

제6차 유엔 고문방지협약 심의 대응을 위한 한국시민사회모임

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제 목 [보도자료] 유엔 고문방지위원회 제6차 대한민국 심의 최종견해 발표 - 시설수용, 군 사망사고
등 국내 고문 및 학대행위 실태에 우려 표명

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보도자료

유엔 고문방지위원회 제6차 대한민국 심의 최종견해 발표 - 시설수용, 군 사망사고 등 국내 고문 및 학대행위 실태에 우려 표명

- 국가보안법 폐지, 사형제 폐지, 고문방지협약 선택의정서 비준, 과밀수용 개선 등 재차 권고
- 과거사 및 시설수용 피해자 구제 권리 처음으로 명시
- 군 사망사고의 독립적 조사와 지휘 체계에 있는 자에 대한 책임 규명
- 명백한 차별, 균형법 제92조의6 폐지 권고
- 난민인정절차 개선, 이주아동 구금금지, 이주구금 제도 개선 권고
- 정부는 권고에 대한 구체적 이행 계획 마련해야

1. 유엔 고문방지위원회(이하 “위원회”)는 2024년 7월 26일 대한민국 제6차 「고문 및 그밖의 잔혹한·비인도적인 또는 굴욕적인 대우나 처벌의 방지에 관한 협약」

(이하 “협약”) 제6차 국가보고서 심의에 대한 최종견해를 발표했다. 2024년 7월 10일-11일 양일간 제네바 유엔사무소에서 진행된 심의의 결과물인 본 최종견해는 대한민국의 협약 이행 상황에 대한 위원회의 우려사항과 이를 개선하기 위한 포괄적인 권고들을 담고 있다.

2. 위원회는 최종견해에서 협약에서 금지하는 고문과 그 밖의 잔혹한·비인도적인 또는 굴욕적인 대우나 처벌과 관련된 광범위한 국내 인권 문제들을 지적하고 이를 개선하기 위한 권고를 제시하였다. 이번 최종견해에 포함된 주요 권고로 ▲고문 범죄화 및 시효 배제, ▲구금 초기단계부터의 변호인 조력권의 보장, ▲인권위원 임명 절차 개선, ▲과밀수용 개선, ▲수용자 의료권 보장, ▲국가보안법 폐지, ▲사형제 폐지, ▲군형법 제92조의6 폐지, ▲군대 내 폭력 근절, ▲군사망사건에 대한 독립적 조사와 책임 규명, ▲정신 보건 시설 강제 입원 및 입소 방지, ▲북한이탈주민의 법적 권리보장, ▲협약 선택의정서 비준, ▲출입국항에서의 난민신청 권리의 보장, 난민신청자와 인도적체류자에 대한 기본적 처우 보장, ▲이주구금 제도개선 및 아동구금 금지, ▲국제기준에 부합하도록 인신매매방지법의 개정, ▲젠더 기반 폭력의 사법조치 강화 ▲시설수용 및 과거사 피해자의 구제 보장 등이 있다(위원회의 구체적 우려와 권고는 **첨부1** 참조).
3. 정부는 심의과정에서 국내법과의 충돌, 사법부의 판결 등 조약법상 원용될 수 없는 사유로 위원회의 기존 권고를 이행할 수 없다고 주장하였지만, 위원회는 이를 받아들이지 않고 이행되지 않은 권고를 대다수 재권고하였다. 또한, 정부는 보도자료를 통해 위원회가 수용자의 의료접근권 보장, 난민인정절차 개선 등을 위원회가 긍정적으로 평가하였다고 밝혔으나, 실제로 위원회는 한국의 낮은 난민인정률을 지적하며 난민인정절차를 개선을 권고하였고, 수용자의 의료접근권 보장을 권고하는 등 정부의 조치가 충분하지 않았다는 점을 명확히 했다.

4. 특히 이번 최종견해는 그동안 위원회의 질의 및 권고에 포함되지 않았던 과거사 및 시설수용 피해자의 구제에 대한 권리를 명시했다는 점에 큰 의미가 있다.
위원회가 심의 전 쟁점목록에 포함하지 않은 사안에 대해 권고하는 것은 이례적인 만큼, 이번 권고는 시설수용과 과거사 문제가 국제사회에서 절대적으로 금지되는 ‘고문’임을 명확히 확인한 것이다. 나아가 위원회가 정부에게 권고한 구제조치는 피해자들에 대한 법적 배상은 물론, 재활을 위한 조치, 사과와 추모, 책임자 처벌을 포함하는 것으로, 기존 제도로도 시설수용 및 과거사 피해자들의 구제가 충분하다는 정부의 입장은 받아들여지지 않았다. 이번 심의 과정에서 피해자들의 증언을 통해 과거사와 시설수용 문제가 국제사회에 드러난 것이다.
5. 또한 위원회는 군 내 고문, 학대 및 사망사건에 대하여 “가해 혐의자와 제도적 또는 위계적 연관성이 없는” 독립적 조사를 통하여 직접적인 가해자 뿐만 아니라 “지휘 체계에 있는 자”의 책임도 규명하여 사법 처리할 것을 권고하였다. 이는 최근 ‘채상병 사망사건’, ‘훈련병 사망사건’ 등 군 내 사망사건 수사의 독립성 문제와 지휘책임자에 대한 불처벌 문제를 지적한 것으로 풀이된다.
6. 위원회는 최종견해 권고에 대한 후속조치 사항으로 ▲ 피구금자에 대한 근본적인 법적 보호장치 보장, ▲ 독방 감금 관행 개선, ▲ 정신건강 관리 등 수감자의 적절한 의료서비스 제공, ▲ 군대 내 고문 및 학대, 사망사고에 대한 독립적 수사 및 책임자 처벌, 이상 4개의 권고에 대해서는 1년 내에 조치하고 그 결과를 보고하도록 요청하였다.
7. 국내 26개 인권시민사회 단체로 구성된 ‘제6차 고문방지협약 심의 대응을 위한 한국시민사회모임’(이하 “대응모임”)은 이번 심의 과정에서 시민사회 연합보고서를 제출하고 제네바 현지에서 NGO 브리핑과 고문생존자 증언대회 등을 통해 정부의 협약 이행 상황과 개선을 위해 필요한 권고를 위원회에

전달했다. 대응모임은 앞으로 정부의 실효적인 권고 이행을 촉구하기 위하여
토론회, 입법 캠페인 등 다양한 활동을 진행할 예정이다.

첨부 1. 고문방지협약위원회 제6차 대한민국 국가보고서 심의 최종견해 주요 내용.

첨부 2. 고문방지협약위원회 제6차 대한민국 국가보고서 심의 최종견해 원문.

제6차 유엔 고문방지협약 심의 대응을 위한 한국시민사회모임

4.9통일평화재단, 4.16세월호참사가족협의회, 4월16일의약속국민연대,
공익법센터어필, 공익법단체두루, 공익인권법재단공감, 공익인권변호사모임
희망을만드는법, 군인권센터, 기업과인권네트워크, 난민인권네트워크, 두레방,
민주사회를위한변호사모임, 사단법인 노란들판, 외국인이주노동운동협의회,
인권운동공간활, 인권운동네트워크바람, 일본군성노예제문제해결을위한정의기억연대,
장애와인권발바닥행동, 장애우권익문제연구소, 전쟁없는세상, 천주교인권위원회,
코로나19인권대응네트워크, 한국여성의전화, 한국이주여성인권센터,
한국장애인자립생활센터협의회, 한국장애포럼(총 26개 단체)

* NGO 대표단 명단 (가나다순) : 4.9통일평화재단, 공익법단체 두루, 공익인권법재단
공감, 민주사회를위한변호사모임, 영화숙·재생원피해자협의회, 전국탈시설장애인연대,
천주교인권위원회, 한국장애포럼

첨부 1. 고문방지협약위원회 제6차 대한민국 국가보고서 심의 최종견해 주요 내용

▲ **고문의 범죄화 및 시효 배제:** “고문이 협약 제1조에 해당하는 일반적으로 적용 가능한 정의를 가진 특정 범죄로서 아직 국내법에 통합되지 않았다는 점에 우려”

- 협약 제1조의 모든 요소를 포함하는 고문의 정의를 형법에 통합하고 고문의 처벌이 범죄의 중대성에 상응하도록 법을 개정할 것
- 고문 행위가 시효의 적용을 받지 않도록 보장하는 입법조치를 채택할 것

▲ **기본적인 법적 보호장치:** “‘정당한 사유’ 등 명확히 정의되지 않은 근거로 법적 조력 접근권이 제한된다는 점, 소년 구금시설 심문실에서 영상 및 음성 녹화가 불가능하다는 점 등에 우려”

- 구금 초기부터 지체없이 모든 기본적인 법적 보호장치를 받을 권리를 보장할 것
- 독립적인 혹은 본인이 선택한 의료진에 의한 무상 의료 검진을 보장할 것
- 고문 혹은 가혹행위로 인한 부상이 의심되는 의료보고서를 검찰에 즉시, 비밀리에 제출할 수 있는 권리를 보장할 것
- 구금된 소년의 방어권 보장을 위한 심문 영상 및 음성 녹화를 실시하고, 녹화물을 피고인과 변호인에게 제공할 것

▲ **국가인권위원회:** “명확하고 투명하며 참여적인 국가인권위원회 위원 선정 및 임명 절차를 규정하고 있지 않다는 점을 우려”

- 파리원칙에 따라 인권위원의 선정 및 임명을 위한 투명하고 참여적인 절차를 보장하고 위원회의 독립성과 다양성을 보장하도록 인권위법을 개정할 것
- 인권위가 모든 구금 장소에 접근할 수 있고 불시에 비공개로 면담을 진행할 수 있는 권한을 부여할 것
- 조속히 고문방지협약 선택의정서를 비준할 것

▲ **구금 조건:** “교도소 과밀수용 지속, 국제 기준에 미치지 못하는 1인당 수용 면적, 징계조치로서 독방 구금의 과도한 사용, 정신건강 의료를 포함한 의료조치의 적절성과 적시성 부족, 구금 중 사망과 부검 보고서 미제공, 구금 중 사망, 학대 등을 조사할 독립적 메커니즘 부재에 우려”

- 구금의 대안 활용과 시설 개축 등 구금시설의 과밀을 줄이기 위해 추가 조치하고, 비구금조치에 관한 국제 기준(도쿄 규칙, 방콕 규칙)을 준수할 것
- 관련 가이드라인과 법률을 개정하여 수감자 1인당 최소 수용 면적이 국제 기준(넬슨 만델라 규칙)에 부합하게 할 것
- 독방 감금에 관한 법률과 관행을 유엔 피구금자 처우에 관한 최저기준규칙에 부합하게 개선할 것
- 수감자에게 적절한 의료인력을 포함한 충분한 자원이 배정되도록 노력할 것
- 모든 폭력, 과도한 무력 사용, 구금 중 사망 사건을 독립적 메커니즘에 의해 철저히 조사해 책임자를 사법 조치하고 피해자에게 구제를 제공할 것
- 구금 중 사망자에 대해 독립적인 법의학 검사를 보장하고, 유족에게 부검 보고서를 제공하며, 유족의 요청 시 사설 부검을 허용할 것

▲ 국가보안법: “국가보안법 제2조와 제7조의 지나치게 모호한 표현은 협약 위반”

- 제7조의 모호한 표현을 포함하여 국가보안법을 폐지 또는 개정할 것

▲ 사형제: “이전의 최종견해를 상기하여, 법원이 계속해서 사형을 선고하고, 상당수의 사람들이 여전히 사형 선고를 받은 상태로 있다는 것에 우려”

- 「시민적 및 정치적 권리에 관한 국제규약」(“자유권규약”) 제2선택의정서를 비준할 것
- 사형수를 징역형으로 감형할 것

▲ 독립적 조사기구: “구금시설에 구금된 모든 사람이 인권침해를 신고할 수 있는 기밀 메커니즘에 접근할 수 있는 것은 아니라는 점에 우려”

- 모든 구금 장소에 독립적이고 접근 가능한 진정 제도를 구축하고 진정 관련 통계를 수집하고 공개할 것
- 비밀이 보장되고 진정 제기로 인한 협박이나 보복으로부터 보호 받도록 보장할 것.
- 고문 및 학대 행위에 대해 당국이 직권으로 조사를 개시하고 신속하고 효과적으로 조사를 진행하며 피해자에게 구제를 제공하도록 보장할 것
- ‘멘데즈 원칙’ 등에 따른 비강압적 취조 및 수사 기법 교육을 개발할 것

▲ **교육:** “고문의 절대적 금지 및 협약의 조항, ‘고문 및 그 밖의 잔혹한, 비인도적인 또는 굴욕적인 대우나 처벌에 대한 효과적인 조사와 기록에 관한 지침서 (이스탄불 의정서)’에 대한 교육 부재 우려”

- 협약의 조항과 고문의 절대적 금지에 대해 관련 공무원 및 공무수행자가 충분히 인지하도록 시스템을 개발하고, 이를 평가할 수 있도록 할 것

▲ **군대 내 폭력:** “자살을 포함한 사망을 야기하는 성폭력을 비롯한 군대 내 폭력 증가와 동성 간 합의된 성적 행위를 처벌하는 군형법 제92조의6에 우려”

- 자살을 포함한 군대 내 모든 사망 사건의 근본 원인에 대한 철저한 모니터링, 문서화, 기록을 실시하고 군대 내 폭력을 예방 및 근절하기 위한 계획과 프로그램을 채택할 것
- 자살을 포함한 군대 내 모든 사망 사건에 대해서 가해 혐의자와 제도적 또는 위계적 연관성이 없는 독립적 조사를 실시하고 책임 규명을 통해 직접적 가해자와 지휘 책임자에 대한 사법처리 및 피해자에게 구제를 보장할 것
- 군형법 제92조의 6을 폐지할 것.

▲ **정신 보건 시설 강제 입원/입소 :** “동의 입원 제도가 사실상 강제/자의적 입원으로 기능하고 있으며, 정신보건 시설에 대한 독립 모니터링이 부재한 점에 대한 우려”

- 강제입원 요건 개정 등 고문 및 학대 예방을 위한 법적 보호 장치를 마련할 것
- “동의 입원 절차”에 대면 심사 제도 도입할 것
- 정신 보건 시설 내에 효과적이고 독립적이며 비밀이 보장되는 민원 제도 도입 및 모든 공공, 민간 보건 시설(health-care institutions) 내 학대 발생시 가해자에 대한 엄중한 처벌 및 피해자에 대한 효과적 구제 및 배상 제공할 것
- 지역사회 내 재활/정신 보건 서비스 기관에 대한 충분한 자원 제공할 것

▲ **북한이탈주민:** “북한이탈주민의 보호 및 정착지원에 관한 법률 및 시행령의 개정에도 불구하고 예외 조항으로 인해 여전히 무기한 구금이 가능한 점을 우려”

- 북한이탈주민의 자유박탈을 최소화할 것
- 자유를 박탈한 결정에 대해 이의를 제기할 권리와 변호인의 조력을 받을 권리 등을 실질적으로 보장할 것
- 북한이탈주민에 대한 강제송환금지 원칙을 보장할 것

▲ **난민 제도** : “낮은 난민 인정률과 출입국항에서 난민 절차에 대한 접근 자체가 거부되는 사례(불회부 결정)가 많다는 점 우려”

- 부실한 난민 절차 개선을 위해 난민심사 제도에 더 많은 자원 배분할 것
- 공항 등에서 난민심사 자체를 거부하는 ‘불회부 사유’ 전면 삭제할 것
- 난민신청자와 인도적체류자에 대한 기본적 처우 보장 및 개선할 것

▲ **이주 구금** : “이주 구금의 상한이 없으며, 자의적인 이주 구금에 대한 안전장치의 부재, 미성년자를 이민 구금하는 관행에 우려” “

- 2023. 3. 23. 헌법재판소 결정에 따라 이주구금의 상한을 설정하고 이주 구금에 대한 정기적이고 독립적인 사법 심사가 보장되도록 할 것을 권고
- 아동과 그 가족을 구금해서는 안된다는 점을 강조
- 구금이 아닌 대안 조치를 마련할 것

▲ **인신매매** : “인신매매방지법과 형법에 규정된 인신매매의 정의와 관련 처벌이 국제협약에 부합하지 않는다는 점에 우려”

- 인신매매의 정의와 처벌에 대한 조항을 개정하고, 가해자 처벌조항을 포함하는 등 국제기준에 부합하는 방향으로 법률을 개정할 것

▲ **젠더 폭력** : “젠더 기반 폭력에 대한 낮은 고소 건수, 낮은 기소 및 유죄 판결 비율, 관대한 형량에 대한 우려”

- 가정폭력을 포함한 모든 여성 폭력 사건이 철저히 조사되고 가해자의 기소와 피해자에 대한 배·보상을 보장할 것
- 전국의 젠더 폭력 피해자들에 대하여 보호와 재활을 돕는 지원센터 접근이 가능하도록 할 것
- 형법을 개정하여 배우자간 강간을 형사 범죄로 명시할 것

▲ **과거사/시설 수용 피해자에 대한 구제** : “과거 국가 폭력 및 시설 수용 피해자 중 극소수만이 구제 권리를 보장받고 있는 점, 일본군 ‘위안부’ 피해자들이 완전한 배상을 받지 못한 점 우려”

- 유엔 여성차별철폐위원회의 우려를 상기하며 일본군 ‘위안부’ 피해자에게 보상, 만족, 재활을 포함한 효과적인 구제와 배상을 제공할 것.
- 국내 법률 개정 등을 통해 과거 국가 폭력 및 시설 수용 피해자에게 공식적인 진정 제기 없이도 보상, 만족, 재활을 포함한 효과적인 구제와 배상을 제공할 것.
- 법원 또는 기타 국가 기관이 지시한 구제, 재활 수단을 포함하여 고문 및 가혹 행위 피해자에게 실제 제공된 구제에 대한 정보를 위원회에 제공할 것.

Committee against Torture

Concluding observations on the sixth periodic report of the Republic of Korea*

1. The Committee considered the sixth periodic report of the Republic of Korea¹ at its 2113rd and 2116th meetings,² held on 10 and 11 July 2024, and adopted the present concluding observations at its 2127th meeting, held on 19 July 2024.

A. Introduction

2. The Committee expresses its appreciation to the State party for accepting the simplified reporting procedure and submitting its periodic report thereunder, as this improves the cooperation between the State party and the Committee and focuses the examination of the report and the dialogue with the delegation.

3. The Committee appreciates having had the opportunity to engage in a constructive dialogue with the delegation of the State party and the responses provided to the questions and concerns raised during the consideration of the periodic report.

B. Positive aspects

4. The Committee welcomes the ratification by the State party of the following instruments:

(a) International Convention for the Protection of All Persons from Enforced Disappearance, in January 2023;

(b) Optional Protocol to the Convention on the Rights of Persons with Disabilities, in December 2022;

(c) Forced Labour Convention, 1930 (No. 29), of the International Labour Organization, on 20 April 2021;

5. The Committee also welcomes the State party's initiatives to revise and introduce legislation in areas of relevance to the Convention, including the following:

(a) Act on Prevention of Human Trafficking and Protection of Victims, in April 2021.

(b) Act on Assignment to and Performance of Alternative Service, in 2019;

(c) Framework Act on Prevention of Violence against Women, in 2019;

* Adopted by the Committee at its eightieth session (8–16 July 2024).

¹ CAT/C/KOR/6.

² See CAT/C/SR.2113 and CAT/C/SR.2116.

(d) Amendment of Act on Special Cases Concerning the Punishment of Crimes of Domestic Violence, to strengthen response at crime scenes, in 2020;

(e) Amendment of the Military Personnel Management Act, to abolish the “guardhouse detention” system, in 2020;

(f) Amendment of the Civil Act, to delete article 915, which could be construed as allowing the corporal punishment of children by their parents, in 2020;

(g) Amendment of the Act on the Employment of Foreign Workers, to prevent violence against migrant workers, in 2021.

6. The Committee also welcomes the initiatives undertaken by the State party to amend its policies and procedures in order to improve human rights protection and to apply the Convention, in particular:

(a) Adoption of the plan to strengthen counsel’s right to audience, in 2019;

(b) Adoption of the amendment to the Rules on the Standard of the Use of Hazardous Police Equipment, to restrict the use of water cannons, in 2020;

(c) Adoption of the National Action Plan for the Promotion and Protection of Human Rights, in 2024;

(d) Launch of the National Trauma Recovery Center to heal trauma from state violence, hostile forces, and international terrorist groups, in 2024.

C. Principal subjects of concern and recommendations

Pending follow-up issues from the previous reporting cycle

7. In its concluding observations on the combined third to fifth periodic reports of the State party, the Committee requested the State party to provide information on its implementation of 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 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.³ In the light of the replies submitted by the State party on 9 December 2016,⁴ the information contained in the State party’s sixth periodic report and the additional information provided by the delegation during the dialogue, the Committee is of the view that these recommendations, as set out in paragraphs 14 (d) and (e), 26 and 36 (b) of the previous concluding observations, have been implemented.

Definition and criminalization of torture

8. While noting the delegation’s explanation that acts of torture fall under articles 124 and 125 of the Criminal Act, the Committee is concerned that torture has not yet been integrated into domestic legislation as a specific crime with a generally applicable definition that corresponds to article 1 of the Convention. The Criminal Act does not fully and explicitly cover the mental and psychological aspects of torture, nor torture inflicted at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. The Committee is also concerned that, despite increased penalties for “violent and cruel acts” that result in bodily injury and death, penalties for torture are still not commensurate with the gravity of this crime (arts. 1 and 4).

9. **Recalling its previous recommendations,⁵ the Committee reiterates that the State party should:**

(a) **Incorporate into the Criminal Act a definition of torture that makes torture a distinct crime and incorporates all the elements of article 1 of the Convention,**

³ CAT/C/KOR/CO/3-5, para. 49.

⁴ CAT/C/KOR/CO/3-5/Add.1.

⁵ CAT/C/KOR/CO/3-5, para. 8.

including the mental and psychological aspects of torture and the notion of torture being inflicted “with the consent or acquiescence of a public official or other person acting in an official capacity”;

(b) Revise its national legislation to ensure that acts of torture are punishable by penalties commensurate with the gravity of the crime, whether they result in injury or death or not, as required by article 4 (2) of the Convention.

Statute of limitations

10. While acknowledging the statute of limitations is not applicable to the crime of killing a person and serious crimes, the Committee is concerned that some acts of torture are subject to a statute of limitations of seven years.

11. The Committee recommends that the State party adopt the legislative measures necessary to ensure that no acts of torture are subject to any statute of limitations.

Fundamental legal safeguards

12. While taking note of recent measures that, inter alia, seek to ensure access to legal counsel, the Committee is concerned that this right may be limited based on grounds that are not clearly defined, including for reasons of “good cause”, leaving excessively broad discretion to the prosecution and police to exclude counsel, as pointed out by the Human Rights Committee.⁶ The Committee against Torture is also concerned that detained persons may not be able to request and receive a medical examination by a physician from the very outset of their detention and that doctors may not be able to directly and confidentially bring medical reports of injuries suspected of resulting from torture to the attention of the public prosecutor. Moreover, interrogation rooms in juvenile detention centres are not equipped with closed-circuit television and video and audio recording equipment (art. 2).

13. The State party should ensure that all persons deprived of their liberty are afforded, both in law and in practice and regardless of the reasons for their detention, all fundamental legal safeguards from the very outset of their detention, in particular the rights to be assisted without delay by counsel, to request and obtain a free medical examination performed by an independent physician or by a physician of their choice that is conducted out of hearing of police officers and prison staff, unless the doctor concerned explicitly requests otherwise, and to have medical reports of injuries suspected of resulting from torture or ill-treatment brought to the attention of the prosecution, immediately, directly and confidentially. The State party should also ensure that interrogation rooms in juvenile detention centres have closed-circuit television and equipment for the video and audio recording of interrogations, that interrogations are properly recorded and that videotapes are made available to defendants and their counsel, reviewed to identify and investigate breaches of the Convention and used as evidence in court where relevant.

National human rights institution

14. While welcoming the work of the National Human Rights Commission of Korea, the Committee observes with concern that the relevant legislation does not provide for a clear, transparent and participatory selection and appointment process for the members of the Commission. In addition, the Commission does not have unrestricted access to all places of deprivation of liberty, it cannot carry out unannounced visits and its ability to conduct private interviews with persons deprived of liberty without witnesses is not guaranteed, even though the description of its mandate corresponds to that of a national preventive mechanism, as set out in the Optional Protocol to the Convention, which the State party has not ratified (arts. 2, 11 and 16).

15. The State party should:

(a) Amend its legislation to ensure a clear, transparent and participatory process for the selection and appointment of members of the National Human Rights

⁶ CCPR/C/KOR/CO/5, para. 35.

Commission of Korea, while guaranteeing the independence, diversity and functional autonomy 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);

(b) Further strengthen the Commission's monitoring mandate by granting it access to all places of detention, as well as the authority to carry out unannounced visits to all places of deprivation of liberty, including psychiatric, social care and other closed-type institutions, and privately conduct confidential interviews with persons deprived of liberty without witnesses;

(c) Consider ratifying the Optional Protocol to the Convention as soon as possible.

Conditions of detention

16. The Committee acknowledges the steps taken to improve the material conditions in detention centres and reduce the occupancy rate of correctional facilities, including ongoing construction and renovation projects, the establishment of an electronic monitoring system seeking to facilitate release on bail, the measures taken to improve wages and working conditions for medical doctors working in prisons and the increased use of remote video consultations and external medical assistance. The Committee is nevertheless concerned about the following:

(a) The persistent overcrowding in prisons, with a national occupancy rate of 113 per cent in 2023, according to the information provided by the delegation;

(b) The minimum accommodation area per inmate in multi-occupancy cells (2.58 m² per inmate) falls short of international standards;

(c) The excessive recourse to solitary confinement as a disciplinary action, and its prolonged duration that can last up to 45 days, despite recent steps taken, and the lack of daily monitoring of persons under this detention regime by qualified medical personnel;

(d) The lack of access to adequate and timely medical care, including mental health care, that has reportedly been the cause of a number of deaths in custody;

(e) The fact that in cases of deaths in custody, the practice of informing bereaved relatives of autopsy outcomes without providing them with a copy of the autopsy report;

(f) The lack of an independent mechanism that can effectively investigate death in custody and allegations of torture and ill-treatment (arts. 2, 11 and 16).

17. The State party should intensify its efforts to bring conditions of detention in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). It should, in particular:

(a) Take further measures to reduce overcrowding in prisons and other detention centres, including by making more use of alternatives to detention and continuing to implement plans to develop and renovate infrastructure of prisons and other detention facilities. In this connection, the Committee draws the State party's attention to the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);

(b) Amend relevant guidelines and legislation to ensure the minimum living space per inmate is in line with international standards, including in multi-occupancy cells;

(c) Bring its legislation and practice on solitary confinement in line with international standards, in particular rules 43-46 of the Nelson Mandela Rules. It should ensure that solitary confinement is used only in exceptional cases as a previous resort, for as short a time as possible, in no case for more than 15 consecutive days for adults, subject to independent review, and only pursuant to the authorization by a competent authority, in accordance with rule 45 (1) of the Nelson Mandela Rules. The imposition of solitary confinement should be prohibited for prisoners with mental or

physical disabilities when their conditions would be exacerbated by such measures, in accordance with rule 45 (2) of the Nelson Mandela Rules;

(d) Intensify its efforts to ensure that sufficient resources, including sufficient suitable medical personnel, are allocated to provide prisoners with adequate healthcare, including mental healthcare;

(e) Ensure that all instances of violence, excessive use of force and deaths in custody are thoroughly investigated by an independent mechanism, with no institutional or hierarchical connection with alleged perpetrators, bring those responsible to justice, and provide redress to victims;

(f) Ensure independent forensic examinations into deaths in custody, provide a copy of the autopsy report to the relatives of the deceased, and, if requested, permit family members to commission private autopsies.

National Security Act

18. The Committee reiterates its concern about the excessively vague wording of articles 2 and 7 of the National Security Act on “anti-government organizations” and the “praise” and “incitement” of their activities, which may give rise to violations of the Convention. It is particularly concerned about reports of arbitrary arrests and detentions carried out under these provisions (arts. 2, 11 and 15-16).

19. Recalling its previous concluding observations⁷, the Committee invites the State party to repeal or amend the National Security Act, including the vague wording of article 7 of the Act, on “Praise, incitement, etc.”, to ensure that it is in conformity with the Convention and that arrests and detentions under the law are in compliance with human rights obligations.

Death penalty

20. Recalling its previous concluding observations⁸ and echoing the concerns of the Human Rights Committee⁹, and while noting the moratorium on the application of the death penalty effectively observed by the State party since 1997, the Committee notes with grave concern that courts continue to impose the death penalty and there remains a significant number of persons on death row (arts. 2 and 16).

21. The Committee invites the State party to:

(a) Maintain the moratorium on the application of the death penalty, and 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, ensure that prisoners who were formerly on death row benefit from the same regime as all other prisoners and guarantee their basic rights and needs in accordance with international standards.

Investigation into allegations of torture and independent complaints mechanism

22. While noting the mandate of the National Human Rights Commission of Korea and the establishment of Human Rights Centres in the Prosecutors’ Offices throughout the country, the Committee is concerned that not all persons held in places of detention have access to confidential mechanisms for reporting abuses. Another matter of concern is the low number of complaints registered with the Human Rights Centres, which raises doubts about their effectiveness and promptness. Lastly, the Committee observes with concern that while there is a high number of complaints filed through the Ministry of Justice’s Human Rights

⁷ CAT/C/KOR/CO/3-5, para. 16.

⁸ CAT/C/KOR/CO/3-5, para. 30.

⁹ CCPR/C/KOR/CO/5, para. 23.

Bureau, the percentage of accepted complaints and subsequent investigations, prosecutions, or measures of redress remains low (arts. 2, 11-14 and 16).

23. The State party should:

(a) **Establish an independent, effective, confidential and accessible complaints mechanism in all places of detention, including police custody facilities and prisons, and protect victims, witnesses and members of their families from any risk of reprisals;**

(b) **Strengthen the existing complaints mechanism in all places of detention, by ensuring confidential and unhindered access to such mechanisms in complete privacy and by ensuring that complainants are protected against any intimidation or reprisals as a consequence of their complaints.**

(c) **Ensure that all complaints of torture or ill-treatment are investigated in a prompt, effective and impartial manner by an independent mechanism and that there is no institutional or hierarchical relationship between that body's investigators and the suspected perpetrators of such acts;**

(d) **Ensure that the authorities open an investigation ex officio whenever there are reasonable grounds for believing an act of torture or ill-treatment has been committed, that, in cases of torture and of ill-treatment, the suspected perpetrators are immediately suspended from duty for the duration of the investigation, and that the suspected perpetrators of acts of torture and ill-treatment and the superior officers responsible for ordering or tolerating such acts are duly tried and, if found guilty, punished in a manner that is commensurate with the gravity of those acts; and provide redress to victims;**

(e) **Develop training modules for police officers on non-coercive interviewing and investigation techniques, including the Principles on Effective Interviewing for Investigations and Information Gathering (the Méndez Principles), and introduce advanced investigative tools and establish a sound system of gathering forensic evidence;**

(f) **Compile and publish comprehensive disaggregated statistical information relevant to all complaints and reports received of torture, ill-treatment, excessive use of force and the applied means of coercion against public officials, including information on whether such complaints led to investigations and, if so, by which authority, whether the investigation resulted in the imposition of disciplinary measures or prosecutions and whether the victims obtained redress.**

Training

24. While acknowledging the training offered on the prohibition of torture to healthcare professionals, law enforcement officials, immigration officials, the military and the judiciary, the Committee regrets the lack of specific training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Istanbul Protocol"), as revised (art. 10).

25. The State party should:

(a) **Further develop and implement mandatory initial and in-service training programmes to ensure that all public officials, in particular law enforcement officers, military personnel, judicial officials, prison staff and other who may be involved in the custody, interrogation or treatment of persons subjected to any form of arrest, detention or imprisonment, are well acquainted with the provisions of the Convention, especially the absolute prohibition of torture, and that they are fully aware that violations will not be tolerated and will be investigated, and that those responsible will be prosecuted and, if convicted, appropriately punished;**

(b) **Ensure that all relevant staff, including medical personnel, are specifically trained to identify and report cases of torture and ill-treatment, in accordance with the Istanbul Protocol, as revised;**

(c) Develop and apply a methodology for assessing the effectiveness of educational and training programmes in reducing the number of cases of torture and ill-treatment, and in ensuring the identification, documentation and investigation of such acts, as well as the prosecution of those responsible.

Abuses in the military

26. While acknowledging the measures taken by the State party to address human rights abuses in the military, the Committee is concerned about the reported increase in cases of violence in the military, including sexual and gender-based violence, which has resulted in deaths, including suicides. The Committee is further concerned that the criminalization of consensual sexual relations between same-sex adults and the related punishment of “imprisonment with labour for not more than two years” provided for in article 92-6 of the Military Criminal Act may give rise to violations of the Convention (arts. 2 and 16).

27. The Committee recalls its previous recommendation¹⁰ and recommends that the State party:

(a) Continue its efforts to adopt strategies and programmes for the prevention and elimination of violence, including sexual and gender-based violence, as well as prevent suicides in the military, including by addressing their root causes, such as mental health issues caused by high levels of pressure, and by monitoring, documenting and investigating this type of incidents;

(b) Ensure allegations of torture and ill-treatment and all cases of death, including suicides, are thoroughly investigated by an independent mechanism, with no institutional or hierarchical connection with alleged perpetrators, bring those responsible to justice by establishing the liability of direct perpetrators and those in the chain of command, and provide redress to victims;

(c) Consider repealing article 92-6 of the Military Criminal Act.

Involuntary hospitalization in psychiatric institutions

28. While taking note of measures taken during the reporting period to, inter alia, improve procedures for involuntary hospitalization, the Committee remains concerned about:

(a) The large number of persons with mental and psychosocial disabilities who do not present a threat to themselves or others who are placed involuntarily in psychiatric institutions. The Committee is concerned at reports of such persons being denied discharge after being admitted under the “consensual hospitalization” system and whose status has been changed to “hospitalization by legal guardians” because they applied for discharge without the consent of their legal guardians;

(b) The insufficient and inadequate procedural safeguards relating to involuntary placement in psychiatric institutions;

(c) The lack of required independence, impartiality and resources of entities reviewing admission, and their practice of deciding on most cases without interviewing patients face-to face;

(d) The lack of independent monitoring of psychiatric institutions, despite the high number of complaints about abuses in psychiatric hospitals received by the National Human Rights Institution.

29. The State party should:

(a) Continue its ongoing efforts, and consider revising legislation regulating involuntary hospitalization, to ensure respect for legal safeguards to prevent torture and ill-treatment, including judicial review;

(b) Revise the “consensual examination” system to require face-to-face assessments for admission review;

¹⁰ CAT/C/KOR/CO/3-5, para. 36.

(c) **Establish an effective, independent, confidential and accessible complaint mechanism for persons with disabilities in the psychiatric institutions and conduct prompt, impartial thorough investigations into all allegations of ill-treatment in health-care institutions, both public and private, prosecute persons suspected of ill-treatment and, if found guilty, ensure that they are punished according to the gravity of their acts and provide effective remedies and redress to the victims;**

(d) **Increase its efforts in providing sufficient resources to facilities providing rehabilitation care and mental health services in the community.**

Persons escaping from the Democratic People's Republic of Korea

30. The Committee notes that the Enforcement Decree of the North Korean Defectors Protection and Settlement Support Act was amended to reduce the “provisional protection” period from 180 days to 90 days, but remains concerned that the Act also includes exceptions providing for extending this period, and that such persons’ right to legal counsel is not guaranteed. While noting the delegation’s assurances that the State party will prevent deportations of persons escaping the Democratic People’s Republic of Korea in the future by accepting all such persons, the Committee notes a case of refoulement during the period under review (arts. 2, 3, and 16).

31. The State party should:

(a) **Ensure that the deprivation of liberty of persons escaping the Democratic People’s Republic of Korea is for the shortest possible period and never exceeds the established legal maximum;**

(b) **Guarantee that all fundamental legal safeguards, including the rights to legal counsel, medical care, and an effective independent review, for all persons escaping the Democratic People’s Republic of Korea, and ensure they have access to these safeguards in practice;**

(c) **Uphold the principle of non-refoulement for all persons escaping the Democratic People’s Republic of Korea, guaranteeing that they are not expelled, returned or extradited to a country where there are substantial grounds for believing they would be in danger of being subjected to torture, in line with article 3 of the Convention, regardless of whether the person is suspected of having committed criminal acts or has expressed a wish to defect that is deemed genuine.**

Asylum-seekers and migrants

32. While noting the additional resources allocated to improve refugee status determination procedures, the Committee observes with concern the low recognition rate and the high number of cases where access to refugee status determination procedures is denied at ports of entry (“non-referral” decisions) under article 5 of the Enforcement Decree of the Refugee Act. Noting the Constitutional Court decision of 23 March 2023, the Committee is concerned that a legally prescribed maximum duration for immigration detention is still lacking. The lack of safeguards against arbitrary immigration detention, the practice of holding minors in immigration detention, and the insufficient access of asylum-seekers and holders of humanitarian protection status to essential healthcare and basic needs assistance are also concerning (arts. 2-3, 11-13 and 16).

33. The State Party should:

(a) **Allocate additional resources to refugee status determination bodies, and ensure that an effective independent appeal mechanism exists with regard to negative decisions and that appeals have a suspensive effect;**

(b) **Revise article 5 of the Enforcement Decree of the Refugee Act with a view to removing the grounds for non-referral to asylum procedures;**

(c) **Further to the Constitutional Court decision of 23 March 2023, establish a legally prescribed maximum duration of immigration detention by amending article 63(1) of the Immigration Act and ensuring immigration detention is subject to regular independent judicial review, in line with international standards;**

(d) Avoid detaining immigrant minors and provide appropriate non-custodial care arrangements for children and their families as well as for unaccompanied children;

(e) Ensure effective access to work permits, essential healthcare and basic needs assistance for asylum-seekers and holders of humanitarian protection status.

Trafficking in persons

34. While welcoming the adoption of the Act on Prevention of Human Trafficking and Protection of Victims in April 2021, the Committee is concerned that the definitions of trafficking and related punishment set forth in this act and the Criminal Act are not fully in line with the provisions of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol) (arts. 2 and 16).

35. The State party should consider amending the definition of trafficking and provisions related to the punishment of this crime in its legislation to ensure these provisions and their implementation fully comply with international standards.

Gender-based violence

36. While acknowledging measures taken the State party to address domestic violence, such as the Framework Act on Prevention of Violence against Women, in 2019, and other forms of gender-based violence, including stalking and online sexual abuse, the Committee is concerned by:

(a) The low number of complaints, the low rate of prosecutions and convictions, and lenient sentences for domestic violence;

(b) The absence of legislation that explicitly makes marital rape as a punishable offence in the Criminal Act¹¹ (arts. 2 and 16).

37. The State party should

(a) Ensure that all cases of violence against women, including domestic violence, especially those involving actions or omissions by State authorities or other entities that engage the international responsibility of the State party under the Convention, are reported and thoroughly investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that survivors are adequately compensated;

(b) Ensure that survivors/or their families benefit from protection and have access to medical and legal services, redress and rehabilitation, as well as to adequately funded shelters throughout the country, including adequate compensation;

(c) Consider amending the Criminal Act to explicitly make marital rape, defined as non-consensual sexual relations between spouses, a criminal offence punishable with appropriate sanctions.

Redress

38. The Committee expresses its concern that only very few victims of past State violence and institutionalization have enjoyed the right to redress, including compensation and rehabilitation. The Committee recalls the concerns of the Committee Elimination of All Forms of Discrimination Against Women, that many former “comfort women”¹² have not obtained full reparation and still face health challenges resulting from the long-term effects of their trauma, their age and vulnerability. The Committee draws the attention of the State party to general comment No. 3 (2012) on the article 14 of the Convention, in which the Committee explained the content and scope of the obligations of States parties to provide full redress to victims of torture (art. 2, 12-14 and 16).

39. The State party should:

(a) Ensure, including by revising domestic legislation, that all victims of past State violence and institutionalization, including those from social care institutions,

¹¹ CAT/C/KOR/CO/3-5, para. 37

¹² A/HRC/54/24/Add.1, and CEDAW/C/KOR/CO/9 para. 30 (a).

orphanages and other closed-type institutions, are provided effective redress and reparation, including compensation, satisfaction, and rehabilitative services, without being required to file formal complaints;

(b) Ensure that all former “comfort women” are provided effective redress and reparation, including compensation, satisfaction, and rehabilitative services;

(c) Ensure that, in law and in practice, all victims of torture and ill-treatment obtain redress, including by ensuring an enforceable right to fair and adequate compensation and the means for as full a rehabilitation as possible, in line with article 14 of the Convention. The State party should compile and provide to the Committee information on redress, including means of rehabilitation, ordered by the courts or other State bodies and actually provided to victims of torture or ill-treatment.

Follow-up procedure

40. The Committee requests the State party to provide, by 26 July 2025, information on follow-up to the Committee’s recommendations on fundamental legal safeguards; solitary confinement; prisoners’ access to adequate healthcare, including mental healthcare; allegations of torture and ill-treatment and cases of death, including suicides, in the military (see paras. 13, 17 (c), 17 (d) and 27 (b)). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, the remaining recommendations in the present concluding observations.

Other issues

41. The State party is requested to widely disseminate the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations and to inform the Committee about its dissemination activities.

42. The Committee requests the State party to submit its next periodic report, which will be its seventh, by 26 July 2028. For that purpose, and since the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party’s replies to that list of issues will constitute its seventh periodic report under article 19 of the Convention.
