



THE ASIA PACIFIC FORUM
OF NATIONAL HUMAN RIGHTS INSTITUTIONS

... a partnership for human rights in our region

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QUESTIONNAIRE

Advisory Council of Jurists - Terms of Reference on Torture Background Paper on Torture

Please complete the questionnaire and send all responses by e-mail to:

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Responses to this questionnaire will be used in the Background Paper on Torture which will be distributed to the Advisory Council of Jurists.

We would be grateful to receive your response by or before **10 December 2004**. Thank you in advance for your time and contribution.

Information about the Advisory Council of Jurists and the terms of reference on torture is available at <http://www.asiapacificforum.net/jurists/>

Activities of National Human Rights Institutions:

1. Has your Commission received complaints from individuals or groups claiming torture? If so, how many complaints and please describe some of the most important cases and the role of your Commission in resolving the complaints.

Between November 2001 and October 2004, the Commission received a total of 12,716 complaints, among which 700 cases concerned ill-treatment and violence by law enforcement officials. The major complaints cases are: A witness was assaulted with a baseball bat during the police investigation of a bank robbery so the Commission filed an accusation with a public prosecutor which resulted in a public prosecution instituted on February 23, 2004; The Commission requested the Prosecutors' Office to investigate a case where a suspect was assaulted by the police relating to the death of a police officer (September 15, 2003). The Commission also lodged accusations and recommended to take disciplinary action regarding 20 cases relating to ill-treatment by the law enforcement officials. As for the role of the Commission in resolving the complaint, we investigate the complainant(s), respondent(s), witness(es); receive submissions; obtain evidence; file an accusation with a public prosecutor, recommend disciplinary action or request legal aid where appropriate.

2. Has your Commission conducted research on the issue of torture? If so, please provide the results of this research.

We have not conducted research specifically on the issue of torture. However, we had carried out 15 inquiries on the human rights situation with a high risk of human

rights violation, including those on the armed forces (4 inquiries), legal procedure (2 inquiries), prisons (7 inquiries).

The Inquiries

	2002	2003	2004	Total
Armed Forces	2	2		4
Legal Procedure	2			2
Prison	1	4	2	7
Others	1	1		2
Total	6	7	2	15

Description of each inquiry is as follows:

- Armed Forces
 - ◆ Basic Inquiry into Military Detention (2002)
 - ◆ Preliminary Research for Human Rights Improvement in Military Detention (2002)
 - ◆ Inquiry into Military Investigation and Detention (2003)
 - ◆ Inquiry into Sexual Violence in Armed Forces (2003)

- Legal Procedure
 - ◆ Protection of Rights of the Child and Adolescent in Juvenile Justice System (2002)
 - ◆ Inquiry into Violation of the Rights of the Suspect in Criminal Investigation (2002)

- Prison
 - ◆ Inquiry into Police Detention Center (2002)
 - ◆ Patterns of Human Rights Violation in Detention and Development of Instructions (2003)
 - ◆ Human Rights of Female Prisoner (2003)
 - ◆ Human Rights under Social Protection Law (2003)
 - ◆ Guidebook for Development of Prison Assessment (2003)
 - ◆ Policy Study on the Protection of Rights of Prisoners and the Improvement of their Treatment
 - ◆ Policy Study on the Protection and Promotion of Rights of Suspects, Accused and Witnesses (2004)

- Others
 - ◆ Case Study of Probationers under National Security Law (2002)
 - ◆ Human Rights Violation under National Security Law (2003)

3. Has your Commission undertaken awareness and education campaigns relating to torture? If so, please provide details of these campaigns, identify the individuals or groups who have been trained and estimate how many people have been trained.

- Education Campaign for Law Enforcement Officials

The target group includes the police, prosecutors' office, and prison staff. The Commission has undertaken a total of 151 training sessions for 16,205 persons between November 2002 and October 2004.

- The Commission also published human rights education materials containing prevention of torture and employed them in the training (e.g., Human Rights Guidebook for the Police, Human Rights Guidebook for the Prosecutors' Office).

- The Commission has advised educational institutions for law enforcement Officials to expand subjects of human rights

- The Commission advised the educational institutions of Ministry of Justice and National Police Agency to open and expand classes of human rights in each educational course and institute preventive education of torture and this was accepted.
- Ministry of Justice: 119 sessions (correction facility officers: 93 sessions, prosecution clerks: sessions), 2 hours each session, in 2004.

Human Rights Education for Law Enforcement Officers

The year of 2004: 30 sessions, 4,420 people

Areas	Organizations	Sessions	Number of Attendees
Police	Criminal Investigation & National Security Institute/Police Comprehensive Academy/ National Central Police Academy etc.	25	3,967
Prosecution	Legal Research and Training Institute	3	260
Correction	Legal Research and Training Institute	2	193
Total		30	4,420

The year of 2003: 91 sessions, 9,040 people

Areas	Organizations	Sessions	Number of Attendees
Police	Criminal Investigation & National Security Institute/Police Comprehensive Academy/ Korea National Police University, etc.	80	8,223
Prosecution	Legal Research and Training Institute	1	124
Immigration	Legal Research and Training Institute/Hwaseong Processing Center	3	210
Correction	Legal Research and Training	5	330

	Institute/Seoul Detention Center, etc.		
Military	Naval Police/Army Correction Center	2	153
Total		91	9,040

As of Oct. 31, 2004: 30 sessions, 2,745 people

Areas	Organizations	Sessions	Number of Attendees
Police	Criminal Investigation & National Security Institute/Police Comprehensive Academy/ Seoul Metropolitan Police Agency	19	2,273
Prosecution	Legal Research and Training Institute	4	197
Immigration	Legal Research and Training Institute/Ministry of Justice	3	120
Others	Legal Research and Training Institute(general education for police, prosecution, and immigration-related people)	4	155
Total		30	2,745

4. Has your Commission monitored the conditions in and visited centres of detention to assess the conditions in which detainees are kept and the treatment they receive? If so, please provide details of any findings.

Once requested by a prisoner or a detainee, our investigators visit the places of detention, receive a complaint regarding conditions of detention and treatment, and provide remedies. As a consequence of our activities, there has been significant improvement in detention environment and treatment of prisoners. This includes the repeal of continuous punishment detention within prison, improvement on the use of restraints, enhancement of toilet facilities, dimming of the light during the night time; and the extension of medical service. In addition, we have commissioned research on the human rights issues in detention and presented recommendation accordingly.

5. Has your Commission intervened in court proceedings on the issue of torture? If so, please provide details of the cases, the role of the Commission and the outcome of the cases. Please provide copies of any submissions and court decisions.

No.

6. Has your Commission addressed the issue of torture in its annual reports? If so, please provide a copy of the relevant sections.

As of December 2004, the Commission has published two annual reports. The annual reports of 2002 and 2003 respectively addressed the issue of torture. Please refer to two annual reports sent by separate postal mail

7. If your government has ratified the International Covenant on Civil and Political Rights, Convention Against Torture and/or Convention on the Rights of the Child, has your Commission been approached by the government to contribute to the periodic reports to the relevant Committees, or has your Commission provided a shadow report to the relevant Committees? If so, please provide copies of the sections relevant to the issue of torture.

The Republic of Korea is a party to six major international human rights conventions. Article 21 of National Human Rights Commission Act provides that "If a related state organ prepares a governmental report under the provisions of any international treaty on human rights, it shall hear opinions of the Commission." Since its establishment in November 2001, the Commission has reviewed and submit opinions on the governmental reports to Human Rights Committee, Committee on the Elimination of Racial Discrimination, Committee on the Elimination of Discrimination Against Women, and Committee Against Torture. The Commission does not submit a shadow report.

8. Does your Commission have regional offices and are these offices involved in torture issues? If so, in what way?

At the time of writing, regional offices are not established yet. However, two offices in Busan and Gwangju will open in 2005 and they will receive and process complaints, possibly including cases related to torture.

9. Does your Commission work in collaboration with civil society including the private sector, government or UN agencies or multilateral donors such as the World Bank on the issue of torture? If so, in what way?

The Commission consults with civil society in various ways. It organizes seminars and public hearings, and also commissions NGOs to research on human rights issues. Pursuant to Article 20(1) of National Human Rights Commission Act, the government is to notify the Commission in advance when it plans to enact or amend any legislation which would likely affect the protection and promotion of human rights. Once notified, the Commission works with the government accordingly. Finally, the Commission pursues international cooperation through the UN Commission on Human Rights and other treaty monitoring bodies.

10. Has your Commission identified laws/policies/practices in your country that impact on torture?

The Commission has not conducted research specifically on the issue of torture. However, we had carried out 15 inquiries on the human rights situation which would deem relevant to torture, including those of the armed forces, legal procedure, and prisons (please refer to question 1).

11. Has your Commission proposed legislation relating to torture, or helped develop a national policy?

The Commission is in the process of developing the National Action Plan on Human Rights, which will strengthen and advance the country's human rights protection system.

Documentation

Please send the following documentation to the APF Secretariat by e-mail or by mail:

Constitutional provisions relating to:

- torture, including references to other ill-treatment and refoulement or extradition; and
- relevance of international law in the domestic jurisdiction.

Relevant legislation referring to:

- torture and other forms of ill-treatment;
- the treatment of individuals in all forms of detention; and
- legal and other safeguards aimed at the prevention of torture.

NGO Reports

- Reports by local, national or regional non-governmental organisations on torture within your country.

Issues raised in the Terms of Reference

1. Do the police and other disciplinary forces in your country currently follow set minimum standards of interrogation?

If so, are you able to provide a copy of these minimum standards?

If not, please provide any information you have about these minimum standards including:

- who developed them?
- on the basis of what documentation?
- when were they developed?
- when were they last revised?

- do the staff of the disciplinary services receive specific training in interrogation methods?
 - if so, how often and who conducts the training?

In 2001, a suspect died from violence during prosecutorial interrogation in Seoul and the Commission investigated the case ex officio. In the aftermath of the accident, the Prosecutors' Office established "Code of Interrogation for Human Rights Protection" and it came into effect in 2003. The Code provides that interrogators should respect the dignity of those being interrogated and should not perform any ill-treatment including acts of torture (Article 5(1)). It also prevents public prosecutors from using evidence suspected to be extracted from torture (Article 5(2)). Likewise, Article 6 of "Code of Ethics for Public Prosecutors" which concerns "human rights protection and due process of law" provides that "prosecutors shall ensure the human rights of suspects, accused, victims and others under investigation and upholds the procedure set forth by the Constitution and laws. According to Article 12 (2) of the Constitution, "no citizen shall be tortured or be compelled to testify against himself in criminal cases." In addition, the Police has published and made available a guide for complaint filing with the National Human Rights Commission for those in police custody.

Please provide any information about complaints received by individuals or groups about the methods of interrogation used by the disciplinary forces in your country.

We receive complaints on police violence, suppression of the rights to communicate with one's legal counsel, overnight interrogation, and others. On individual cases, where appropriate, we file an accusation and recommend to take disciplinary action. In a more general manner, we issue policy recommendation to amend the legislation and address the structural problems. The number of complaints regarding police physical violence has recently decreased while more complaints are filed about the verbal abuse occurring during the investigation.

2. Do your national courts recognise customary international law as a source of law to be complied with? Include any cases that refer to the rule of customary international law prohibiting torture.

According to Article 6(1) of the Constitution that "Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea," customary international law is ranked on the same level as the national law. No national court ruling has so far referred to the rule of customary international law prohibiting torture. Yet, when an occasion arises, the court should follow the constitutional provision to invoke customary international law in prohibiting torture.

3. Does your constitution or national law allow for any derogation from the prohibition on torture and other forms of ill-treatment? If so, please provide the relevant sections.

Article 12 of the Constitution provides for the freedom of the person including prohibition of torture. Concerning the restriction of basic rights, Article 37(2) provides that "The freedoms and rights of citizens may be restricted by Act only when necessary for national security, the maintenance of law and order or for public welfare. Even when such restriction is imposed, no essential aspect of the freedom or right shall be violated." Thus, to decide whether derogation from the prohibition of torture is allowed for under the Constitution, two things must be considered: (1) whether the torture is allowed under a specific law; (2) whether torture infringes upon the essential aspect of freedom and right. First, no law of the Republic of Korea allows for the use of torture. Second, scholars general agree that torture does violate the essential aspect of human rights. Therefore, derogation is not possible.

Article 12

- (1) All citizens shall enjoy personal liberty. No person shall be arrested, detained, searched, seized or interrogated except as provided by Act. No person shall be punished, placed under preventive restrictions or subject to involuntary labor except as provided by Act and through lawful procedures.
- (2) No citizens shall be tortured or be compelled to testify against himself in criminal cases.
- (3) Warrants issued by a judge through due procedures upon the request of a prosecutor shall be presented in case of arrest, detention, seizure or search: Provided, That in a case where a criminal suspect is an apprehended flagrante delicto, or where there is danger that a person suspected of committing a crime punishable by imprisonment of three years or more may escape or destroy evidence, investigative authorities may request an ex post facto warrant.
- (4) Any person who is arrested or detained shall have the right to prompt assistance of counsel. When a criminal defendant is unable to secure counsel by his own efforts, the State shall assign counsel for the defendant as prescribed by Act.
- (5) No person shall be arrested or detained without being informed of the reason therefor and of his right to assistance of counsel. The family, etc., as designated by Act, of a person arrested or detained shall be notified without delay of the reason for and the time and place of the arrest or detention.
- (6) Any person who is arrested or detained, shall have the right to request the court to review the legality of the arrest or detention.
- (7) In a case where a confession is deemed to have been made against a defendant's will due to torture, violence, intimidation, unduly prolonged arrest, deceit or etc., or in a case where a confession is the only evidence against a defendant in a formal trial, such a confession shall not be admitted as evidence of guilt, nor shall a defendant be punished by reason of such a confession.

4. Set out any legislation, rules or practices of courts in admitting or rejecting any statement that is made by an accused as a result of torture or any other form of ill-treatment.

Article 12(7) of the Constitution provides that where a confession deems to have been extracted from torture, such a confession shall not be admitted as evidence of guilt. Thus, Article 309 of Criminal Procedure Code goes that "Confession of a defendant extracted by torture, violence, threat or after prolonged arrest or detention, or which is suspected to have been made involuntarily by means of fraud or other methods, shall not be admitted as evidence of guilt."

This was not complied with under previous authoritarian regimes. Particularly, the principle of "voluntariness of a confession" was not respected under National Security Law. However, the Supreme Court has upheld this principle through many court decisions.

In 2001, a suspect died from violence during prosecutorial interrogation in Seoul and the Commission investigated the case ex officio. Following the accident, The Prosecutor's Office established "Code of Interrogation for Human Rights Protection" and it came into effect in 2003. The Code sets out requirements to protect the rights of those under investigation including:

- (1) The public prosecutor shall respect to the greatest extent the rights of those related to the investigation including suspects and accusers (Art 3).
- (2) The public prosecutor shall, for the protection of the rights of the suspect, ensure the communication with one's legal counsel and the participation of legal counsel in the interrogation process (Art 4).
- (3) All law enforcement officials in the interrogation process shall respect the dignity of those being interrogated and shall not perform any ill-treatment including acts of torture. The public prosecutor shall not use evidence suspected to be extracted from torture (Article 5(1), 5(2)).
- (4) The public prosecutor shall take necessary measures including interviewing the suspect oneself once it deems that there have been human rights violations or confession was not made voluntarily when reviewing the warrant submitted by a judicial police official (Art. 5(1), 15(2)).
- (5) The public prosecutor shall obtain sufficient evidence before interrogating the suspect and refrain from seeking confession through excessive measures. The public prosecutor shall verify the confession against the process it was obtained when the confession of the suspect appears inconsistent (Art 15(1), 15(2)).
- (6) The public prosecutor shall complete the interrogation before midnight. However, the prosecutor may proceed when: (1) the overnight interrogation is agreed by the suspect and his/her legal counsel; (2) limitation period is about to expire; (3) reasonable reasons exist including prompt investigation is needed to decide whether to take the suspect in custody (Art 17).
- (7) A human rights officer shall be appointed at every police agency to protect the rights of those under investigation and ensure the due process of law. The human rights officer shall take measures to protect human rights, including inquiries, recommendation of

improvement, human rights education, and permission of overnight interrogation and others (Art 33 and Art 34).

5. Describe the remedies available and provided in practice to victims of torture and other forms of ill-treatment, including complaints systems, compensation mechanisms and medical rehabilitation.

The Special Act To Find the Truth on Suspicious Deaths was enacted on January 15, 2000 and came into effect on May 16, 2000 to provide remedies for those killed from torture and other forms of ill-treatment under the previous authoritarian regimes. The Act allowed the families of alleged victims to file petitions and get reparation from the government. Another special legislation, Act for Democratization Movement Activists' Honor-Restoration and Compensation, also provides governmental reparation.

In general, victims of alleged torture or other forms of ill-treatment can request reparation from the government or statutory agencies according to National Reparation Act. Article 260 of Criminal Procedure Code provides that:

Article 260 (Request for Ruling)

(1) When persons who lodge complaints or accusations on the crimes as referred to in Articles 123 through 125 of the Criminal Act, are notified that the competent public prosecutors will not institute public prosecutions, they may apply for ruling whether the decisions not to institute public prosecutions are proper or not with the competent High Court corresponding to the competent high public prosecutor's office to which the public prosecutors concerned belong. <Amended by Act No. 2450, Jan. 25, 1973>

(2) The application mentioned in the preceding paragraph shall be made in writing through the chief of district public prosecutor's office or the branch office to which the public prosecutor belongs within ten days from the date of receiving the notice provided for in Article 258.

One of the most accessible complaints systems in the area of torture is through the National Human Rights Commission of Korea. The decision of the Commission is not enforceable, yet has a high compliance rate. The Commission can request the prosecutorial investigation and file an accusation.

6. Provide information about the protections afforded to persons being forcibly returned to a country in which they may face torture or other forms of ill-treatment.

Article 6(1) of the Constitution provides that “treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea” and the Republic of Korea is a party to Convention relating to the Status of Refugees since 1992. The principle of refoulement as set out in Article 33(1) of the Convention requires that “no contracting state shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account

of his race, religion, nationality, membership of a particular social group or political opinion.” Therefore, the Republic of Korea does not expel individuals, where there is a valid concern that they could be in danger should they be returned

7. Have the national courts been asked to consider any cases of alleged torture that have taken place outside the territory of your country and not involving citizens of your country? If so, please describe the position of national courts in exercising their jurisdiction in such cases. For example, General X was a Balkan military officer accused of torturing civilians during the regional conflict. He is currently holidaying in your country. What would the position of your national courts be if they were asked to try him for torture?

As of now, the Republic of Korea has no such case. However, the Korean government drew up and submitted to the National Assembly a bill to nationally implement the Roman Statute of the International Criminal Court. Should the bill be passed, Korean courts will exercise universal jurisdiction over “genocide, crimes against humanity, war crimes.”

Bill for the Implementation of the Roman Statute of the International Criminal Court has the following provision:

Article 3

Article 8 to 12 shall apply to a foreigner who has committed crimes against humanity outside the Republic of Korea and currently reside therein.

8. Have the national courts considered the extent of their jurisdiction over international intervention forces? If so, please provide details of the cases and copies of the judgments, if possible.

No.

9. Describe the nature and extent of procedures and safeguards, both legal and practical, in place to protect against torture by non-state actors.

In the Republic of Korea, the closest mode of behaviour to torture by non-state actors is the ill-treatment occurring in private welfare institutions. The Commission can receive and investigate complaints with regard to ill-treatment in private welfare institutions according to the National Human Rights Commission Act. This issue can be also dealt with by Criminal Code.

Annex 1

Provisions Relating to Torture in Criminal Code (Excerpts from the ROK periodic report to the Committee Against Torture)

106. Current laws contain special provisions related to persons who engage in judicial prosecutorial, police or other functions involving physical restraint.

(a) Article 125 of Criminal Code provides that "a person who, in performing or assisting in activities concerning judgement, prosecution, police or other functions involving physical restraint, commits an act of violence or cruelty against a criminal suspect or against another person while performing his duties, shall be punished by penal servitude not exceeding 5 years, and suspension of qualifications not exceeding 10 years". It is understood that an act of violence signifies the exercise of force against the human body, not necessarily exerted directly against a person, and that an act of cruelty includes all other acts, excluding acts of violence, which cause a person to suffer mentally and physically. Meanwhile, torture as defined in article 1 of the Convention implies severe pain or suffering, both physical and/or mental, imposed by public officials, etc. to extract confessions or information relevant to a crime. Article 16 of the Convention stipulates provisions for cruel, inhuman or degrading treatment other than torture. Thus, it may be interpreted that the concept of torture under the Convention is defined as more severe than concepts of an act of violence or cruelty under the Criminal Code of the Republic of Korea. Therefore, it may be said that, in a case in which a person who engages in activities concerning judgement, prosecution, police or other functions involving physical restraint, commits torture, he shall be punished under article 125 of the Criminal Code;

(b) The Criminal Code provides that if a person who performs or assists in activities concerning judgement, prosecution, police or other functions involving physical restraint, commits an act of violence against another by abusing his official authority, he shall receive aggravated punishment of penal servitude not exceeding 7 years and suspension of qualifications not exceeding 10 years (art. 124, para. 1, of the Criminal Code). In other words, if a person who engages in investigative activities arrests or imprisons another by abusing his official authority, he is subject to aggravated punishment for the higher degree of severity of the crimes he has committed;

(c) Furthermore, a person who commits such crimes as described in the preceding paragraphs and causes injury, shall be punished by penal servitude for a minimum of one year. If his crime causes the death of another, he shall be punished by penal servitude of three years to life (art. 4-2 of the Act Concerning Aggravated Punishment Against Specified Crimes);

(d) On the other hand, if persons who perform activities involving physical restraint commit crimes for which the punishment is more severe than that provided for in article 125 of the Criminal Code, such as rape or an indecent act by compulsion, as will be mentioned later, the act is regarded as a compound crime, and the punishment provided for the most severe crimes shall be imposed (art. 40 of the Criminal Code).

107. If a person, other than a public official as mentioned above, commits acts of torture as defined in article 1 of the Convention, he shall be punished for the following crimes, under the relevant provisions elaborating upon the pattern of the crimes, such as an act of violence, intimidation, bodily injury, false arrest and illegal confinement. Specifically, if a public official commits a crime by taking advantage of his official authority, he shall be punished with an increase by one half of the penalty specified for the crimes committed (art. 135 of the Criminal Code):

(a) Act of violence (art. 260, para. 1, of the Criminal Code), penal servitude not exceeding two years;

(b) A person who commits an act of violence, thereby causing death or injury, shall receive the same punishment as for crimes of bodily injury, aggravated bodily injury, or death resulting from bodily injury, according to the results (art. 262 of the Criminal Code);

(c) Intimidation (art. 283, para. 1, of the Criminal Code), penal servitude not exceeding three years;

(d) Obstructing a person, through force, from exercising his rights (art. 324 of the Criminal Code), penal servitude not exceeding five years;

(e) Bodily injury (art. 257, para. 1, of the Criminal Code), penal servitude not exceeding seven years;

(f) Aggravated bodily injury (endangering a person's life or causing him to be crippled or incurably diseased) (art. 258 of the Criminal Code), penal servitude for a minimum of 1 year, but not exceeding 10 years;

(g) Death resulting from injury (art. 259 of the Criminal Code), penal servitude for a minimum of three years;

(h) Cruelty to another under his protection or supervision (art. 273, para. 1, of the Criminal Code), penal servitude not exceeding two years;

(i) Death or injury resulting from cruelty (art. 275 of the Criminal Code), more severe punishment by comparing penalties of abandonment, abandoning infants, and cruelty to a person under his protection or supervision, resulting in injury;

(j) False arrest or illegal confinement (art. 276, para. 1, of the Criminal Code), penal servitude not exceeding five years;

(k) Aggravated false arrest or aggravated illegal confinement (art. 277 of the Criminal Code), penal servitude not exceeding seven years;

(l) Special false arrest or illegal confinement (art. 278 of the Criminal Code), punishment by increasing the penalty specified for the relevant crime by one half;

(m) Sexual intercourse with a female under his protection or supervision through the abuse of authority (art. 303 of the Criminal Code), penal servitude not exceeding five years;

(n) Rape (art. 297 of the Criminal Code), penal servitude for a minimum of three years;

(o) Indecent act by compulsion (art. 298 of the Criminal Code), penal servitude not exceeding 10 years;

(p) Death or injury resulting from rape or an indecent act by compulsion (art. 301 of the Criminal Code), penal servitude for five years to life;

(q) Defamation (art. 307 of the Criminal Code), penal servitude not exceeding two years;

(r) Insult (art. 311 of the Criminal Code), penal servitude not exceeding one year;

(s) Bodily injury, an act of violence, false arrest, illegal confinement, or intimidation committed at night and/or by two or more persons (art. 2, para. 2, of the Act Concerning the Punishment Against Acts of Violence and Other Crimes), punishment by increasing the penalty specified for the relevant crime by one half;

(t) Bodily injury, an act of violence, false arrest, illegal confinement, or intimidation committed by using deadly weapons (art. 3 of the above Act), penal servitude for a minimum of three years.

108. Furthermore, the Criminal Code of the Republic of Korea provides that, in a case in which a public official abuses his authority and obstructs a person from exercising a right to which he is entitled, the official shall be punished by penal servitude not exceeding 5 years and suspension of qualifications not exceeding 10 years for the act itself, although the crime committed was not an act of torture, violence or cruelty (art. 123 of the Criminal Code).

109. The Military Criminal Code provides that if a soldier treats a person cruelly or commits an act of cruelty through the abuse of his official authority, he shall be punished by penal servitude not exceeding five years (art. 62 of the Military Criminal Code). Furthermore, the National Security Planning Agency Act stipulates that a staff member of the National Security Planning Agency who, by abusing his official authority, illegally arrests or confines a person, or causes a person to perform a duty for which he is not responsible, shall be punished by penal servitude not exceeding seven years and suspension of qualifications not exceeding seven years (art. 19 of the National Security Planning Agency Act).

110. The Criminal Code of the Republic of Korea provides that when an intended crime is not completely carried out or if the intended results fail to occur, it shall be punishable as an attempted crime only if the punishment for the attempted crime is specifically provided for in each article concerned. The punishment for an attempted crime may be mitigated from the degree of punishment for a crime completely carried out (arts. 25 and 29 of the Criminal Code). Regarding this statutory mitigation for criminal attempts, penal servitude for life may be reduced to limited penal servitude for a minimum of seven years. Limited penal servitude and a fine may be reduced by one half of the term of the punishment (art. 55, para. 1, of the Criminal Code).

(a) Under the current laws, the punishment for attempted criminal acts is provided for only in articles for unlawful arrest and unlawful confinement by public officials (art. 124, para. 2, of the Criminal Code); bodily injury (art. 257, para. 3, of the Criminal Code); false arrest and illegal confinement (art. 280 of the Criminal Code); intimidation (art. 286 of the Criminal Code); rape and indecent act by compulsion (art. 300 of the Criminal Code); acts of violence (art. 6 of the Act Concerning the Punishment Against Acts of Violence and Other Crimes); and abuse of official authority by staff members of the National Security Planning Agency (art. 19, para. 3, of the National Security Planning Agency Act). Therefore, in a case in which one of the crimes enumerated above also involved attempted torture, the criminal shall be punished by the penalties in the above provisions or by mitigated penalties;

(b) However, given that the current articles of the Criminal Code do not provide for punishment against attempted criminal and violent or cruel acts by investigative public officials (art. 125 of the Criminal Code), there has been some discussion as to whether or not measures need to be taken to amend the various articles if the Republic of Korea accedes to the Convention. For an act to be declared torture as defined in the Convention, it must have caused severe pain or suffering, both mental and/or physical. In this regard, attempted torture under the Convention is understood as the initiation of an act of torture which does not cause severe pain or suffering. Also, as mentioned above in paragraph 106, article 125 of the Criminal Code of the Republic of Korea punishes an act of violence or cruelty. Therefore, even if acts of investigative public officials constitute only attempted torture as defined in the Convention, their acts are still punishable under article 125 of the Criminal Code of the Republic of Korea;

(c) In summary, when a public official of the Republic of Korea commits an act constituting attempted torture as defined in the Convention, he shall be sentenced to punishment for committing, during the performance of his duties, cruel and/or violent acts which correspond to attempted bodily injury, attempted false arrest or illegal confinement, intimidation or attempts to intimidate, attempted rape or indecent act by compulsion, or an act of violence.

111. The Criminal Code of the Republic of Korea contains provisions for punishing co-principals or participants in a crime, according to the concreteness of their acts. Therefore, accomplices are punished as principal offenders of the said crime or given mitigated sentences.

(a) When two or more persons have jointly committed a crime, each shall be punished as a principal offender for the crime committed (art. 30 of the Criminal Code);

(b) Accessories to a crime committed by another person shall be punished for aiding and abetting, but their sentences shall be mitigated to less than that of the principals (art. 32 of the Criminal Code);

(c) If a person collaborates in the commission of a crime of which a person's status or position is an element, although he lacks such status, he shall be punished as a co-principal, an instigator, or an accessory, according to the concreteness of his act. However, if the severity of punishment varies with the accused person's status, the more severe punishment shall not be imposed on the person who lacks such status (art. 33 of the Criminal Code);

(d) A person who commits a crime by instigating or aiding and abetting another person who is under his control and supervision shall be punished with an increase by one half of the maximum terms of punishment provided for the principal in a case of instigating a crime, and the full penalties shall be imposed on the principal in a case of aiding and abetting (art. 34 of the Criminal Code).

112. On the other hand, if an exercise of force by a person causes a degree of mental and physical suffering to another person, and if such an act is conducted in accordance with the law, or in pursuit of accepted business practices, or other actions which do not violate social mores, the act is not punishable (art. 20 of the Criminal Code).

(a) Disciplinary actions taken within reason by a principal toward students and those by the head of a juvenile reformatory, etc. are acts in accordance with the law and are not punishable. The latter part of article 1, paragraph 1, of the Convention provides that torture does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions. Therefore, the Criminal Code of the Republic of Korea does not contradict the Convention in this regard;

(b) However, such exercise of disciplinary force shall be made within necessary and acceptable limits. And if social mores are violated, the act of exerting force shall be punished. For example, if an officer hits a subordinate (e.g. private) on the shoulder three times with a rod in order to penalize the subordinate for misconduct and the use of profanity toward his battalion commander, the officer is beyond the limits of disciplinary punishment (Supreme Court judgement 71 DO 179, rendered on 6 April 1971). Furthermore, if a teacher, under the impression that a student used profane language directed at him, assaults the student without confirmed reason and causes injury, the act is considered an act of violence (Supreme Court judgement 80 DO 762, rendered on 9 September 1980).

113. Statistics gathered since 1990 on those who have been punished for violent or cruel acts committed by abusing their authority while engaged in investigations reveal that there were three such cases in 1990, two in 1991, one in 1992, three in 1993, and four in 1994. These are considered to be very low numbers (statistics for crimes other than violent or cruel acts committed through the abuse of authority were not available because they were not classified into separate groups). Factors influencing these statistics may be that the principle of presumption of innocence applies to these crimes (cruel or violent acts committed through the abuse of authority) as they do to other crimes, and that such acts are often committed in covert or undetectable locations, making them difficult to prove. Most importantly, however, these statistics reveal changes in the perception of human rights held by those in the Republic of Korea who engage in investigative processes.

114. Furthermore, in a case in which a public official is involved in committing torture, the punishments stipulated above are accompanied by the following additional consequences:

(a) When a public official is involved in committing torture, an act which violates the relevant laws, the person entitled to appoint the official shall impose disciplinary actions distinct from the above punishments (art. 78, para. 1, of the National Civil Service Act; art. 69 of the Local Civil Service Act). Specifically, when an act of

cruelty is committed in military camps, the supervisor of the offender shall also be subjected to disciplinary action, taking into account the strict hierarchical nature of the military;

(b) If a public official has been disqualified, or his qualifications suspended pursuant to a judgement of the court, or if he has been sentenced to penal servitude or a punishment heavier than imprisonment without hard labour, including sentences with a stay period or deferred sentences, he shall be deprived of his status as a public official (art. 33 of the National Civil Service Act; art. 31 of the Local Civil Service Act);

(c) If the State or local government has compensated individuals who suffered damage or injury inflicted by the unlawful action of a public official, such as torture, the State or local government may demand reimbursement or compensation from the public official. In other words, the public official shall be liable for reimbursement to the State or local government (art. 2 of the National Compensation Act);

(d) In case the State is not held liable for damages or injuries caused by unlawful acts such as torture committed by a public official, the official must bear direct civil liability toward the victim(s).

115. If a public prosecutor decides not to indict a person suspected of committing torture, processes of appeal and reappeal, constitutional petition and request for ruling are available to the victims of torture. These measures are understood as guarantees of punishment against torture..