support and guidelines for companies to prevent sexual discrimination are provided in the Republic of Korea, pointing out that in March 2006 enterprises with a low rate of female workers had to submit an employment improvement plan. The delegation also reminded the Committee about the adoption of a 'Five Year Plan for Employment of Females in Managerial Positions'. However, in the concluding observations the Committee recommended the introduction of effective measures to encourage participation of women in the political, legal, and economic sectors.

Domestic violence and rape

The Committee raised concerns over cases of domestic violence and rape. On domestic violence the delegation stated that the Government was expanding the number of prosecutors exclusively in charge of cases of domestic violence, adding that in 2005 there were 175 shelters for female victims of rape. With regard to rape, the Committee asked about the content of the legislation and the number of prosecutions and convictions. The delegation provided statistics that showed that a high number of persons had been charged and prosecuted for rape in recent years.¹⁵ On marital rape the delegation stated that if a rapist was the husband he was not exempt from being charged and in the concluding observations the Committee recommended that the State party reform the penal system to make marital rape a criminal offence.

Interrogation and detention

The Committee raised questions on confession, the complaints procedure for cruel and unfair treatment to detainees, prison conditions, and mental health institutions.

The Republic of Korea insisted that the procedure of confession is strictly controlled; a suspect has to confirm all of the content of their confessions before the court and any claims of violations during the process of interrogation are investigated. The Committee raised concerns over reports that interrogators took part in beating detainees and keeping them awake for long periods of time. In response the delegation insisted that strict standards had been imposed on those working in prison facilities and that any complaints from prisoners are forwarded to a disciplinary committee.

¹³ 'The Family Head System' is a patriarchal family registration system, which gave legal authority to the male family head over the rest of the family. This authority prevailed over rights of approval for marriage, divorce, adoption and inheritance.

¹⁴ The delegation explained that the delay in implementation was due to the need to reform the entire birth registration system.

¹⁵ Out of 20,751 rape cases from 2004 to 2006, 9,929 offenders were persecuted and more than 8,000 convicted.

The Committee went on to ask about ‘stacking’¹⁶ of sentences in solitary confinement as well as the use of physical restraints. The Republic of Korea described that investigative agencies dealt with reports of cruel treatment in detention facilities and that complaints were first considered internally and then reported to a self-regulatory review committee in the Ministry of Justice. The delegation also highlighted that the act on restraining tools that came into force on 29 April 2004 assured tools were only used when it was necessary to protect other detainees and that it was mandatory for the appropriateness of using them to be reviewed every seven days. The Committee recommended setting up an independent investigative body to monitor places of detention and the use of video surveillance in their work.

On mental health institutions the delegation informed the Committee that human rights experts had been engaged in educating staff on human rights standards. In addition it described that there were greater efforts to monitor facilities and that discussion groups focussed on human rights protection made up of experts, patients and their families had been organised. The Committee expressed concerns regarding reports that in mental health hospitals excessive isolation and constraint measures had been used. The delegation explained that the Government provided guidelines for the admission and discharge of patients adding that according to the *Mental Health Act*, regional mental health committees examined treatments given to patients every six months.

Right to a fair trial

The Committee raised the issues of access to defence counsel, arrest procedures, and the length of pre-trial detention.

The delegation insisted that there was access to defence counsel at all times during arrest and trial except in cases where there was risk of the suspect running away or hiding evidence. However, the Committee criticised that the Chief of Police maintained an authority to restrict access to defence counsel and this was reiterated in the concluding observations where it called for prompt access to counsel in all forms of custodial detention.

The Committee also expressed concern over the high number of arrests without warrant (urgent arrests) noting that a high number (30-40%) ended up in unconditional release. On complaints the delegation stated that 80% of complaints on the legitimacy of an arrest were taken up through the courts. In the concluding observations the Committee urged that amendments should be made to the *Criminal Procedure Act* to restrict the number of urgent arrests.

Committee expert, Sir Nigel Rodley, made reference to reports that pre-trial detention could be extended to 50 days and that detention often takes place in police stations. The delegation responded that after 24 hours detention could only be extended after ruling by a judge.¹⁷ In the concluding observations the Committee recommended that any detention should be promptly subjected to judicial scrutiny.

Conscientious objection

The Committee asked for statistics on the number of those imprisoned on grounds of refusal to do military service as well as the nature of this imprisonment.¹⁸ The delegation responded that imprisonment was for one to two years and that conscientious objectors were treated in the same capacity as other prisoners whilst in

¹⁶ The term ‘stacking’ refers to the practise of adding together periods of solitary confinement so that in some cases it extends for years.

¹⁷ After 30 days of detention extensions of a maximum of 10 days can be requested by the police and equally 10-day extensions can be made by the prosecution. The delegation went on to point out that there had been only 3 cases of detainees being kept for 50 days in pre-trial detention and that in general there were very few cases in which the police appeal for extensions of pre-trial detention (never over 10% per year).

¹⁸ This comes under article 18 of the Covenant.

prison and on release.¹⁹ Although the delegation did highlight plans to review alternatives to military service in June 2007²⁰ they reiterated that in light of severe national security concerns the State would not recognise the right to conscientious objection and that this view was shared by 99% of the population in the Republic of Korea. The Committee rejected national security as an acceptable justification. In the concluding observations the Committee recommended that the Republic of Korea should take all necessary measures to recognise the right of conscientious objectors, referring them to its General Comment 22, paragraph 11 on the right to freedom of thought, conscience, and religion.²¹

Peaceful assembly and trade unions

The Committee raised the issues of the right to peaceful assembly and access to form and join trade unions, in particular with regard to migrant workers.

The Republic of Korea stated that those working in the emergency services and human resources as well as officials above 6th grade were not allowed to join or participate in trade unions.²² In their concluding observations the Committee asked the State party to reconsider this position on restrictions placed on public officials in this regard.

Although the Committee appreciated the prohibition of discrimination based on race stated in Article 9 of the *Trade Union Act*, it expressed concerns that no mention had been made to discrimination based on nationality. The Committee went on to enquire into the application on 3 June 2005 for the Government to recognise a migrant workers trade union (MTU) and the Republic of Korea responded by explaining that the proposed union housed illegal undocumented aliens and therefore the application had been disallowed. In their concluding observations the Committee recommended that the State party should ensure migrant workers are not subject to discrimination and that in particular they should be given equal access to social services and education as well as the right to form trade unions.

Other Issues

Other issues that were discussed during the session included restriction of freedom of expression justified by protection of national security.²³ Furthermore, on dissemination of the Covenant, the Committee remarked that the concluding observations of their previous session were placed on the Government website in English without translation. In response the delegation assured that the Korean translation would be added soon.

Conclusion and Next Steps

At the close of the session Chairperson of the Committee, Ms Christine Chanet, paid particular tribute to the abolition of the patriarchal family head system. However, she regretted that despite promises there had been slow progress in the withdrawal of the reservation to Article 14(5) and even more reticence to share their

¹⁹ They included that are released with a criminal record and they are not eligible to be a civil servant. Furthermore they stated that conscientious objectors did suffer from social stigmatisation.

²⁰ The delegation proposed that the review would be carried out through engagement with private officials, lawyers, professors, religious members, NGOs, National Defence Ministry, military drafting board and that a report would be submitted to the National Defence Ministry.

²¹ CCPR/C/21/Rev.1/Add.4, General Comment No. 22, 30 July 1993:

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/9a30112c27d1167cc12563ed004d8f15?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/9a30112c27d1167cc12563ed004d8f15?Opendocument).

²² This provision came under the public official Trade Union Act and came into force on 28 January 2006.

²³ On freedom of expression, the case of Professor Kang who had been punished for publishing an account of Korean history that was highly critical of the Korean government was raised and the delegation insisted that his works had threatened their constitution and thus the sentence imposed by the regional courts was not a violation of [Article 19 of the Covenant](#).

intentions on the reservation to Article 22. She further expressed her disappointment that the delegation had failed to give direct responses on the questions regarding interrogation, detention, arrests and conscientious objection.

These remarks were reflected in the concluding observations made by the Committee. Notably the Committee called for prevention of all forms of ill-treatment by law enforcement officials in all places of detention, including mental health hospitals. In addition the Committee stated that punishments should be made proportionate to the seriousness of the crime and that the provision of compensation to the victims should be reviewed. Finally, it stated in its concluding observations that the Republic of Korea should integrate human rights education in primary, secondary, higher and vocational education, as well as in the training of law enforcement officials.

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