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HUMAN RIGHTS COMMITTEE

Eighty eighth session

SUMMARY RECORD OF THE 2411th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 26 October 2006, at 10 a.m.

Chairperson: Ms. CHANET

then: Ms. PALM (Vice Chairperson)

then: Ms. CHANET

SUMMARY

CONSIDERATION OF REPORTS SUBMITTED UNDER ARTICLE 40 OF THE
COVENANT (*continued*)

Third periodic report of the Republic of Korea (*continued*)

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED UNDER ARTICLE 40 OF THE COVENANT (agenda item 6) (*continued*)

Third periodic report of the Republic of Korea (CCPR/C/KOR/2005/3; CCPR/C/KOR/Q/3) (*continued*)

1. *At the invitation of the Chairperson, the delegation of the Republic of Korea resumed their places at the Committee table.*
2. The CHAIRPERSON invited the delegation of the Republic of Korea to answer the questions asked orally by Committee members at the previous meeting.
3. Mr. KIM Chong-hoon (Republic of Korea) said, with respect to the difficulties in the way of implementing the Committee's recommendations concerning the communications presented under the Optional Protocol, that a part of those difficulties arose because of the incompatibility of the measures recommended by the Committee with Korea's legislated provisions on compensation. However, the Government had undertaken to study ways of reconciling its domestic laws, to the extent possible, with the Committee's recommendations.
4. Three anti-terrorism bills had been submitted to the National Assembly, in March 2005, July 2005 and June 2006, and were currently under consideration by a parliamentary committee. Under the provisions of the bills, searches, wiretapping, interception of communications or deportations were lawful only if the requirements of the Penal Procedure Act and the Communications Privacy Act were met.
5. Mr. KIM Young-me (Republic of Korea) said that the bill on employment submitted to the National Assembly recognized three categories: workers on fixed-term contracts, part-time workers and atypical workers. The bill also provided that all workers, of whatever category, could not be dismissed except for cause.
6. Regarding the exposure to toxic substances of foreign women ("irregular workers") working in a factory that produced plastic components, it should be noted that the Government had opened an investigation into the case in 2004 and that the Director General of the plant in question had been arrested. The workers exposed to toxic substances had received medical treatment for a year, in accordance with the Industrial Accident Compensation Insurance Act, before being sent home.
7. Regarding the increasing number of childcare facilities, which was expected to enhance implementation of the Equal Employment Act, it was clear that the State lacked any mechanism to promote equality in the private sector. However, the authorities had recently adopted a corrective action plan for public enterprises with more than 500 employees. In order to encourage women's employment, obviously, better childcare was needed, and the authorities also planned to introduce a system of family allowances.
8. Mr. KANG Ji-sik (Republic of Korea), responding to a question about the transmission of nationality to children, said that the previous law had been based on a system of patrilineal descent, but that since the revision of the Nationality Act of 13 December 1997, children held Korean nationality at birth if at least one parent was a citizen of the Republic of Korea. Thus, matrilineal descent was recognized. Children who, through one of their two parents, were entitled to another State's

citizenship were required at the age of 22 years to choose between that citizenship and Korean nationality.

9. Regarding the possibility of amending the legislation on marriage to incorporate the concept of marital rape, Mr. Kang Ji-sik said that current legislation did not recognize marital rape but that the National Assembly would shortly be considering a bill to amend that situation. The new family registration system would no longer be based on the concept of head of family and household, as previously, but on the individual. All personal data about a person, from birth to death, would be recorded under the new system. Three bills had been submitted to the National Assembly on the issue and should be adopted shortly. The authorities had implemented two programmes whereby they had obtained public feedback on the new system; if the bills were adopted, State institutions and civil society organizations would continue their public outreach activity on the benefits of the new system.

10. Mr. LEE Moon-han (Republic of Korea), in response to a question concerning a suspect's death in the course of a murder investigation, said that the Public Prosecutor's Office had opened an investigation that had led to the conviction of three investigators on charges of torture, among other offences; the investigators were serving prison sentences of between 24 and 30 months. The prosecutor in the case had been tried and sentenced to 18 months in prison; the appeal he had filed before the Court of Appeal was pending. The Minister of Justice and the Public Prosecutor had resigned and the President of the Republic had apologized to the nation for the events in the case.

11. Mr. LEE Sang-yong (Republic of Korea) said that suspects' access to counsel was subject to strict rules, which stipulated that a suspect could request the assistance of counsel during interrogation, which request the police station chief was required to rule on. Restrictions could be placed on that right, particularly in cases involving organized crime, drug trafficking or terrorist activities, to ensure the secrecy of the investigation, or if there was a high probability of obstruction or a risk of destruction of evidence. A draft amendment to the Penal Procedure Act, however, granted suspects access to counsel as a general rule unless otherwise provided. As regards how soon suspects could retain counsel, the planned changes to the Penal Procedure Act on criminal procedure, but also the directives applicable to the police and prosecutor's office, provided that in principle the suspect could be assisted by counsel right from the start of the investigation, without restriction.

12. With respect to the suspect's arraignment, it should be noted that the legislation referred to three types of arrest: criminal arrest, emergency arrest and arrest by warrant. Criminal arrest did not require a warrant from a judge, and in the case of an emergency procedure, there was by definition no time to get a warrant. In all cases, suspects could be detained for 48 hours at most, after which, if the judge did not issue a warrant, they must be released. Under the Penal Procedure Act, when a warrant was issued for a suspect's arrest or detention, the suspect and his or her counsel or a family member could ask the judge to review the legality of the measure; the judge must interrogate the suspect without delay and make a ruling. In other cases, if an arrest warrant was issued after the 48 hours of police custody, the suspect could ask to appear before a judge who would examine the merits of the case. Thus, the right of suspects to be brought before a judge was fully guaranteed. It should be noted that in 80% of cases, suspects' detention was subject to review by a judge.

13. One committee member wondered whether the length of pre-trial detention was not excessive, especially in cases involving State security. After interviewing the suspect, the judge could extend his or her detention for 10 days at the request of the police or prosecutor. The police could request only one extension, while the prosecutor could ask for an additional 10-day period. In cases involving State security, the police could request a further extension of detention and the prosecutor could ask twice, but in no case could detention exceed 50 days. Between 2002 and 2006, there had been only three cases of violation of the State Security Act. In ordinary cases, extensions of detention to more than 10 days at the request of the police averaged only 10% of all cases of detention since 2001, meaning that about 90% of suspects spent less than 20 days in detention.

14. The question of amendment of the Penal Procedure Act had been entrusted to a presidential committee, which had now completed its work after obtaining the opinions of various actors in Korean society. A bill had been presented in the National Assembly and the matter was now before members.

15. Mr. Lee Sang-yong said that the law contained clear provisions on the measures taken to prevent abuse in police custody and interrogation facilities. Any complaint of human rights violations in that context gave rise to an internal investigation under the supervision of the Deputy Chief Prosecutor's Office, which referred it, if necessary, to the Department of Justice. In addition, there was an inspection body within the Human Rights Office of the Ministry of Justice which also monitored respect for suspects' rights. People who had suffered violations of their rights could obtain compensation without delay. With regard to confessions obtained by coercion, the Penal Procedure Act provided that they could not be used in the judicial process. Judges were able to exclude any evidence on which a doubt existed in that regard.

16. As regards the Prosecutor's investigative powers, an interrogation record was kept by the Prosecutor but its contents could be accepted in evidence by the judge only with the suspect's consent. Should the suspect or his or her counsel challenge the contents of the record, it could in no case be used in the procedure. Nor were the suspect or counsel required to justify their request.

17. One committee member noted the large number of arrests under an emergency procedure, and wondered whether such arrests were not conducive to human rights violations. The emergency arrest procedure was subject to strict control and, furthermore, was less and less commonly employed. Statistical data had been sought from the competent authorities and would be sent to the Committee at a later date by the delegation of the Republic of Korea. The delegation could say right away that on average 30% of suspects arrested under an emergency procedure were released within 48 hours of their arrest, so the situation could hardly be considered problematic. Detention for an investigation lasting more than 48 hours was also subject to strict rules. For comparison, the competent criminal justice authorities of the United States of America had reported that in 2005, for every 100,000 US residents, 4,700 had been arrested. For the same year, the corresponding figure was 1,300 in the Republic of Korea, and only 129 suspects had been held in custody for more than 48 hours.

18. Mr. LEE Moon-han (Republic of Korea) said, with respect to disciplinary measures in detention centres, that prison authorities were required to meet strict standards but also to apply them with the utmost restraint. Sanctions were imposed

by disciplinary committees in accordance with the Penal Administration Act. Several structures, including the National Human Rights Commission, also looked after the rights of detainees and their families. Decisions on the use of restraints such as handcuffs or shackles were made on the basis of various criteria such as the age of the person concerned, his or her background, etc. Such measures were taken on the basis of the principle of strict necessity and prison administrations oversaw their application. No human rights violations arising from the use of restraints had ever been recorded. In any event, if measures of that type were applied to a detainee for more than seven days, the head of the prison administration at the regional level must be informed and could be asked to review the appropriateness of the measure. In addition, the prison administration regularly inspected the facilities to ensure they complied with applicable standards.

19. Mr. KIM Chong-hoon (Republic of Korea) said, in response to a question on the protection of the rights of individuals with mental disorders held in psychiatric institutions, said that the Government had decided to upgrade employee training at those institutions. In that context, human rights experts worked at least once a year with officials of provincial and municipal institutions. Moreover, strict regulations governed a person's admission to, care at, and departure from a psychiatric facility. In the event of any violation of the person's rights, measures were taken according to law. The authorities also encouraged the establishment of advisory bodies bringing together human rights specialists, patients and family members to oversee the situation at psychiatric institutions. The authorities regularly met with members of those bodies to discuss any improvements that could be made. Patients and their spouses had the right to access their medical file and obtain a copy, except where that was not in the patient's interest, and the physician was required to accede to such requests.

20. Mr. LEE Seong-ryong (Republic of Korea) said that the Republic of Korea intended to lift its reservation to Article 22 of the Covenant and that the Act on Teachers' Organization and Management of Labour Unions, the Act on Establishment and Operation of Public Officials' Workplace Associations and the Tripartite Agreement of 11 September 2006 constituted progress toward that end. The law prohibited unfair treatment of foreign workers. Any employer discriminating based on a worker's nationality was liable to a fine of 5 million won. To end discrimination against persons with disabilities, government bodies and private companies with fewer than 50 employees applied the quota system established by law to hire such persons. Private companies failing to comply with the law were fined. The recruitment of persons with disabilities in government bodies was encouraged. Surveys were conducted regularly to ascertain the number of employees with disabilities. As of late 2005, there were 51,862 persons with disabilities working in the public sector and at private companies with fewer than 50 employees. They were encouraged to hold consultant positions, but the Government had also adopted affirmative action measures to help them find jobs in all sectors of the economy. It provided grants and vocational training for that purpose.

21. Mr. LEE Sung-ju (Republic of Korea) said that Article 32 of the Military Criminal Act made sodomy among homosexual and heterosexual soldiers punishable by a year in prison, to maintain order in the barracks. Homosexuals could do their military service and were treated like other soldiers, guidelines being applied in the barracks for conscripts. There was no specific provision for officers, but the Republic of Korea intended to enact one.

22. Sir Nigel RODLEY wanted to know what authority, under the system now in place or the one contemplated in the draft amendment to the Penal Procedure Act, had the power to decide that a lawyer could not see a detainee. Was that decision appealable? And were there compensatory measures to guarantee the detainee protection equivalent to that provided by a lawyer? His understanding was that, after police custody ended, the suspect could ask to see a judge. He wondered why the court appearance was not automatic, in accordance with Article 9(3) of the Covenant. Regarding the extension of detention to as much as 50 days at the request of investigators or the prosecution, he asked whether the extension was ordered by a judge. Were suspects brought before a judge, or were they detained at the police station or elsewhere? He did realize that a lawyer was present right from the start of the investigation, but would like to know whether that meant the lawyer was called as soon as the person was arrested. He would also like details on confessions. In particular, were they governed by different rules from those applicable to the interrogation record? As the delegation had indicated that confessions were inadmissible if not obtained in accordance with law, he asked whether the burden of proving the illegality of a confession lay with the suspect, or whether it was up to the prosecution to prove that the confession had been obtained by legal means. As regards protective measures, he asked whether there was an independent body with responsibility for inspecting places of detention.

23. Finally, Sir Nigel Rodley pointed out that the Committee had not questioned the rate of incarceration as such and thought the comparison with the United States was inappropriate inasmuch as the US was known to imprison three or four times as many persons as any other country.

24. Mr. LEE Sang-yong (Republic of Korea) replied that the power to restrict access to counsel lay first with the police station chief, then, at the next stage, with the investigating prosecutor. By law, those decisions were appealable before a trial court, an appellate court and the Supreme Court. With regard to police custody, the arrest warrant was issued within 48 hours or immediately after the arrest. The legitimacy of the detention warrant could be challenged, in which case the judge must consult with and question the suspect. If an arrest warrant was issued after 48 hours in custody, the suspect could ask the court to review that decision. The judge could also summon the suspect to court. However, suspects were not systematically interrogated. The draft amendment to the Penal Procedure Act provided that a judge could, at his or her discretion, question the suspect prior to detention, whether the latter so requested or not. If the prosecutor wanted the detention prolonged beyond 10 days, he or she must provide the judge with all records of the investigation and other necessary documents and seek court approval. If the request was refused, the suspect must immediately be either charged or released. While in custody, the suspect was detained at the police station, then, if an arrest warrant was issued, transferred to a detention centre. The suspect could ask to see a lawyer as soon as his or her arrest was recorded.

25. The content of the confessions was the only relevant criterion, regardless of the form in which they were recorded. Interrogation records drawn up by investigators and the suspect's written testimony were part of the confessions. If the confessions were extracted under duress and the suspect had submitted to the court evidence raising a reasonable suspicion thereof, it was the prosecution's responsibility to show that the confessions were obtained by legal means. Finally,

the delegation had used prison statistics from the United States because none other were available; it asked the Committee's indulgence.

26. Mr. LEE Moon-han (Republic of Korea), responding to question No. 18, said that there was not now any intelligence or investigation body charged with performing illegal wiretapping, shadowing, or surveillance. By law, wiretapping was restricted to two months in the case of a normal criminal investigation and four months in national security cases. In an emergency, a wiretap could be ordered for a period of 36 hours without court approval but must be lifted immediately if permission was not granted. The Government strictly controlled the production, distribution and possession of wiretapping equipment through a licensing and registration system; illegal wiretapping was severely punished under the Penal Code and the Communications Privacy Act. The Act also stipulated that governments were subject to inspections and investigations and that the number of illegal wiretaps was regularly reported to the Standing Committees of the National Assembly. As a result, the Government had found it unnecessary to establish an independent body. Finally, to avoid arbitrariness by investigating agencies, a warrant system had been established for wiretaps authorized for investigative purposes.

27. Mr. LEE Sung-ju (Republic of Korea), responding to question No. 19, said that from 2000 to June 2006, 3,665 conscientious objectors had been tried or brought to justice and that 86% of them had been or were imprisoned, most having been sentenced to terms of 18 months to two years. In 99% of cases, the objection was motivated by religious beliefs. The Committee was invited to refer to the table in the written replies for details of the cases. Alternative service in a civilian or military institution was under consideration given the large numbers refusing military service. To that end, a joint committee had been established in April 2006 to review policies relating to conscientious objection. Under the law on military service, persons aged 18 to 28 years registered for active service could be enrolled, but women could not volunteer. However, there were no restrictions on women officers and NCOs (who numbered 4,086 in January 2006). In 2006, women accounted for approximately 10% of all cadets (10% in the Army and Air Force and slightly more in the Navy).

28. Mr. LEE Moon-han (Republic of Korea), responding to question No. 20, said that the proposals for the amendment or abolition of the National Security Act that had been repeatedly submitted to the National Assembly since 2000 were still under consideration because, given the situation on the peninsula, public opinion was divided on whether to repeal it. However, the articles that had caused problems in the past were now applied circumspectly and the Act no longer gave rise to any abuse. The Committee was invited to refer to the table in the written replies for more details.

29. Ms. KWON Gun-a (Republic of Korea), responding to question No. 21, said that public assemblies were authorized provided the appropriate police station had been notified and they were not in violation of the Act regarding Meetings and Demonstrations, which banned demonstrations posing a threat to public safety and order and those during which illegal acts were committed. Such acts were particularized in Article 5(1) of the Act and included mass violence, acts of intimidation and destruction, and arson. Where an event was prohibited, a police authority could be seized within 10 days of receipt of the notice of prohibition and

an administrative appeal filed against the police station. The police station chief had 24 hours to respond in writing to the objection. If the protest ban was deemed illegal or inappropriate, the meeting or demonstration could take place in accordance with the initial notification to police, provided the police station chief was notified 24 hours in advance.

30. Mr. CHUNG Hyoung-woo (Republic of Korea), responding to question No. 22 on freedom of association, said that the Act on Establishment and Operation of Public Officials' Workplace Associations had been promulgated 27 January 2005 and entered into force 28 January 2006 with the goal of guaranteeing employees freedom of association and the right to collectively negotiate their wages and working conditions with the authorities and to sign collective agreements. However, to ensure continuity of public service, public servants were, as in many other countries, not allowed to strike. To compensate for that restriction, a mediation committee in charge of labour relations with public servants—a neutral agency—had been created within the National Labour Relations Commission. Officials up to level six had the right to unionize. Restrictions were imposed in the following categories: military, police and members of the judiciary with responsibility for the maintenance of justice, national security and the protection of citizens' life and physical safety, employees occupying management or supervisory positions, and staff responsible for human resources and payment of wages, to ensure a balance between autonomy and unions' bargaining power.

31. There was no discrimination against migrant workers in terms of freedom of association (question No. 23). Foreign workers residing legally in the Republic of Korea were protected by the Labour Code and in particular by the Professional Standards Act, the Industrial Safety and Health Act and the Industrial Accident Compensation Insurance Act. No one would dispute that, unlike guaranteed payment of wages and compensation for work accidents, which were vital to illegal alien workers, such workers did not have the right to unionize to defend or improve their working conditions. The Act regarding Meetings and Demonstrations laid no special restrictions on foreigners, and migrant workers had the right to assemble, unless such assembly constituted an illegal activity.

32. Ms. PARK Min-jeong (Republic of Korea), responding to question No. 24, said that the Committee's concluding observations on the consideration of the second periodic report of the Republic of Korea had been posted on the websites of the Ministry of Justice and the National Human Rights Commission. Non-governmental organizations had been consulted during the preparation of the report, and to the extent possible their views were reflected in the final report. Implementation of the Committee's recommendations would have to be organized by the ministries and authorities concerned. Its progress would be regularly reviewed in ways that would soon be defined by the Government, which would also be looking at ways to increase the openness and transparency of the processes of drafting the periodic reports and implementing the recommendations.

33. *Ms. Palm (Vice-Chairperson) took the Chair.*

34. Mr. SHEARER, alluding once again to the practice of illegal wiretapping (question No. 18), asked what the occupational categories were of the persons indicted on that charge, and whether it was true that the National Intelligence Service had engaged in wiretapping before 2003. As regards legal wiretaps, it was clear from the written replies that a warrant for them must be issued by a judge.

Further information regarding the procedure for issuing such a warrant would be welcome. The delegation said that illegal wiretaps were no longer practised in the Republic of Korea. However, wiretapping equipment was freely sold in specialized shops, and in August 2006 a member of Parliament had been convicted of illegally listening in on an opponent's telephone line. It would be interesting to know what measures the Government intended to take to stop such intrusions on privacy.

35. Referring to the statistics given in the written replies, Mr. Shearer asked whether persons imprisoned for refusing to perform military served their sentences under the same conditions as other prisoners or were treated less harshly. He would also like to know the membership of the joint committee that was to examine the possibility of introducing alternate forms of service for conscientious objectors, and how long it had been given to report its findings. Regarding the right of women to serve in the armed forces, the statistics in the written replies indicated that the proportion of women among cadets was approximately 10% both in the Army school and in those of the Air Force and Navy, which would suggest that recruitment of women into the armed forces was subject to a quota. It would be useful to hear the delegation's remarks on that point. The written replies also said that women could not volunteer for active duty. What exactly was meant by "active duty"? Did it mean that women were barred from combat? If so, then what was their role in the army?

36. With respect to the National Security Act (question No. 20), Mr. Shearer noted with satisfaction that the proposed amendments, particularly to Article 7 of the Act, which the Committee had found incompatible with the Covenant, were under review by Parliament. He noted however that on 26 May 2006, a professor of sociology, Mr. Kang Jeong-koo, had been sentenced for violating the National Security Act on account of his opinions on the Korean War, and asked what reasons had been invoked to justify the conviction. The table of cases of violation of the National Security Act showed a number of persons arrested lower than the number of persons charged, so the meaning of "arrested" in that context needed clarification.

37. Regarding the right of peaceful assembly and freedom of association, Mr. Shearer said that even though the Act regarding Meetings and Demonstrations had not been amended, the small proportion of permit applications rejected did seem to indicate that its enforcement had become much more moderate. He would like the delegation's views on that point. He also wished to know whether it was true that demonstrators could be held to account for acts of violence committed during a demonstration in which they participated, though they themselves had not perpetrated any such acts.

38. As regards the dissemination of the Committee's concluding observations on the second periodic report of the Republic of Korea, Mr. Shearer feared that the fact that they could be consulted in English on the websites of the Ministry of Justice and the National Human Rights Commission meant that a great part of the population had no access to them. He wondered whether the Government intended to take the necessary steps in future to ensure the distribution of the Committee's concluding observations and those of other human rights bodies in Korean. The delegation had indicated that NGOs had been consulted before the report. It would be useful to know whether that participation had been open to NGOs in general or had been restricted to certain pre-selected organizations.

39. *Ms. Chanet (Chairperson) resumed the chair.*

40. Mr. SOLARI-YRIGOYEN said that conscientious objection to military service was a right that the Committee expressly acknowledged to be guaranteed by Article 18 of the Covenant and that the Republic of Korea, as a party to the Covenant, was obliged to comply. He asked whether conscientious objectors were detained as of the opening of the investigation of their case or later. Could they receive an amnesty? Were they eligible to work in the public service, or was that ruled out by their failure to perform military service? Was it true that in the private sector those who had not completed their military service had difficulty finding a job? Could reservists claim conscientious objector status? And were there any plans to amend the legislation to guarantee the right to conscientious objection to military service and to arrange for an alternate form of service?

41. Mr. O'FLAHERTY asked whether remedies could be sought before the courts in case the police refused to grant a meeting permit. He also asked why the Government had refused to legally recognize the KGEU, the government employees' union, and would like details of the circumstances under which a number of locals of the union had been shut down in September 2006. He welcomed the promulgation of the Act on Establishment and Operation of Public Officials' Workplace Associations but was concerned about the restrictions it placed on the right of staff members beyond level 6 to join a union. Furthermore, it appeared that the ban on participation in political activity which, under the Immigration Control Act, applied to immigrants, and so to migrant workers, also applied to the expression of political views; if true, that would constitute a violation of the right to freedom of expression guaranteed under the Covenant. It would be useful to hear the delegation's remarks on that point. Similarly, according to some sources, the State had refused to legally recognize the migrant workers' union. Could the delegation confirm that, and if so could it indicate the reasons for the refusal?

42. The CHAIRPERSON proposed that the meeting be suspended to allow the delegation to prepare its replies.

The meeting was suspended at 11:45 a.m.; it resumed at 12:05.

43. Mr. LEE Moon-han (Republic of Korea) confirmed that up until 2003 the National Intelligence Service had conducted illegal wiretap operations. In 2006, two former leaders of the Service had been indicted for their role in those activities. Other charges had also been brought. Some employees' trials were still going on; others had been sentenced to 18 months' imprisonment. For wiretaps to be legally undertaken, it was mandatory to obtain a judge's warrant. The sale of listening devices was regulated by a strict licensing regime. Any sale contrary to the rules laid down therein was punishable by law, as was the purchase of illegally sold equipment.

44. As for Mr. Kang Jeong-koo, he had received a suspended sentence of two years' imprisonment for his statements describing the Korean War as a war of reunification and denouncing the United States' intervention. He had appealed, and his appeal was currently being heard. Korean law stipulated that the expression of ideas threatening the constitutional order could be restricted. The ideas disseminated by Mr. Kang Jeong-koo for many years were of that nature, and so he had been convicted. In the table in the written replies, persons "arrested" should be construed as detainees.

45. Mr. LEE Sung-ju (Republic of Korea) emphasized that the Republic of Korea's position on conscientious objection was closely tied to the civil war and to the constant threat posed to its national security by the Democratic People's Republic of Korea. The Joint Committee that was to examine the possibility of introducing alternate forms of service for conscientious objectors should have completed its work by June 2007. It consisted of professors, lawyers, members of NGOs, religious representatives (monks, priests, etc.), as well as officials of the Ministry of Defence.

46. There was no quota limiting the proportion of women in the armed forces to 10%. Active duty meant compulsory military service, which excluded women. In the professional army women had access to all posts, including command posts. Conscientious objectors were detained right from the start of the investigation; they were treated the same as other prisoners, but those whose first conviction it was were eligible for parole once they had completed two thirds of their sentence. The conviction resulted in a criminal record, and conscientious objectors were subsequently not eligible for positions in the public service. Objectors who refused to undergo reserve training were also punished. The introduction of alternative service was under consideration; the study was expected to be completed by June 2007. Three steps had already been taken: The Government had begun by consulting a few conscientious objectors, then experts holding divergent views on the issue, then conducting a public survey to determine whether there was a consensus on the issue in society.

47. Mr. KIM Chong-hoon (Republic of Korea) said) that the Committee's concluding observations had been published on the websites of the Ministry of Justice and the National Human Rights Commission. The same would apply to the observations on the third periodic report, which would be published in Korean and English. Regarding the participation of nongovernmental organizations in the preparation of the report, it should be noted that the Government was always open to comments. In future, the draft report would be reviewed in the course of a public debate with civil society, whose views would be incorporated into the final document.

48. The question of military service and conscientious objection was one of the most sensitive ones in social and political terms. it should be noted that, for example, that all candidates for a post of minister or Supreme Court judge must submit not only their own military service records but also their sons'. Though the Government was prepared to adapt to international standards in that regard, the problem was not a simple one.

49. Mr. LEE Hwa-jin (Republic of Korea) explained, with respect to officials' freedom of association, that no union could have legal status unless it was established in accordance with law. However, the Korean Government Employees' Union (KGEU) was conducting activities—including political activities—that ran counter to the provisions of the Act on Establishment and Operation of Public Officials' Workplace Associations. In particular, it was illegally occupying offices that had been made available to public officials by local governments to host professional associations, not union locals. Therefore, those offices had been closed in September 2006 upon the expiry of the notice given to KGEU to close them voluntarily. The Government was open to discussion with legal unions: to date, 58 had applied for collective bargaining.

50. Mr. LEE Seong-ryong (Republic of Korea) added that higher-level officials (level 5 and above) were not allowed to join a union because of the nature of their functions, which often involved them in decision making. It must be remembered that the Korean public service system was extremely hierarchical. The Government was however planning to comply with the International Labour Organization's recommendation that officials of level 5 and up be at least allowed to join professional associations.

51. Ms. KWON Gun-a (Republic of Korea), in response to the question concerning the arrest of protesters, said that only those persons could be indicted who directly committed acts of violence and those who encouraged or organized such acts, in accordance with the principle that accomplices should receive the same punishment as the perpetrators.

52. Mr. KIM Chong-hoon (Republic of Korea) added that organizers were notified in advance of any ban on meetings and had the opportunity to challenge the decision before the Administrative Tribunal.

53. Mr. KIM Byoung-chul (Republic of Korea) moving on to the question concerning migrants, said that Article 17(2) of the Immigration Control Act, under which foreign nationals were forbidden to engage in political activities, in no way sought to restrict the right to freedom of expression guaranteed in Article 19 of the Covenant and in Article 21 of the Constitution. Foreigners were treated the same as Korean nationals, the only difference being that in accordance with the principle of national sovereignty, certain rights, such as the right to vote and to stand for election, to join the public service or to take part in referenda, were reserved for nationals.

54. Mr. LEE Seong-ryong (Republic of Korea) added that it was for that reason that in June 2005 the Regional Labour Office in Seoul had refused to recognize a migrant workers' union some of whose members were illegal aliens.

55. Mr. O'FLAHERTY noted that national sovereignty was subject to the nation's obligations under any treaties it had freely ratified. Also, while Article 25 of the Covenant did recognize that certain political rights were reserved for nationals, such was not the case of freedom of expression, which was guaranteed to all without exception. Thus, it was very worrisome to see that a migrant worker could be deported simply for expressing a political opinion.

56. Mr. KIM Chong-hoon (Republic of Korea) said that migrant workers in Korea were certainly free to express their political opinions. For example, several groups had protested outside their embassies to demand greater respect for human rights in their countries. Migrants also gave their opinions on other issues such as health or education.

57. The CHAIRPERSON thanked the delegation for their replies and reminded them that they had three days to provide any additional information in writing. The Committee noted with satisfaction that the concept of "family head" had been abandoned in Korean society and that children could take their mother's name—a step towards a more equal sharing of parental responsibilities. He also noted that the Government encouraged NGO participation and sought to disseminate the Committee's observations widely.

58. With respect to the reservations to the Covenant, the promise to withdraw them was not enough: it needed to be followed through. In particular, the reservation to Article 14(5) seemed superfluous, as the State party itself had agreed. The delegation had explained that the Covenant had been incorporated into the Constitution and was equivalent to domestic legislation, but had failed to cite a single case where it had been invoked by the courts. The delegation had also remained fairly vague on the follow-up of communications, especially those concerning the National Security Act. An amendment to the Act had been announced, and the authorities had given assurances that its implementation did not give rise to any abuse, but the case of Mr. Kang Jeong-koo contradicted those assertions. It was to be feared, therefore, that the Committee's concerns on that point would not be dispelled.

59. With respect to detention, the delegation claimed that attendance of a lawyer during interrogations was guaranteed but was subject to restrictions; however, the nature of those restrictions was not specified. Similarly, it merely stated, without any details, that strict instructions were given to limit solitary confinement, whose continued renewal could constitute cruel and inhuman treatment. Such instructions were insufficient: written rules and an independent review mechanism were essential. The allowable duration of police custody—10 days renewable four times—was also excessive. Finally, the delegation had not answered the question on the definition of terrorism. The Committee would make recommendations on those issues to help the State party in its endeavour to reform the Penal Code and Penal Procedure Code.

60. Mr. KIM Chong-hoon (Republic of Korea) thanked the Committee for the constructive dialogue that had taken place. After the consideration of the second periodic report in 1997, the Government had taken significant steps, particularly with regard to criminal proceedings, equality between men and women, freedom of association and human rights advocacy organizations, and would do so again at the conclusion of the present review. The Government would also continue its efforts to promote and protect human rights in Korea and to strengthen cooperation with the international community in that regard.

61. *The Korean delegation withdrew.*

The meeting rose at 1 p.m.