

## Committee against Torture

### Concluding observations on the third to fifth periodic reports of the Republic of Korea<sup>\*</sup>

#### ADVANCE UNEDITED VERSION

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

#### A. Introduction

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

#### B. Positive aspects

3. The Committee welcomes the State party's accession to and ratification of the following international instruments:

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

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

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

(a) Amendments to the Criminal Procedure Act providing, *inter alia*, for the application of the Exclusionary Rule, the right of the legal counsel to be present during interrogations by investigating agencies, expanding the scope of cases in which public defenders shall be appointed and imposing stricter conditions regarding the admissibility of written evidence, in 2006 and 2007;

(b) Adoption of the Act on the Punishment of Crimes under the Jurisdiction of the International Criminal Court, which covers certain types of torture and other inhuman treatment that constitute a crime against humanity or a war crime under the Rome Statute and stipulates in article 6 that a statute of limitations shall not be applied to crimes against humanity including torture, crime of genocide, and war crimes, in 2007;

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

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

(e) Adoption of the Act on the Protection of Children and Youths from Sexual Violence, in 2010;

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<sup>\*</sup> Adopted by the Committee at its sixtieth session (18 April – 12 May 2017).

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

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

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

(i) Adoption of the Refugee Act, in 2013; and

(j) Adoption of the Act on Special Cases of Punishment for Child Abuse Crimes, in 2014 and its revision expanding the list of professions in contact with children which are mandatory reporters, in 2016.

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

(a) Drawing up of the first National Action Plan for the Promotion and Protection of Human Rights 2007-2011, and the creation of the National Human Rights Policy Council to implement it, of the second National Action Plan for the Promotion and Protection of Human Rights in March 2012 to 2016 and current work with a view to adopting the third Action Plan;

(b) Establishment of the Group Home Project for female victims of violence, in 2008;

(c) Issuance by the military of the Directive on Unit management, *inter alia*, to prevent ill-treatment and abuses, including hazing, on 19 May 2009 and the operation of the Suicide Prevention Programme in the Korean Military since 2009;

(d) Introduction of the Korea Information System of Criminal-Justice Service (KICS) for persons under arrest or detention, in July 2010; and

(e) Setting up of the Women and Children Crime Investigation Division at the Seoul Central District Prosecutor’s Office, subsequent establishment in major cities by February 2017, and the designation of trial divisions exclusively in charge of sexual crimes by the Court, in 2011.

## C. Principal subjects of concern and recommendations

### Follow-up procedure

6. **The Committee takes note of the State party’s follow-up replies to its previous concluding observations and notes that its recommendations concerning reinforcing human rights education, awareness-raising and training activities for law enforcement and correctional facility staff (para. 7); amending the Criminal Procedure Act to guarantee that legal counsel is present during interrogations and investigations (para. 9); limiting the use of “substitute cells” and constructing new detention facilities (para. 13); providing access to medical care and conducting suicide prevention programmes in detention facilities (para. 14); and conducting systematic research into the causes of suicides in the military and establishing comprehensive programmes for the prevention of suicides in the military (para. 15), have been partly implemented.**

### Definition and criminalization of torture

7. The Committee reiterates its concern that a definition of torture that contains all the elements of this crime as set out in article 1 of the Convention has not yet been incorporated in the State party’s penal legislation. It is particularly concerned that torture is considered under different articles of the criminal legislation which cover only physical aspects of such acts and only specific individuals in the investigation and trial processes. The Committee is

also concerned that penalties under current applicable legislation are not commensurate with the gravity of the crime of torture (arts. 1, 2 and 4).

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

#### **Statute of limitations for acts of torture**

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

10. **The State party should:**

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

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

#### **Fundamental legal safeguards**

11. The Committee is concerned that persons deprived of their liberty do not enjoy the right to fundamental legal safeguards from the very outset of their detention, in particular in cases of urgent arrest which is conducted without a warrant. It is also concerned that detained person may not be informed of their right to remain silent, obtain a medical screening within 24 hours of arrest, to request and receive medical examination by a qualified medical doctor within 24 hours of their arrival in a place of detention, and to have access to an independent doctor upon their request, inform a family member or a person of their choice, be brought before a judge 48 hours after their arrest and have access to legal counsel from the very outset of detention and during all stages of the proceedings against them, including for reasons of "good cause" established by the prosecution or police, that legal counsel's requests for participating in suspect interrogations are "mostly granted" and that a detained person's meeting their lawyer was recorded by Closed Circuit TV (CCTV) (arts. 2, 11, 12, 13, 14 and 16).

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

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

**(b) Request and receive medical examination by a qualified medical doctor within 24 hours of their arrival in a place of detention, and to have access to an independent doctor upon their request;**

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

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

**(e) Have their detention recorded immediately after arrest and ensure that access to the Korea Information System of Criminal-Justice Service (KICS) regarding their detention is available to their lawyers, family members or other persons of their own choice; and**

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

#### **Excessive use of force by law enforcement officials**

13. The Committee is concerned at:

(a) The excessive use of force by law enforcement officials during demonstrations such as the Candlelight Rally of 2008 and the Peoples' Rally in 2015, including water cannons, tear gas, fire extinguishers, electrical discharge weapons (tasers), iron clubs, as well as of batons and shields;

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

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

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

(e) Reports that some suspects are handcuffed during the interrogation, despite the ruling of the Constitutional Court that such practice is unconstitutional (arts. 2, 12, 13, 14, 15 and 16).

14. **The State party should:**

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

**(b) Adhere to international standards in order to ensure that law enforcement officials are trained in professional techniques on the use of force and firearms and deploy adequately trained and experienced police and law enforcement officers to manage assemblies;**

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

**(d) Provide information on the outcome of the investigations undertaken by the Prosecutor's Office and the National Police Agency against seven police officers for violating the Act on the Performance of Duties by Police Officers in relation to the**

**death of Mr. Baek Nam-Gi and inform the Committee about the outcome of any judicial proceedings;**

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

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

#### **National Security Act**

15. The Committee reiterates its concern at the continued arrests of persons under the National Security Act, and that treatment of persons arrested under this act has allegedly resulted in arbitrary arrest and detention as well as coerced confessions. It remains concerned at the vague wording of article 7 may give rise to violations of the Convention (arts. 2, 11, 15 and 16).

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

#### **Detention of persons escaping from the Democratic Peoples' Republic of Korea (DPRK) by the National Intelligence Service**

17. While the Committee takes note that articles 12(2) and 15(2) of the Presidential Decree of the Act on the Protection and Settlement Support of Residents Escaping from North Korea provides that persons escaping from DPRK may be detained for up to six months, it is particularly concerned at reports such persons may be detained indefinitely by the National Intelligence Service (NIS). The Committee is also concerned that they can be detained in solitary confinement and without due process, including the right to legal counsel. It is also concerned that they may be deported to third countries where they risk torture if it is determined that they do not qualify for protection and to not enjoy the right to an independent review and to appeal the decision regarding deportation (arts. 2, 3, 5, 7, 8, 12, 13 and 16).

**18. The State party should:**

**(a) Ensure that any person detained for reasons related to their escape from DPRK be deprived of their liberty for the shortest possible period and not beyond the established legal maximum;**

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

**(c) Ensure that the duration and methods of interrogation and conditions of detention comply with international human rights standards, while differentiating between the investigation process to decide on protection for persons escaping from the DPRK regarding settlement as opposed to criminal investigation processes for the violation of the National Security Law;**

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

**(e) Provide updated information on the number of persons who have escaped from DPRK, including those in detention, during the reporting period.**

### **Independent complaints mechanism**

19. The Committee is concerned at the low rate of acceptance of complaints relating to torture or ill-treatment by the National Human Rights Commission of Korea (NHRCK) and by the Hotline Center and lack of information regarding complaints lodged with the Human Rights Bureau of the Ministry of Justice and the Human Rights Division of the Ministry of National Defence (arts. 2, 11, 12, 13, 14 and 16).

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

(a) **Establish an independent and effective complaints mechanism regarding complaints of torture and ill-treatment, including in all places of deprivation of liberty;**

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

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

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

### **Conditions of detention**

21. The Committee is concerned at:

(a) Continued overcrowding in correction facilities, living space per inmate available which is below international standards and insufficient numbers of prison staff;

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

(c) Frequent use of protective devices/restraints as punishment of inmates with the duration of their use decided by prison guards;

(d) The absence of age and gender-disaggregated data with regard to places of deprivation of liberty, including prisons, during the current reporting period (arts. 2, 11, 12, 13 and 16).

22. **The State party should:**

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

(b) **Take urgent measures to increase the number of prison guards, hire additional medical personnel, further expand the room for multiple inmates in accordance with international standards and enable the referral of inmates requiring specialized medical care to outside medical facilities;**

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

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

**(e) Provide age and gender-disaggregated data with regard to detainees during the current reporting period.**

#### **Solitary confinement**

23. The Committee is concerned about the frequent use of solitary confinement as disciplinary punishment of inmates for periods up to 30 days, without strict medical monitoring and without the possibility for appeal (arts. 2, 11, 12, 13 and 16).

24. **The State party should:**

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

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

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

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

#### **“Substitute cells” in police stations**

25. While taking note of the closure of several “substitute cells” in police stations and that only four remain in operation at present, the Committee is concerned at the poor material conditions including overcrowding, extremely small investigation detention rooms and insufficient privacy of sanitary facilities, in particular for women, which are supervised by male staff (arts. 11, 12, 13, 14 and 16).

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

#### **Deaths in custody**

27. The Committee is concerned about the high number of suicides and sudden deaths in correctional facilities. It is particularly concerned that a large number of deaths in custody is due to the absence of adequate medical treatment for inmates suffering from diseases and that autopsies may not always be carried out and can be used as evidence in criminal and civil cases. The Committee is also concerned about the very high number of persons in pre-trial detention who have committed suicide that may be the result of coercive investigation procedures by police and prosecutors (arts. 2, 11, 12, 13, 14 and 16).

28. **The State party should:**

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

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

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

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

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

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

#### **Death penalty**

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

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

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

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

#### **Involuntary hospitalization in psychiatric institutions**

31. The Committee is concerned:

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

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

(c) That procedural safeguards regarding involuntary placement in psychiatric institutions are insufficient and inadequate (arts. 2, 10, 11, 12, 13, 14 and 16).

32. **The State party should:**

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

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

**(c) Ensure effective legal safeguards for persons under involuntary hospitalization in psychiatric institutions, including the right of effective appeal and the patient's right to be heard in person by the judge, the judicial tribunal or board ordering the hospitalization;**

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



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

#### **Corporal punishment against children**

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

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

#### **Abuses in the military**

35. The Committee is concerned at reports of a large number of cases of violence, including sexual, physical and verbal abuse in the military, which has sometimes resulted in deaths. It is also concerned at the small number of such cases which result in indictment. In addition, the Committee is concerned about “guardhouse detention” as a disciplinary measure by which a soldier can be detained for 15 days without a warrant, based only on the decision of the commanding officer. It is also concerned as about repeated crackdowns against gay soldiers on grounds of violating article 92-6 of the Military Criminal Act, which criminalises consensual sexual relations between same sex adults (arts. 2, 4, 11, 12, 13, 14 and 16).

**36. The State party should:**

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

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

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

**(d) Ensure the independence of military judicial officers for human rights;**

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

**(f) Consider repealing article 92-6 of the Military Criminal Act and take all necessary measures to make punishable violent actions against LGBTI persons in the military; and**

**(g) Provide redress and rehabilitation to victims, including through appropriate medical and psychological assistance, in accordance with general comment No. 3.**

#### **Violence against women, including domestic and sexual violence**

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

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

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

(c) At the conditional suspension of charges against perpetrators of domestic violence in exchange for education and counselling that may amount to acquittal and fails to adequately protect the victims (arts. 2, 12, 13, 14 and 16).

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

(a) **Take necessary legislative measures to strengthen protection against domestic violence and reiterates its recommendation to define and introduce marital rape, defined on the basis of absence of consent, as a specific criminal offence with appropriate sanctions;**

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

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

#### **Violence against migrant workers**

39. The Committee is concerned that migrant workers suffer abuse, including sexual violence, and ill-treatment by employers, including the confiscation of their personal documents. It is concerned that migrant workers are not sufficiently informed about or fear lodging complaints and that female migrant workers are unable to leave abusive employers unless they have been judged guilty of abuse by a court (arts. 2, 12, 13, 14 and 16).

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

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

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

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

#### **Asylum seekers and migrants**

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

(a) The implementation of article 5 of the Enforcement Decree of the Refugee Act outlining the grounds for non-referral to asylum procedures and the quality of the Refugee Status Determination (RSD) if certain criteria are met and which may result in forcible deportation;

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

(c) The reported overcrowding and poor material conditions in immigration detention facilities, including at points of entry and also in departure waiting areas when applicants file complaints against their non-referral to RSD (arts. 2, 3, 12, 13, 11 and 16).

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

(a) **Consider revising article 5 of the Enforcement Decree of the Refugee Act with a view to removing the grounds for non-referral to asylum procedures and**

**ensure that an effective appeal mechanism exists with regard to negative decisions and that appeals have a suspensive effect;**

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

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

#### **National human rights institution**

43. The Committee is concerned about:

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

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

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

44. **The State party should:**

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

**(b) Establish an independent committee to nominate candidates and to guarantee the independence, diversity and functional immunity of the members of the Commission, in compliance with the Principles Relating to the Status of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles);**

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

**(d) Strengthen further the Commission's monitoring functions in all places of deprivation of liberty and act on the recommendations it makes through its Annual Report; and**

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

#### **Training**

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

46. **The State party should:**

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

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

**(c) Ensure that the Istanbul Protocol is made an essential part of the training for all medical professionals and other public officials involved in work with persons deprived of their liberty; and**

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

#### **Redress for victims of torture and ill-treatment**

47. The Committee is concerned:

(a) While welcoming the Agreement reached at the Republic of Korea-Japan Foreign Ministers' Meeting on December 28, 2015, and taking note that there are still 38 surviving victims of sexual slavery during World War II, that the Agreement does not fully comply with the scope and content of its general comment No. 3 (2012) on the implementation of article 14 of the Convention, and fails to provide redress and reparation, including compensation and the means for as full rehabilitation as possible as well as the right to truth and assurances of non-repetition;

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

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

(d) At the absence of information concerning the compensation lawsuit filed on 22 March 2016 by the family of Mr. Baek Nam-Gi who died of his injuries (arts 2, 12, 13, 14 and 16).

48. **The State party should:**

(a) **Ensure that all victims of violations of the Convention obtain redress, including rehabilitation and have an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible by formulating a detailed rehabilitation programme. The Committee draws the attention of the State party to general comment No. 3 (2012) on the implementation of article 14 of the Convention, in which the Committee explains the content and scope of the obligations of States parties to provide full redress to victims of torture and recommends amending the domestic legislation accordingly;**

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

(c) **Establish a programme of monitoring and evaluation of the impact of the rehabilitation programme, including establishing a programme of data collection in order to identify the number of victims and their specific rehabilitation needs;**

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

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

#### **Follow-up procedure**

49. The Committee requests the State party to provide, by 12 May 2018, information on follow-up to the Committee's recommendations on the outcome of investigations by the Prosecutor's Office and the National Police Agency in relation to the death of Mr. Baek

Nam-Gi; on the outcome of any proceedings in relation to the Sewol Ferry accident; on the closing of remaining “substitute cells” and on the establishment of the office of the military ombudsman (see paras 14(d) and(e), 26 and 36(b)). In the same context, the State party is invited to inform the Committee about its plans for implementing within the coming reporting period, some or all of the remaining recommendations in the concluding observations.

**Other issues**

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

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

**52. The State party is invited to submit its next periodic report, which will be the sixth periodic report under article 19 of the Convention, by 12 May 2021. To that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure. The State party’s replies to that list of issues will constitute its sixth periodic report under article 19 of the Convention.**

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