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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
TORTURE AND DETENTION

Written statement* submitted by Asian Legal Resource Centre (ALRC), a non-
governmental organization in general consultative status

The Secretary-General has received the following written statement which is
circulated in accordance with Economic and Social Council resolution 1996/31.

[30 January 2003]

* This written statement is issued, unedited, in the language(s) received from the
submitting non-governmental organization(s).

Indefinite solitary confinement in the Republic of Korea

1. Solitary confinement, or 'segregation', is a common form of discipline in the prisons of the Republic of Korea. Though prisoners may not legally be segregated for a period exceeding two months, in reality prison officials routinely impose consecutive segregation periods, meaning that some prisoners find themselves segregated and effectively dehumanized for a time far exceeding what has been regulated.
2. Article 7 of the International Covenant on Civil and Political Rights (ICCPR), to which the Republic of Korea is a party, states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The United Nations General Comment 20 on this article notes that the prohibition torture and ill-treatment "relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim" and that "prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by Article 7". The general comment observes that provisions should be made against incommunicado detention, and steps undertaken to appropriately instruct and train any persons involved in administering custody of prisoners on the prohibitions under article 7. Furthermore, systematic reviews of arrangements for the custody of prisoners should be conducted with a view to preventing cases of torture and ill-treatment. The Standard Minimum Rules for the Treatment of Prisoners add that, "Instruments of restraint, such as handcuffs, chains, irons and strait-jacket, shall never be applied as a punishment." The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Korea has also ratified, likewise forbids torture and the infliction of severe pain or suffering. Consecutive segregation is therefore a cruel and unusual punishment in violation of the ICCPR and the CAT.
3. Under article 46(2)(5) of Korea's Penal Administration Law, disciplinary segregation must be limited to two months. The law, however, is silent over whether or not a prisoner can be confined thus for consecutive periods, on different counts. This ambiguity has permitted prison officials to segregate those in their custody with impunity and without time limit, in violation of Korea's international obligations outlined above. It is not surprising then that during its inaugural year (2002), 30.9 per cent of human rights violation complaints received by the National Human Rights Commission (NHRC) of the Republic of Korea related to detention facilities and abuse of disciplinary power and tools of restraint.
4. Once placed in disciplinary cells, inmates are prohibited from going out for physical exercise, meeting family and friends, reading books or newspapers, writing letters or petitions, watching television, or engaging in any activity that would connect them with the outside world. This may lead to extreme cases of indefinite deprivation of sunlight and speech, amounting to slow murder. Well-documented studies by many human rights organizations, internationally respected criminologists and penologists, ex-wardens and administrators of solitary units have highlighted the detrimental effects resulting from sensory deprivation while in long term solitary confinement. It

can result in substantial psychological damage, including paranoia, anxiety, depression, aggression and psychosis.

5. In February 2002, the NHRC's Committee of Standing Members was approached to grant emergency relief to an inmate who had been under disciplinary segregation for more than six months. Relying on the legality of consecutive enforcement of multiple sentences of imprisonment, the Committee ruled that consecutive enforcement is legally acceptable if each disciplinary measure is lawful, and thereby voted against granting relief. However, there is a clear distinction between consecutive imprisonment, which allows a prisoner his or her rights to sunlight, physical exercise, conversation and so on, and consecutive segregation, which denies all of the above. Drawing this distinction, the Asian Legal Resource Centre firmly believes that the NHRC erred when it failed to grant emergency relief to this inmate and also as it failed to set a precedent in ruling on the question of consecutive periods of segregation.
6. Shortly after the decision, on 27 May 2002 an inmate in his mid-thirties at the Busan Penitentiary with only eight months left of his sentence committed suicide while in a disciplinary segregation cell. By the time of his death, he had already been kept handcuffed and chained for four days and had been under disciplinary segregation for four months, with four more months of such confinement ahead. Prison officials had sentenced him to a total of eight months segregation for four different accounts of bad behaviour. In total he had been disciplined 15 times during the 52 months in jail before his death, and it was also alleged that ward officials had targeted him for punitive treatment after he blew the whistle on intramural drug trafficking. Outraged relatives have appealed to the NHRC and stated that his suicide was caused by psychological and physical oppression brought on by excessive punishment. They have called for a close investigation of his death.
7. In addition to exposing Korea's violation of international legal standards through the use of consecutive solitary confinement, this case exposes the arbitrary methods prison officials employ with impunity to discipline prisoners. In particular, the use of chains and handcuffs is of grave concern. There also does not appear to be any proportional relationship between the ostensible violation of the prisoner and the subsequent punishment. The four separate charges that led the above inmate to be segregated for eight months included exchanging notes with another prisoner and attacking a prison officer with crockery, yet in spite of their trivial nature, each misbehavior was given the maximum discipline of two months segregation.
8. In light of the above, the Asian Legal Resource Centre recommends to the Commission, and in particular the Committee against Torture, to
 - a. Pressure the National Human Rights Commission of the Republic of Korea to reverse its earlier decision regarding consecutive periods of segregation, and in view of the aforementioned suicide recommend to the Government of Korea that the practice be outlawed, along with the use of restraining devices in Korean

prisons. The government may do this by amending article 46 of the Penal Administration Law, and other relevant legislation. It should also take all other necessary and speedy steps to amend and create legislation to ensure the human dignity of all prisoners.

- b. Urge the Government of Korea to create an independent working group to examine and monitor prison reform, with unrestricted access to the prison system and its records, to ensure that Korea comes into compliance with its international obligations. In particular, the working group should examine all aspects of confinement, and particularly the two-month period and conditions regulated for segregation, which even without being abused as they are at present are a matter for serious concern.
- c. Insist that the Government of Korea submit its second periodic review to the Committee Against Torture, which was due on 7 February 2000, giving a detailed account of how the government is safeguarding the rights of prisoners.
- d. Assist the Government of Korea in educating all enforcement personnel on the international standards for treatment of prisoners, and in the creation of an independent mechanism to monitor their progress.
- e. Encourage the National Human Rights Commission to take far more progressive steps to ensure that human rights are protected in Korea, in particular in prisons. (See also the Asian Legal Resource Centre's written statement to the fifty-ninth session of the Commission on the need for national human rights institutions in Asia.)
- f. Establish a working group or appoint a Special Rapporteur to examine the practice of solitary confinement internationally, including in the Republic of Korea.
- g. Continue via all available mechanisms to demand that states alter legislation and prison practices to ensure that international instruments on confinement are fully complied with.
