

Written Responses of the Delegation of the Republic of Korea to the Review of the State Party Report by the Committee against Torture

Migrant Children in Detention

1. The Government makes it principle not to detain children in facilities for foreigners. When a child is inevitably subject to detention, regardless of whether his/her parent in custody wishes to accompany the child or whether or not the child is a juvenile delinquent charged with using a forged passport or being illegally employed, then the child is accommodated in a special protection room and is assigned with a designated officer in exclusive charge of the child. Repatriation of the protected child is considered the utmost priority. In order to minimize the period for protecting the child, efforts are exerted to facilitate the child's departure by requesting relevant diplomatic missions' cooperation and support for expeditious issuance of travel documents. During the last three years, the average time taken for the departure of such children was seven days, including the time for travel documents issuance, flight ticket reservations and the collection of personal belongings.
2. From June 2015, the Ministry raised age eligibility for receiving commissioned education from external welfare facilities from under 14 to 18 in a bid to improve children's human rights and minimize their detention. Since the initiation of the program, however, no child has actually received such commissioned education as there has been no child who remained in detention for longer than a month. Children in custody receive regular medical check-ups every two months and medical care from either resident doctors or external hospitals. Psychological counselling is also available. In 2015, two foreigner detention centers hired full-time counsellors.

Female Migrant Workers

3. The Government allows female migrant workers to change their workplace upon their request on the grounds of unfair treatment including sexual harassment or sexual abuse. The delegation wishes to stress the fact that workers are permitted to change their workplace even at a time when any litigation, accusation or petition regarding the alleged sexual abuse is pending with competent

authorities as well as before a final decision that is likely to take much time to be rendered. It takes one month at most for labor offices to process such requests.

The Agreement on Issues related to the “Comfort Women” between the Governments of the Republic of Korea and Japan

4. Since the early 1990s, when the so-called “comfort women” issue was first raised in the international community, the Government of the Republic of Korea has shared its opinions with the UN human rights mechanisms on the issue, endeavoring to ensure that the relevant international human rights standards and principles are put into practice. Unfortunately, however, notwithstanding the continued attention of UN human rights mechanisms and efforts made by the previous ROK Governments to resolve this issue, many of surviving victims passed away before such efforts bore fruit. The average age of the victims in the ROK is currently 90, and only 38 are still living.
5. The ROK Government has put in extensive efforts to resolve the issue with a sense of urgency that it should be settled before any more of the “comfort women” victims pass away. As a result, the Governments of ROK and Japan finally reached an agreement at the ROK-Japan Foreign Ministers’ Meeting on December 28, 2015 (hereinafter referred to as the “Agreement”).
6. The primary purpose of the Agreement is to restore honor and dignity of the victims and to heal their psychological wounds. Bearing this in mind, the ROK Government has heeded the opinions of the victims and advocacy groups, and has exerted the best of its efforts to reflect their opinions in the Agreement during the consultations with Japan.
7. The demands of the victims and advocacy groups are reflected in the Agreement as follows: (i) reaffirmation of the historical fact that the Japanese military authorities were involved and the acknowledgement of responsibility by the Japanese Government for the first time, (ii) an expression of sincere apologies and remorse to all the victims by Prime Minister Abe in his capacity as Prime Minister of Japan in public and in an official manner; and (iii) the provision by the Japanese Government of a lump sum funding from its budget to a foundation, which would be established by the ROK Government to implement the commitment made by the Japanese Government.
8. The ROK Government established the Foundation for Reconciliation and Healing as a follow-up measure of the Agreement in July 2016 to carry out programs to restore honor and dignity of the

victims and to heal their psychological wounds. The ROK Government and the Foundation have met the majority of the surviving victims and the families of the deceased victims to explain the programs of the Foundation. The Foundation has so far confirmed consents of 34 out of the 46 surviving victims, who were alive as of December 28, 2015 when the Agreement was reached. The ROK Government will continue to communicate with the victims and spare no effort to restore their honor and dignity, and to heal their psychological wounds through programs of the Foundation.

9. Meanwhile, the “comfort women” issue embodies multi-dimensional aspects in the sense that it has bearings with: an issue involving the restoration of honor and dignity of each victim; a global issue relating to universal human rights; an issue which offers important lessons to be drawn from history that must not be forgotten to prevent any recurrence of such inhumane acts; and a diplomatic issue between the ROK and Japan. Among these, the “comfort women” issue as a bilateral diplomatic issue between the Governments of the ROK and Japan is the subject of the Agreement, and the principal purpose of the Agreement is to restore the honor and dignity of all the victims. In this regard, when the Governments of the ROK and Japan stated in the Agreement that the two Governments “confirm that through today’s statement, this issue will be finally and irreversibly resolved,” they meant that the “comfort women” issue as a bilateral diplomatic issue will be resolved “on the condition that” the measures stated by the Japanese Government are faithfully implemented.

Hate Crime against LGBTIs

10. Physical violence such as assault or infliction of an injury motivated by hatred against a certain group of people is a crime that is punishable by relevant laws, and the motivation of violence affects sentencing. While discrimination or a discriminatory expression against LGBTIs is criminally punishable when it constitutes criminal offenses of insult or defamation, there is no separate criminal provision that stipulates a discriminatory motivation as an element of a crime.

Petitions filed with the National Human Rights Commission of Korea

11. In response to the request to further clarify Table 26 regarding the statistics on petitions concerning detention facilities filed with the National Human Rights Commission of Korea

(NHRCK), the delegation reiterates its response provided in the session. The NHRCK does register all petitions including the ones not under its jurisdiction, which explains the large number of total registered petitions. The NHRCK exercises its function and mandates in full compliance with the National Human Rights Commission Act, which explicitly specifies grounds for dismissing or rejecting petitions under Articles 32 and 39.¹ This is the primary reason for the high rejection and dismissal rates of petitions by the NHRCK.

12. Furthermore, inmates file petitions repetitively on the same issue in a number of cases, or problems cited in the petitions get resolved in the course of the NHRCK'S investigations. The "accusation/request for investigation" in Table 26 denotes that the NHRCK has brought the petitions to a regular criminal procedure on the basis of its decisions as prescribed in Article 34 of the said Act. The NHRCK's investigation is complementary to the regular justice system in nature and indictment is sought only by prosecutors. This further proves the fact that any torture or cruel act rarely occurs in detention facilities.

¹ National Human Rights Commission Act

Article 32 (Rejection of Petition, etc.) (1) The Commission shall reject a petition which falls under any of the following subparagraphs:

1. Where the content of the said petition does not fall under the scope of matters subject to the investigation of the Commission;
 2. Where the content of the said petition is deemed manifestly false or ill-founded;
 3. Where the said petition is filed by any person other than a victim, and it is manifest that the victim does not want an investigation;
 4. Where the said petition is filed after one or more years have elapsed since the fact causing the petition occurred: Provided, That this shall not apply to any case in which the prosecution or civil prescription with respect to such fact has not been completed and which the Commission determines to investigate;
 5. Where the trial at a court or the Constitutional Court, the criminal investigation by an investigation agency or the procedures for remedies for infringement of rights under any other Act are in progress or terminated with respect to the fact causing the petition, at the time when the said petition is filed to the Commission: Provided, That this shall not apply where the Commission receives a petition against cases identical with those falling under crimes of Articles 123 through 125 of the Criminal Act which are being recognized and investigated by the investigation agency;
 6. Where the said petition is filed under any pseudonym or anonym;
 7. Where the Commission deems it improper to investigate the said petition;
 8. Where the said petition is withdrawn by the petitioner;
 9. Where the said petition is re-filed against the fact identical with any other petition which has already been dismissed by the Commission;
 10. Where the purport of the said petition is contrary to the final judgment of a court or a decision of the Constitutional Court on the fact causing the petition.
- (2) Where the Commission rejects a petition under paragraph (1), it may, if deemed necessary, deliver such petition to related agencies, etc. In such cases, the related agencies, etc., to which the petition is delivered shall, if requested by the Commission, inform the Commission of the results of treatment thereof without delay.
- (3) The Commission may, even after initiating an investigation on a petition, reject the petition if it corresponds to a case referred to in any subparagraph of paragraph (1).
- (4) Where the Commission rejects or delivers a petition, it shall, without delay, notify the petitioner by specifying the reasons therefor.
- (5) Where the Commission notifies a petitioner under paragraph (4), the Commission may, if deemed necessary, advise the relevant victim or the petitioner on the procedures and measures for the relief of his/her infringed rights.

[This Article Wholly Amended by Act No. 10679, May 19, 2011]

Article 39 (Dismissal of Petition)(1) The Commission shall dismiss a petition if the content thereof turns out to fall under any of the following subparagraphs as a result of investigation:

1. Where it is evident that the content of the petition is not true, or there is no objective proof that it is true;
 2. Where it does not correspond to a violation of human rights or a discriminatory act pursuant to Article 30 (1) as a result of investigation;
 3. Where it is deemed that any further remedy is not required because the damage related to the petition has already been recovered.
- (2) The Commission shall, if dismissing a petition, inform the party concerned of the result of such dismissal and grounds therefor.

Urgent Arrest

13. Specific conditions and procedures of urgent arrest are stipulated in the *Criminal Procedure Act* to prevent arbitrary arrest. In addition, external control by the judiciary is provided for in the *Act*: a prosecutor or judicial police officer, after putting a suspect under urgent arrest, shall prepare a document stating the summary of the charge, the grounds for urgent arrest, etc., and a judicial police officer shall immediately obtain the approval of a prosecutor upon making an urgent arrest. Judges examine the lawfulness of the urgent arrest when examining detention warrant requests.
14. When releasing an urgently arrested suspect without requesting a detention warrant, a prosecutor should notify the court of such an arrest and release in writing no later than by 30 days since the release.

Medical Treatment in Correction Facilities

15. All newly admitted inmates receive health examination by licensed doctors in correctional facilities. If they find any medical problem, they prescribe the inmates adequate medical treatments, including those available outside correctional facilities. If they find any bodily injury, they are required to report such facts to special judicial police officers or other investigative agencies.
16. Inmates are required to receive general physical check-ups provided by external medical institutions every 6 months or 1 year for early detection of illnesses and provision of necessary medical treatment. All medical records shall be retained as required by the relevant law, and inmates have the right to access their own medical records; they are allowed to make copies of the records and send those records to their families.
17. The Government installed remote medical care systems at 32 correctional facilities as of May 2016. Medical specialists from outside hospitals are also invited to offer treatment at such facilities. For inmates with critical illness or diseases requiring long-term care, a medical prison is under construction in order to provide specialized medical treatment.
18. Correctional officers receive regular training on prevention of torture on a continued basis on the occasions of on-the-job training, monthly training and sexual violence prevention training sessions. Qualified doctors and nurses who completed professional education and passed the national examination which includes the subject of medical ethics are employed to provide medical

services for inmates.

Suicide of Suspects

19. A suspect's suicide over the course of investigation period is attributable to a number of factors which vary from case to case. It is difficult to find any correlation or causation between suicide during investigation and methods of investigation. /End/