

Dispatched Workers" as a measure for the "promotion of diverse forms of employment". The reality, however, betrays the real impact and purpose of this law: institutionalising and legalising "middle exploitation". This law has given rise to the following problems among many others:

(1) the law gives impetus to illegal practices in "labour dispatch industry"; the act of legalising "dispatched labour" – which had been illegal until the advent of the legislation in 1998 (at the time of the breakout of the economic crisis and arrival of the IMF structural adjustment regime in Korea) – has encouraged further other forms – all of which are illegal – of "labour dispatch". These take the form of illegal commissioning of production or service and in-house subcontracting. This has, therefore, legalised the practice of "middle exploitation".

(2) the law prohibits the use of "dispatched labour" for jobs in "direct production process", and restrict its use to jobs which require "expertise, skills or experience" or in the cases of "labour shortage due to child birth, illness, injury or a need to temporarily/occasionally secure manpower. However, the "enforcement decree" opens dispatched labour to jobs, such as, secretaries, typists, office workers, book and post related jobs, bill collection work, telephone exchange board, telemarketing jobs, hospice, janitors. The list of jobs open to "dispatched labour" is virtually all embracing.

(3) middle exploitation: many workers engaged in "dispatched labour" suffer from delayed wage payment, excessive placement fee, cancellation of employment in the middle of dispatch labour placement. While the law contains an article stating the principle of equal treatment ("A sending employer and a using employer shall not treat a dispatched worker in a discriminatory manner in comparison with a worker who performs the same work in the business. [Article 21]), but it is powerless to ensure equal treatment because a glaring lack of any implementation instruments, such as, provisions for penalties or punishment in case of violation.

(4) health and safety: while the law defines the "using employer" to have the responsibility of complying with health and safety standards at workplace where the "dispatched worker" works, it defines the "sending employer" to be responsible for providing damage compensation. As a result, it makes unclear who is actually responsible for the health and safety of the dispatched workers.

(5) basic labour rights: there is no special provisions to facilitate the formation of a union at a "labour dispatch" enterprise. At the same time, under the current legislation and practice, "dispatched workers" working in a particular workplace are not eligible to form a union, due to the uncertainty over responsibilities for the various aspects of employment and working conditions.

D. Current Situation and Problems

116. The current structural adjustment drive propelled by the government has and is generating mass unemployment. But due to the absence of a comprehensive and substantial unemployment programme – founded on primacy of job retention orientation –, large groups of unemployed workers are fallen by the side of the labour market. In worst cases, they become homeless and dot

the streets. The government's unemployment programme consists of short-period unemployment insurance payment and ad hoc public works activities. These, however, cannot in any way constitute a meaningful and effective unemployment programme.

117. The priority must be given to minimising the generation of unemployment. For those who are unemployed, the programme must effectively realise vocational training and job placement. One important step that must be regulated by the government is the need to provide job training for re-deployment (or re-placement) prior to retrenchment.

Chapter 8. Industrial Safety and Health(Article 7)

Section 1. Responsibility of the Government

A. Conclusions and Recommendations

118. The Korean government should recognize the responsibility for worker's safety and health and strengthen its role to inspect and regulate safety and health management in workplace.

B. Subjects of Concern and Recommendations of the CESC

119. The ILO Convention No.155 on "Occupational Safety and Health" states that the member nation should establish policy for preventing accident and disease that can happen during work, enforce and review it periodically.

120. In the Concluding observations on the initial report, the CESC expressed its concern that there has been a relatively high incidence of accidents in the workplace in Korea and that there has been a failure to adequately address the problem".³⁷

C. The Government's Response and its Second Periodic Report

121. Citing Industrial Safety and Health Act and other related acts, the second periodic report in para. 64 claims to have enacted specific regulations for worker's safety and health. However, it omitted the fact that some regulations were weakened after IMF economic crisis.

D. Current Situation and Problems

122. The Korean government has not been faithful in assuring workers safety and health.

³⁷ E/C.12/1995/3, para.12

Industrialization of Korea after 1960s was accomplished, ignoring worker's basic rights and also the right of safety and health. The situation has somewhat gotten better as labor movement developed rapidly since the latter half of 1980s, but it came to retreat again after the economic crisis in 1998. In the past, labor rights were ignored in the name of 'economic development', and now they are neglected for the sake of 'economic recovery' again. After the economic crisis, the government weakened or deregulated some regulations and restricted treatment of injured workers in the name of economic recovery rather than strengthening inspection of workplace or intensifying regulations.

Section 2. Increasing number of industrial accident and death

A. Conclusions and Recommendations

123. Accident has not decreased despite some policies of government including '3 Years Project for Advanced Occupational Safety and Health'. Now, the government should establish effective plan for preventing accident.

B. The Government's Response and its Second Periodic Report

124. The government states that industrial accident and occupational disease have continuously decreased but the statistics it provided in the second periodic report is limited to 1996 or before. It omitted the change after economic crisis.

C. Current Situation and Problems

125. After slow decrease since 1980s, industrial accident started to increase again from 1999. The number of injury in 1999 is 55,405 (accident rate: 0.74%), which shows an increase of 3,891 injuries, or 7.55% from 51,514 (0.68%) in 1998. The number of death has increased from 2,212 (death rate: 2.92%%) in 1998 to 2,291 (3.08%%) in 1999, increasing by 79, or 3.57%. The situation got worse in 2000. The number of injury by October is 53,662, which shows an increase of 9,578 (22.23% increase) from 43,904 in 1999. Moreover, the number of death by October has increased from 1,848 in 1999 to 2,031 in 2000, an increase of 183 deaths (9.90% increase)

Table 6. Statistics of compensated industrial accident³⁸

	'1997	'1998	'1999
a. N of workplace	227,564	215,539	249,405
b. N of Worker	8,236,641	7,582,479	7,441,160
c. N of injury(c/b %)	66,770 (0.81)	51,514 (0.68)	55,405 (0.74)

³⁸ The Ministry of Labor, "Annual report on Industrial accident"

d. N of death(d/b %%)	2,742 (3.33)	2,212 (2.92)	2,291 (3.08)
e. N of over-work death (e/d %)	660 (24.07)	625 (28.25)	673 (29.38)
f. N of occupational disease	1,424	1,288	1,521
g. N of disabled(g/c %)	28,854 (43.21%)	24,759 (48.06)	19,762 (35.67)

126. According to above statistics, we have 185 injuries, 7.6 deaths (including 2 overwork deaths), 5 occupational diseases and 66 disabled persons a day. However, this statistics seems to be underestimated because many injuries are not reported and small scale manufacturing unit (fewer than 5 workers) is excluded from statistics.

127. The government analyzed that the increase of injury and death is mainly from the increase of factory operating rate and working hour in 1999. In this analysis, the government denies its responsibility to protect worker's safety and health saying that increase of injury is natural with economic activation. The actual reason of increase is weakened management of the security and health in workplace due to related deregulations and weakened inspection by authority after IMF economic crisis. In addition, less workers had to put up with the same amount of work after massive layoff, which strengthened labor intensity, causing more injuries in the workplace. And conditions like job insecurity made it difficult for workers to voice their rights.

Section 3. Deregulation related to safety and health

A. Conclusions and Recommendations

128. It is clear that the deregulation of 'compulsory employment of safety officer' or 'compulsory report of plan for preventing danger and harm' resulted in the weakening of employer's awareness and the increase of industrial accident. Now, the Korean government should once again tighten regulations.

B. Basis on the International Human Rights Law

129. Article 8 of the ILO Convention No.155 on "Occupational Safety and Health" stated that "every member country should mobilize law, regulation and all measures which meet its condition and custom and should take necessary actions for making this convention effective through consultation with the representatives from labor and employer".

C. The Government's Response and its Second Periodic Report

130. The second periodic report refers to new policies like MSDS, PSM and Safety Certification,

Special Project on Industrial Safety and 3 Years Project for Advanced Occupational Safety and Health. However, it omitted the weakening or abolition of related regulations after economic crisis.

D. Current Situation and Problems

131. Around economic crisis, deregulation and market-oriented policies spread throughout Korean society and it was prominent in economic and labor area. Rules on Industrial security and health were deregulated or abolished under this trend. Among them, there are some essential regulations to prevent industrial accident, including 'compulsory employment of safety officer' and 'the inspection over dangerous machines'.

Table 7. Examples of deregulation of rules on industrial safety and health

Weakening of 'compulsory employment'	Weakening of 'inspection and etc'
<ul style="list-style-type: none"> - change to autonomous employment (occupational medical doctor and etc) - expand concurrent position of safety officer - expand concurrent position of health officer - weaken the obligation of employing safety officer in medium-small scale enterprises - permit joint employment - expand external trust safety management 	<ul style="list-style-type: none"> - weaken (exempt) inspection - weaken duplicative inspection on LPG equipment - weaken duplicative regulation on chemical notification - exempt OSH training - exempt the obligation of submitting Plan for Preventing Harm & Danger

Table 8. Change of the number of Safety and Health officer³⁹

	Before 'weakened rule' ('96.12)	After 'weakened rule' ('98.12)	Change
N of Safety officer	26,057	16,520	-9,537 (-36.6%)
N of Health officer	11,296	9,208	-2,088 (-18.5%)

Section 4. Restriction on the medical treatment for injured workers

A. Conclusions and Recommendations

132. The Korean government should strengthen public medical services as a solution to the current problem of injured worker's treatment and rehabilitation. And also, it should reform the current system. Instead of designating certain hospitals to treat compensated patients only when the hospital makes the request, every hospital ought to be open to treat injured workers.

³⁹ The Ministry of Labor

B. Basis on the International Human Rights Law

133. Article 21 of the ILO Convention No. 155 on "Occupational Safety and Health" states that the cost for Occupational Safety and Health should not be imposed on the worker.

C. Current Situation and Problems

134. In 1998, KLWC(Korea Labor Welfare Corporation) took a measure called 'pain sharing to overcome IMF economic crisis', which planned to reduce insurance payment by 53.2 billion won by restricting medical treatment for injured workers. KLWC made an excuse that insurance bill is not collected well from employers. As a result of this measure, injured workers could not receive proper treatment and rejected or terminated medical treatment. The number of complaints reported to monitoring centers in Korean Confederation of Trade Union(KCTU) was recorded 159 in 1998. And 6 major hospitals including Seoul National University Hospital have been rejecting industrially injured workers.

Section 5. Lack of measures for small-scaled manufacturing unit

A. Conclusions and Recommendations

135. The Korean government should increase the amount of contribution to industrial accident compensation insurance in order to assist small-scale manufacturing unit. And also, it should increase Occupational Security and Health inspectors.

B. Basis on the International Human Rights Law

136. Article 9 of the ILO Convention No.155 on "Occupational Safety and Health" states that the enforcement of OSH regulations should be guaranteed by proper control system and the execution of the system should impose proper fine to violations

C. Current Situation and Problems

137. Workplaces with fewer than 5 workers were excluded from the application of 'the Industrial Accident Compensation Insurance Act' and 'the Industrial Safety and Health Act. Compared with those of big companies, the rate of industrial accident and death rate in small-scaled manufacturing unit is 5.2 times higher and 3 times higher respectively.

138. From July 2000, small-scaled manufacturing unit was included in the coverage of the Industrial Accident Compensation Insurance Act and part of the Industrial Safety and Health Act was applied. However, manpower or specific plans supporting coverage extension is insufficient. In fact, there are only 230 inspectors who are in charge of inspecting conditions of 890,000

workplaces - as a result of coverage extension, 690,000 workplaces are newly added to previous 200,000. This means that each inspector is in charge of 4,000 workplaces and 36,000 workers. Under this condition, it is almost impossible to inspect if Industrial Safety and Health Act is properly observed.

Chapter 9. Basic Labour Rights(Article 8)

Section 1. Government Employees and Teachers

A. Conclusions and Recommendations

139. The Korean government should ratify the ILO Conventions No. 87, No. 98, and No. 151, and undertake measures to guarantee the rights of teachers and civil servants and other groups of workers to organise unions and the right to strike. Furthermore, the Korean government must bring to an end the repression against the Korean Association of Government Employees Works Councils and its officers.

B. Subjects of Concern and Recommendations of the CESCR

140. In the Concluding observations on the initial report, the CESCR pointed out that there was no justifiable cause for the prohibition of the right to form unions by teachers. It criticised the undue limitation of the basic right and freedom to form or join a union freely chosen by the teachers themselves. The CESCR went on to recommend, "Measures should be taken to ensure that teachers, civil servants and others have the right to form trade unions and to take strike action".⁴⁰

C. The Government's Response and its Second Periodic Report

141. The second periodic report, in para.73, emphasises that civil servants are now permitted to form "works councils". These bodies, however, are not "trade unions", and at the same time they are not capable of undertaking protected actions, such as, industrial dispute, nor do they have the right to take action to remedy unfair labour practices. What is provided by the "Act on the Establishment and Operation of Public Servants Works Councils" in no way approximate the basic rights - the right to organise, the right to bargain collectively, and the right to take collective action.

142. The second periodic report, in para. 74, explains that the right of teachers to form and join a union of their choice is now provided by a law. However, rights guaranteed by this law (Act on the

⁴⁰ E/C.12/1995/3, para.17

Establishment and Operation, etc. of Trade Unions for Teachers) are very limited and incomplete. First, the shape and form of the organisation is defined and stipulated by the law, thus depriving teachers of the right to decide on the shape and form of their union. A union can only be set up at units of higher administrative units level (such as provinces and metropolitan cities) - no union organisation can be set up at individual schools. (It thus violates the right to form organisations freely.) Furthermore, collective bargains can only be undertaken at province or metropolitan city level (or above) and not at the level of individual schools. The law defines the scope of issues that can be brought into collective bargaining, and specifically excludes education related policies from the realm of collective bargaining. The limited collective agreement, then, is undermined by government decrees, budget, and regulations, thus nullifying the effect of collective bargaining. For example, the Korean Teachers and Education Workers Union (KTU-Chunkyojo) reached an agreement with the Ministry of Education (signed by the Minister) on the issue of employment conditions of teachers in the conclusion of a difficult and prolonged collective bargaining. However, this was, in fact, nullified when the Government failed to allocate budgetary resource for the implementation of the agreement. The Act, furthermore, specifically prohibits teachers union from undertaking industrial action, hence being engaged in an industrial dispute.

D. Current Situation and Problems

143. All civil servants apart from "those who are actually engaged in labour" are denuded of the basic labour rights. On the other hand, while teachers in primary and secondary schools are now provided with the right to organise (form trade unions), the teaching personnel of higher education (universities) are excluded from all basic labour rights. The basic labour rights, including the right to strike, must be provided and guaranteed for all civil servants and teachers. Furthermore, measure must be taken to guarantee the efficacy of collective bargaining and agreement.

144. Recently "a national association of government employees works councils" has been organised. The "Korean Association of Government Employees Works Councils" has set forth as its primary goal the recognition of trade union rights for civil servants. The formation of the "national association", however, stands in violation of the presidential enforcement decree for the "Act on the Establishment and Operation of Public Servants Works Councils" specifically prohibits the formation of a national association of government employees works councils. The government has, thus, declared the recently formed "Korean Association of Government Employees Works Council" illegal and continues to repress the efforts to build civil servants trade unions. The government attack on the national association of works councils is a serious violation of the right of freedom of association. Furthermore, the repression of the activities to win the right to organise civil servants trade unions is also unjust and illegitimate. The Korean government must, therefore, cease immediately its repression against the activities based on the principle of the right of freedom of

association.

Section 2. The Prolongation of the ban on union pluralism at enterprise levels

A. Conclusions and Recommendations

145. The Korean government must immediately rescind the provision that prohibits the existence of multiple unions at enterprise level and guarantee the right to organise or join a union of one's free choice.

B. Basis on the International Human Rights Law

146. Article 2 of the ILO Convention No. 87 on "Freedom of Association and Protection of the Right to Organise" stipulates that "workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation". In the Concluding Observations on the initial report, CESCR recommends that the Government immediately amend its laws and regulations concerning the freedom to form trade unions and the right to strike in order to bring them into compliance with the Covenant and with other applicable international standards

C. The Government's Response and its Second Periodic Report

147. The second periodic report, in para. 68 states that trade union pluralism shall be guaranteed in full, even at the enterprise level from 2002. However, the government has recently amended the pertinent "addenda" to prolong the ban on union pluralism at enterprise level for further five years (2007). The government action has, not only betrayed the general expectation of the wider trade union movement, but has dealt a real and serious blow to large group of workers who actually suffer grievous consequences due to the existing – now extended – ban on union pluralism. The government behaviour is yet another flagrant violation of its repeated international commitment.

D. Current Situation and Problems

148. The Korean government has for a long time come under strong criticism for the total ban of union pluralism. The change came about in 1997, in the aftermath of a nation-wide general strike, when the government agreed to amend the labour law (concerning trade union rights) to remove the ban on union pluralism. Therefore, the newly amended labour law (Trade Union and Labour Relations Adjustment Act), in its main text guarantees union pluralism in principle. However, the introduction of union pluralism at enterprise level has been delayed for five years. According to the Addenda Article 5 (Transitional Measures as to Formation of Trade Union), union pluralism at enterprise level would have come into force from January 1 2002. However, in early 2001, the government moved to prolong the "transitional measure" for further five years, disallowing the

formation of plural unions at enterprises up to December 31, 2006. The government took the form of "members bill" – rather than Government Bill – to actually move the legislative amendment. The prohibition of union pluralism at enterprise level is a violation of the principle of "right to form or join a union of one's choosing". The prolongation of the ban must be rescinded, and the right to organise must be guaranteed in full immediately.

Section 3. The Ban on the Payment of Remuneration by Employers to Full-time Trade Union Officials

A. Conclusions and Recommendations

149. The issue of payment of remuneration to full-time trade union officials of an enterprise union by the employer is one that should be decided by a mutual agreement between the management and the union through normal collective bargaining and agreement process. Therefore, the legislative ban and criminalisation of the employer who violate this ban, and application of punishment in penalty (the ban is defined in Article 24, and the violation of this ban is defined as an unfair labour practice in Article 81 Paragraph 4, and this is liable for punishment of up to two year imprisonment or by a fine up to twenty million won under the Article 90) should be repealed to allow the issue and the arrangement to be worked out by the parties involved through collective bargaining and agreement.

B. The Government's Response and its Second Periodic Report

150. The second periodic report, regrettably, makes no comment on this issue. The demand and recommendation for the repeal of the ban is based on two arguments. First, it circumvents the possibility of autonomous arrangement between the management and the union. Second, the ban may have actual effect of undermining the efficacy and capacity of trade unions as an organisation of workers to protect and advance their rights, welfare, and conditions.

C. Current Situation and Problems

151. Most unions in Korea are enterprise-level unions. Average membership size of the unions is 200 to 400. Given this, if unions are required to fund the income of full-time union officials from their own budget, there would not be many unions that would be financially capable. This would mean activities of unions would be severely curtailed, leading, in many cases, to a total disruption of trade union capacity.

152. The current provision was introduced with the enactment of a new labour law (Trade Union and Labour Relations Adjustment Act) on March 13, 1997. The new law defined the payment of remuneration to full-time union officials at enterprise level as an unfair labour practice punishable

by law. The enforcement of this provision had been postponed to January 1, 2000. Recently the government has – through a course of “member’s bill” – amended the addenda specifying the delayed enforcement to bring the provision into effect from January 1, 2007.

153. The issue of payment of wage for full-time union officials by employer is a matter that should be allowed to be dealt with by a union and the management through their collective bargaining and agreement process. The act of prohibition and the criminal punishment of the employer “violating” the provision can only be regarded as excessive and unwarranted. Therefore, the provision should be repealed immediately, without any condition.

Section 4. The Freedom of association for dismissed or unemployed workers

A. Conclusions and Recommendations

154. The Korean government must recognise that dismissed workers and/or unemployed workers have the right to form or join a trade union and ensure that appropriate amendment of the relevant law is made to guarantee the right.

B. Basis on the International Human Rights Law

155. Article 2 of the ILO Convention No. 87 on “Freedom of Association and Protection of the Right to Organise” stipulates, “workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation”. The provision surely extends to dismissed workers and/or unemployed workers.

C. The Government’s Response and its Second Periodic Report

156. The second periodic report, in para. 68, emphasise that all workers (“who live[s] on wages, salary, or other equivalent form of income earned in pursuit of any type of job” [Article 2:1]), in accordance with the Article 5 of the Trade Union and Labour Relations Adjustment Act, “are free to establish a trade union or to join it”. The government, however, insists that the definition of “worker” does not include dismissed or unemployed workers. Recently, the government has rejected the notice of establishment of a trade union submitted by the Seoul Women Workers Union. The union argued that the constitution of the union, stating “women workers who are seeking employment” can be members of the union, stands in violation of the law which does not allow a non-worker to be a member of a union. The Seoul Administrative Court, however, ruled that the rejection by the Administration was illegitimate and called for its nullification. The case awaits the ruling of the higher court.

D. Current Situation and Problems

157. The current Trade Union and Labour Relations Adjustment Act defines a “worker” as “a person who lives on wages, salary, or other equivalent form of income earned in pursuit of any type of job” (Article 2:1). This definition does not exclude a dismissed worker and unemployed worker. However, another provision of the Act, by stating that “a dismissed person shall not be regarded as a person who is not a worker, until a review decision is made by the National Labour Relations Commission when he/she has made an application to the Labour Relations Commission for remedies for unfair labour practices” (Article 2:4d), brings in the possibility to interpret a person as not a worker at the completion of the decision by the National Labour Relations Commission. The government, on the basis of this provision, denies the right of dismissed workers and/or unemployed workers to join or form a trade union. However, a dismissed worker and/or unemployed worker is a person who shall need to find employment and work to earn a living. As such, dismissed and unemployed workers must be able to enjoy the basic labour rights.

Section 5. Suppression on trade union activities by the use of the Criminal Code

A. Conclusions and Recommendation

158. The Korean government must ensure that police force is not deployed against striking workers to break up their peaceful action and also ensure that no trade union leader or member is arrested and subject to criminal punishment for the exercise of their legitimate right. Also, the Korean government must take release all the trade unionists held in prison for their trade union activities.

B. Subjects of Concern and Recommendations of the CESCR

159. The CESCR, in the Concluding Observations on the initial report, expressed its view that the regulation on the exercise of the right to strike is excessively restrictive and that the government has exercised inordinate - virtually absolute- discretion in decision on the legality of the activities by workers. It had expressed its concern on the attacks mounted by police force against peaceful actions of workers. The CESCR has recommended the Korean government to immediately reform the laws and regulations related to strikes in compliance with the international standards.⁴¹

C. The Government’s Response and its Second Periodic Report

160. A large number of workers were arrested and subjected to criminal punishment for their participation in strike action: More than 1,000 workers of the Hotel Lotte Workers Union were arrested by police and 7 were indicted and imprisoned (June 2000). More than 1,000 workers of the National Social Insurance Workers Union were arrested and 8 were indicted and imprisoned for

⁴¹ E/C.12/1995/3, para.9 and 17

their strike action (June 2000). Workers and union leaders of the E-Land Workers Union, the Daewoo Motors Workers Union, Banking Industry Workers Union were also arrested and subjected to indictment and imprisonment. It is regrettable that the second periodic report fails to comment on this situation, which is one of the most important factors that restrict the activities of trade unions in Korea.

D. Current Situation and Problems

161. The Korean government undertakes criminal action against workers and trade unions which undertake strike action to influence a change in the laws relating to the welfare and rights of workers and unions, to influence the course of corporate structural adjustment, or strikes undertaken by a union without a strike ballot or without going through the procedure of prior mediation of the dispute. In all these cases, the workers and/or trade union leaders are punished under the Criminal Code, which prohibits "obstruction of business" for having interfered with the business of employer, by use of "force" – in this case, the "strike" itself is defined as an "action with force". However, in all these cases, strikes actions did not involve use of "violence" (nor "force" apart from the inherent force of the strike action itself). Such an abuse of the Criminal Code provision against "business interference" to punish trade union leaders is a serious violation of the trade union rights and the right to strike.

162. As most trade unions in Korea are enterprise-level unions, any strike action by a union takes place with the enterprise by occupying certain areas within the workplace. This does not, however, mean that the union engages in destruction of any or parts of the enterprise facilities or forcibly deprive the management of the control over the facilities. It is common, however, for the government to deploy police force to forcibly disperse the striking workers. In the course of suppression, it is also common for the police to use violent means against the workers.

163. In June 2000, the Hotel Lotte Workers Union began a strike to demand the repeal of the compulsory arbitration clause in the collective agreement. The Korean government deployed large number of police to forcibly end the strike by the union. In the course of the suppression, many unionists were beaten by the police wielding various kinds of instruments of violence, resulting in severe injuries to many workers.

164. In the case of Korea Mint, the state agencies, such as the Public Prosecutors Office, deliberately provoked a strike by the union that had been campaigning against a unilateral structural adjustment. The strike thus provoked was used by the state agencies as a pretext for a massive crackdown leading to the arrest and imprisonment of union leaders and activists. The fact of provocation became public through "slip of the tongue" by high-level Public Prosecutors Office

personnel, leading to the establishment of a special prosecutor. The case was a clear evidence of the widespread involvement of security agencies of the State in repression of trade union activities on the basis of a perception that trade unions are a subversion force.

165. The government initiated and compelled the merger of two "healthy" banks – the Kookmin Bank and the Housing and Commercial Bank – to launch the wholesale restructuring of the financial industry. The members of the Korea Financial Industry Workers Union struck on December 22, 2000 for seven days in protest against the unilateral governmental action. The striking workers gathered at the Training Retreat Compound of the Kookmin Bank, camping out at the compound ground. Thus, there was no interference with business (unless the strike itself is an "interference with business" – which is always the case) or exercise of violence by workers in the course of the strike. However, the Korean government responded by sending in thousands of riot police into the Compound to forcibly disperse the workers on strike and arrested a number of unionists. As a result, seven union officials were arrested and indicted. The president of the union is currently wanted for arrest. Three of the seven were indicted and detained while awaiting or facing trial.

166. The union of the Daewoo Motors employees proposed a workforce utilisation plan in response to the crisis in the enterprise caused by mismanagement by the "owner" Kim Woo-Choong. The plan involves one year of leave in rotation for the portion of the workforce that cannot be absorbed into production. Despite the union's forward-looking proposal, the management pushed ahead to undertake retrenchment dismissal involving 1,750 workers. The Union struck in protest. On the fourth day of the strike (February 19, 2001), thousands of police stormed the plant area where the striking workers were staging a sit-in strike to forcibly clear out the striking workers. A number of unionists were arrested in the process.

167. The deployment of police by the government to crackdown on the strike activities of trade unions and the arrest and imprisonment of union leaders on the charge of "interference with business" are severe violation of the basic labour rights. Such a primitive and violent policies and actions of the government against trade unions must be brought to an end immediately. The trade union leaders arrested and held in prison must be released immediately.

Section 6. Ineffective Tripartite Commission

A. Conclusions and Recommendations

168. The Korean government must ensure the full and sincere implementation of the agreements produced at the Tripartite Commission so that the government is seen to be setting an example and

facilitate the Commission to live up to its given function.

B. The Government's Response and its Second Periodic Report

169. The second periodic report does not contain any mention of the Tripartite Commission.

C. Current Situation and Problems

170. The Tripartite Commission established by the government has lost the confidence of the labour and is not able to function as a social consensus making body due to the failure of the government to implement the agreement reached at the Commission in whose production it had participated. As a result, the Korean Confederation of Trade Unions(KCTU) withdrew from the Commission denouncing that the Commission is used by the government as its faithful servant.

171. The Tripartite Commission, in the first round of social compact based on the common commitment of the government, labour, and employers, agreed to guarantee the right of unemployed workers to be a member of non-enterprise level trade union organisation. The first compact also contains an agreement to revise the current labour law, which make payment of wage by employers to full time union officials at enterprise level illegal to allow the labour and management to arrive at an agreement as a part of normal collective bargaining process. However, these issues, which are central to trade union movement, have not yet been resolved due to the inaction and intransigence of the government that is the party that has the responsibility to take action.

172. The defunct state of the Tripartite Commission is found in its failure to respond to various key concerns of the labor and society: working hour reduction, employment security and unemployment concerns arising from structural adjustment, numerous cases of unfair labor practices erupting in the workplaces, absence of protection for workers in precarious and irregular employment. The government must itself – in all its parts – ensure the implementation of agreements it has subscribed to in order to build confidence and trust in the work and role of the Tripartite Commission.

Chapter 10. Irregular Workers(Article 6, 7, 8)

Section 1. The rapid increase of irregular workers

A. Conclusions and Recommendations

173. The Korean government should make it clear that employing irregular workers deepens the

instability of employment and threatens workers' rights. And it should carry out a policy to restrict the increase of irregular workers.

174. The government should not conceal and distort the scale, the actual status and the increasing tendency of irregular workers. It should investigate them accurately and carry out a policy based on this investigation.

B. Basis on the International Human Law

175. Article 1(1) of the ILO Convention No. 122 on "Employment policy" states that "each member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment".

176. In 1995, the experts committee of ILO commented as such on the report written by the United Kingdom that not only should the government pursue full employment but also should have responsibility to provide opportunities for the workers to utilize their abilities and skills. In its comments on Employment Policy Convention (No.122), the committee pointed out as one of the government's responsibilities to promote employment with no term included in the contract.

177. Article 3 of the ILO Labor Statistics Convention stipulates that, in designing or revising the concept, definitions and methodology used in the collection, compilation and publication of the statistics required under this convention, if there exist representative management organizations and labor organizations, consultation with these parties is necessary in meeting their demands and guaranteeing their support and cooperation.

C. The Government's Response and its Second Periodic Report

178. Despite the fact that the increase of irregular workers is becoming a social problem, no specific recognition has been made through the government report. On the contrary, the report emphasized the fact that lots of effort was made to diversify employment forms, citing "Act related to protection, etc, for dispatched workers" which has been practiced since the first of July 1998. This implies nothing more than the fact that government is actually contributing to the expansion of irregular workers legally and institutionally.

D. Current Situation and Problems

179. The employment policy of government intends to intensify the flexibility of the labor market. So it argues that the increase of irregular workers is a natural result of diversifying employment relationships. Based on the results of an outsourced research on the status of irregular workers, the Ministry of Labor proposed reducing the distinction between regular and irregular workers by

reducing safeguard measures for regular workers. It insisted on using the term "non-standard" workers instead of "irregular" workers because it felt that "irregular" had a negative connotation, that people were led to thinking irregular workers were underpaid and subject to poorer working environment compared to regular workers. This is a desperate effort on the part of the government to change people's perception of "irregular" workers, make them more open to it, and in the end make it the dominant form of employment in the name of making labor market more flexible.

180. With this in mind, the government is indifferent to the rapid increase of irregular workers. Irregular workers account for more than half, 52.2% to be exact, of the total economically active population⁴² and the number is on the rise. The actual number is estimated to be higher than the government statistics because it excludes contract workers who renew their contracts on an ongoing basis.⁴³ And workers classified as independent contractor such as insurance agent, teachers who provide support text material, caddies, household laborers are not included in the statistics. When discouraged workers try to get a job, the actual number of irregular workers will rise even higher, because they are more likely to become irregular than regular workers. But the government is not willing to retain accurate statistics.

181. The increase of irregular workers is a more serious problem because irregular workers nowadays are the permanent outsiders suffering from chronic horror of unemployment and low wage, while irregular workers in 1980s existed temporarily to meet the high demand for labor.

182. The government is rather downplaying the rapid increase in number of irregular workers. A paper that came out in January 2001 (ordered by the Ministry of labor) argues that irregular workers take up only 26.4% of the total working population and says the problem is not so urgent. But just like that of National Statistics Office, this paper used an erroneous methodology in which workers who made more than one year contract but continuously have worked through repeated renewals were omitted. Even if we accept this number as being true, it is still the highest among the OECD members. Nevertheless the government is only eager to conceal the problems rather than to solve them.

183. The last problem is the way the government treats statistics. The National Statistics Office postponed making public the statistics of irregular worker status in August 2000. The national statistics office gave the statistics only to the government institute and the association ordered by

⁴² National Statistics office, "Economically active population research", 2000

⁴³ National Statistics Office classifies the two forms of irregular employment. Temporary worker is one who makes a contract between one month and one year. Daily worker is one who makes a contract less than one month.

the Ministry of Labor. Government should open the result to the public immediately.

Section 2. Irregular workers suffering from employment security

A. Conclusions and Recommendations

184. The Korean government should discourage the use of contracts whose term is fixed.

185. The Korean government should make the employers hire dispatched workers (who worked continuously more than two years) as regular workers. Workers who were illegally dispatched must be hired as regular workers. The government must encourage the use of public job placement agencies, because private agencies may take advantage of the workers.

186. The government should accept independent contractors as workers and protect them under labor law.

B. Basis on the International Human Rights Law

187. Preamble of the ILO Charter refers to the prevention of unemployment. To quote Universal Declaration of Human Rights, "everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment".

C. The Government's Response and its Second Periodic Report

188. The second periodic report was touched upon diversification of employment dealing with only the dispatched workers and kept silent about the employment insecurity of irregular workers.

D. Current Situation and Problems

189. According to the second periodic report, the government is doing all it can to introduce job security measures such as support system to maintain the current job and public job placement services to relieve massive layoff brought about by the economic crisis. However, the employment rate of irregular workers through public employment security office is less than 3% of the total irregular workers. The enactment of the Act relating to protection, etc., for dispatched workers ironically led to the promotion of private job placement company that had been prohibited due to the apprehension of broker's exploitation. This clearly implies that the government is not taking proper responsibility to establish a robust employment structure.

190. Employment status of temporary workers becomes very unstable depending on renewal of a contract. As a result, the employers can reduce the wages and increase labor intensity threatening to refuse to renew the contract. Temporary workers cannot but obey because of this instability.

191. Dispatched workers lose their jobs without notice when the using employer orders the replacement of the dispatched workers or upon termination of the dispatch contract. Because most of the private job placement companies employ the workers temporarily, the companies evade the legal responsibilities. The Act relating to protection, etc., for dispatched workers article 6(3) stipulates "if an employer continues to use dispatched workers exceeding two years, such workers shall be deemed to be employed". But using employers evade the article by dismissing the workers just before 2 years are up or employing them with a short-time contract. The government did nothing to solve this convenient expedient, and indirectly encouraged employers to evade the duty of employment.⁴⁴

192. Independent contractors are under the control of the company but aren't recognized as workers on the ground that they are registered under private entrepreneurs. So they cannot have any protection from labor law. The employers can fire them anytime without any obligation.

Section 3. Deprivation of worker's basic rights

A. Conclusions and Recommendations

193. The Korean government should secure temporary workers the right of association, collective bargaining, and acting on behalf of the other workers.

194. To secure the three basic labor rights of dispatched workers, the concept of employer should be extended. Not only sending employers but also using employers should take the legal responsibilities.

195. The Korean government should launch active supervision and regulation to watch out for any types of unfair labor practice to irregular workers.

B. Basis on the International Human Rights Law

196. The ILO Convention No.175 on "Part-time Work" stipulates, "Measures shall be taken to ensure that part-time workers have the right to organize, the right to bargain collectively and the right to act as workers' representatives".

197. The ILO Convention No.181 on "Private Employment Agencies" states "the workers recruited by private employment agencies shall not be denied the right of freedom of association and the right to bargain collectively".

⁴⁴ Ministry of Labor, "Understanding about worker dispatching system", May 2000

C. The Government's Response and its Second Periodic Report

198. It is regrettable that the second periodic report mentioned nothing about the basic rights of irregular workers.

D. Current Situation and Problems

199. As irregular workers recently began to organize trade unions, the destruction of union by employers is also becoming a serious social problem. Employers, who have the authority to renew contracts, threaten workers and attempt to disintegrate the trade unions. But the government does not regulate these unfair labor practices. Rather the government delays issuing the certificates to trade unions and disturbs the organization of the union in many ways.

200. In the case of dispatched workers, one who uses their labor is not the one who makes the contract. So when they organize a union, using employers terminate the contract of worker dispatch or order the sending employer to dismiss the worker who joins the union. The government refuses to penalize the employer for unfair labor practices, because it is not the employer who wrote up the contract, and thus it is not even considered unfair labor practices. As a result, the union of dispatched workers is broken down just after organization.

201. The amendment of "Trade Union and Labor Relationship Adjustment Act" was passed on February 28 by the National Assembly. So enterprise-level multiple trade unions will have been prohibited until 2006. In most companies the trade unions of regular workers are already organized. If the irregular workers try to organize their own union, the law prohibits it. Regular workers have different interest from (sometimes opposite to) irregular workers. So regular workers' union avoids accepting irregular workers. Prohibition of multiple trade unions totally intrudes the right of association. Until now many irregular workers' unions couldn't receive certificates only because regular workers' union already existed.

Section 4. Poor working condition

A. Conclusions and Recommendations

202. The Korean government should improve low wages and other poor labor conditions of irregular workers.

203. The Korean government should apply social insurance to irregular workers.

B. Basis on the International Human Rights Law

204. Article 175 of the ILO Convention No.175 on "Part-time Work" stipulates that "measures appropriate to national law and practice shall be taken to ensure that part-time workers do not, solely because they work part time, receive a basic wage which, calculated proportionately on an hourly, performance-related, or piece-rate basis, is lower than the basic wage of comparable full-time workers, calculated according to the same method". Part-time workers shall not be discriminated in any way regarding employment, treatment at the workplace, maternal leave, employment termination, annual paid leave, and paid holidays.

205. The ILO Convention No. 181 on "Private Employment" refers to safety measures for wage, working hours, social insurance, job training, industrial safety and against occupational accidents.

C. Current Situation and Problems

206. The wage of irregular workers is only 50-70% of regular workers, even though their work is exactly the same. The result of the research by the Korea Health and Medical Worker's Union below shows the difference of wages between regular workers and irregular workers.

Table 9. Comparison Irregular Worker's wage with Regular Worker's one⁴⁵

	Irregular's wage(A)	Regular's wage(B)	percentage(A/B)
Nurse	652,238(US\$501)	1,227,776(US\$944)	53.1%
Pharmaceutical chemist	771,700(US\$593)	1,410,157(US\$1084)	54.7%
Nurse helper	590,303(US\$454)	993,345(US\$764)	59.4%
Medical engineer	719,302(US\$553)	1,201,665(US\$924)	59.8%
Feeding meals	765,629(US\$588)	954,587(US\$734)	80.2%
Cleaner	487,526(US\$375)	970,946(US\$746)	50.2%

207. Employers sometimes shed workers for the sake of restructuring and then hire them back as contract workers, paying only half their original wage. Temporary workers are not treated equally in wage, calculated proportionately to the number of years of employment, bonus, allowance, or retirement pension. Most temporary workers write up a 3-month, 6-month, 9-month, or 1-year contract, and they receive a much less pay than the regular workers. There is no legal or institutional framework to protect them.

208. Irregular workers perform the hardest job in the company and are placed in the worst labor condition. Employers force irregular workers to do the hard job, which regular workers refuse to do.

⁴⁵ Korea Health and Medical Worker's Union

According to the research of the Korea metal worker's federation in 1998, occurrence rate of industrial accidents requiring more than 8 weeks of recovery in subcontractors was 33.9%, compared to 14.6% in primary contractors. And irregular workers suffer from long working hours.(Table 10)

Table 10. Working Hours by the employment type⁴⁶

	1991	1992	1993	1994	1995	1996	1997	1998	1999
Total employees	2,750	2,695	2,687	2,673	2,679	2,660	2,609	2,549	2,578
Regular workers	2,752	2,709	2,706	2,698	2,697	2,668	2,621	2,610	2,659
Temporary workers	2,864	2,794	2,771	2,739	2,763	2,744	2,699	2,628	2,674
Daily workers	2,536	2,461	2,452	2,440	2,441	2,445	2,361	2,139	2,179

209. Irregular workers suffering from low wages and long working hours do not benefit from social insurance programs. According to the research of Korean Confederation of Trade Union, the percentage of irregular workers not benefited from employment insurance is 39.2%, health insurance 41.3%, national pension insurance 42.6% and industrial accident compensation insurance 58.4%. Irregular workers must bear the expense of social insurance on their own.

Table 11. Coverage rate of each social insurance program according to the employment type⁴⁷

<unit: No. of persons, (%)>

Survey group	KLI			KLSI
	Temp/daily/dispatch	Part-time	Full-day regular	Irregular
National pension	59 (63.4)	12 (34.3)	575 (99.1)	55.3+5.2
Health insurance	59 (63.4)	14 (40.0)	575 (99.1)	56.9+1.8
Employment insurance	57 (61.3)	1 (45.7)	566 (97.6)	59.1+2.7
Industrial accident compensation	24 (25.8)	9 (25.7)	412 (71.0)	36.4+5.2
Total N	93	35	580	308-332

⁴⁶ National Statistics Office, "Research on economically active population"

⁴⁷ KLI(Korea Labor Research Institute), "Status research on characteristics of irregular workers", 1999
KLSI(Korea Labor Society Institute), "Status research on irregular workers", 1999

Chapter 11. Right to Social Security (Article 9)

Section 1. The Exclusion of the underprivileged from social insurance

A. Conclusions and Recommendations

210. The Korean government needs to have policies and plans to include working poor such as part-time workers, workers employed by small businesses, and the poor self-employed within the social insurance system. First of all, National Pension is required to reform in order to transfer part-time workers and workers employed by small businesses from local scheme into occupational scheme. In case of medical insurance, the government should no longer put off including irregular workers such as the temporary workers or day laborers within occupational scheme.

211. Since people do not have much faith in the National Pension system, and therefore avoid paying their premiums, it is urgently needed to revise the pension management system and enhance the quality of services. Moreover, in order to promote the efficiency of management of four social insurances, it is needed that four systems should be integrated under a single administrative system. The separation of the administrative functions of four social insurance plans, especially separation of enforcement and collection of contributions and failure of the income reporting system have generated serious problems in both efficiency and equity. We therefore recommend that a single collection agency or the tax authority takes on the functions of enforcement and collection of contributions for the four major social insurances.

B. Current Situation and Problems

212. The social security system in Korea consists of four major social insurance plans to guarantee living standards in the social risks, such as old age, disease, unemployment, etc, and of public assistance programs to ensure minimum living standards for the poor. Among four major social insurances, National Pension has, since 1988, functioned as a protector from the risks of old age, death, and so on, whereas the National Health Insurance(NHI) plan provides in-kind benefits for patients without any cash assistance. The NHI, which started from 1977, now covers all people and excludes few groups. In case of industrial accidents, Industrial Accident Compensation Insurance(IACI) guarantees 70 percents of the former income level of injured workers while they are suffering from industrial accidents. If the injury remains a handicap throughout their life, the workers are provided with Handicap Pension. The unemployed can, since 1995, receive unemployment benefits - at most six to eight months - by the Employment Insurance plan.

213. In spite of rapid expansion of four major social insurance plans in recent years, with priority given to the full-time workers in getting benefits, the disadvantaged people such as the temporary and part-time workers, workers in small businesses and self-employed people have not actually been protected. Although the government expanded its National Pension coverage to include the urban self-employed in April 1999, it is estimated as of late 2000 that 44.4 % of the population participating in economic activities are excluded from the public pension system.⁴⁸ In case of National Pension, a comprehensive pension system in which most people are mandatory insured, a large number of eligible persons have not paid their insurance bills. This is the result from lack of the public perception of National Pension, failure of the income reporting system, lack of people's trust in governmental policies, and so on. Thus, supposing this situation continues, National Pension will worsen the state of income distribution for the aged in Korea.

214. Employment Insurance(EI) and Industrial Accident Compensation Insurance(IACI) also exclude a number of workers. It was estimated at the end of 2000 that 48.6% of the employed were excluded from the EI plan and 32.6% of the employed from the IACI plan.⁴⁹ Since most of these excluded workers are part-timers or workers employed by small businesses, these underprivileged workers cannot be given any benefit for income maintenance in time of unemployment or any protection against the risk of workplace accidents, and thus, have a higher likelihood of falling into poverty. According to governmental statistics of 2000, in 3Q of 1998 when the unemployment rate was highest at 7.7%, only 9.6% of the unemployed were given unemployed benefits.⁵⁰ Although the government recently expanded EI and IACI plans to include workers employed by small businesses with less than five employees. Due to poor administrative management, its outcome has not been so effective. If the social insurance system in Korea, as it has been, continues to exclude part-timers and workers for small businesses, it is rather going to play a role of promoting inequality among the society.

Section 2. Inadequate level of benefits of social insurance

A. Conclusions and Recommendations

⁴⁸ Kim, Yeon-Myeong, "The Expansion of Social Insurances to Irregular Workers: Issues and Policies", 2001. This estimation is calculated by the way of that the total number(11,720 thousand: the number of payers for their contributions) of the insured in the public pension system is divided by the total working population(21,060 thousand) above 15 years old; that is, 55.6 percents. Therefore, 44.4 % is estimated to exclude from the public pension system.

⁴⁹ Ibid. The way of estimation is the same as above. The percentage of total number(6,750 thousand) of the insured in Employment Insurance divided by the total number of the employed(13,140 thousand) is 51.4%; that of total number(8,860 thousand) in IACI divided by the total number of the employed is 67.4%.

⁵⁰ You, Kil-Sang et al., "Evaluation of the Employment Insurance plan and its direction of improvement in

215. With the narrow scope of benefits and the high rate of self-charge, the National Health Insurance functions poorly as healthcare security. We recommend that the scope of benefits be expanded and the rate of self-charge of medical costs reduced.

216. In the system of Employment Insurance, it is needed to establish much more public vocational training institutes. In the Industrial Accident Compensation Insurance, the Korean government should have its policy and plans to focus in-kind services, for example, to increase and improve rehabilitation programs.

B. Current Situation and Problems

217. Four major social insurances in Korea have not been able to play the role of risk spread due to the low level of benefits. The National Health Insurance could not also function as a risk-distribution in that the average rate of self-charge has been over fifty percents of total medical costs, which makes the low-income people greatly disadvantaged in use of medical care. In case of the Industrial Accident Compensation Insurance, cash benefits to the injured workers are quite well provided whereas in-kind benefits to restore labor force such as rehabilitation counseling and job-training programs for the injured are not adequate. In the Employment Insurance plan, there are few employment service agencies, professionals engaged in such agencies, and public vocational training institutes, which can help the unemployed find jobs.

Section 3. Insufficient Social Security Budget

A. Conclusions and Recommendations

218. As the rate of irregular workers has, since the recent financial crisis, been rising over 50 percents of the total working population, the need for the establishment of social safety-net has been growing and the demand for healthcare and social welfare has also been increasing. Since the current social security budget is insufficient, it is, therefore, inevitable for the Government to expand the social security budget. We recommend that the Korean government should have a time-fixed plan to increase the social security budget.

B. Current Situation and Problems

219. In spite of government's subsequent efforts to enhance social security systems in Korea, social security budget, which determines the level and quality of social security, is very insufficient. Under the OECD standards, gross public social expenditure of Korea was 6.8% of GDP in 1997.⁵¹

Korea", 2000, p. 121

⁵¹ Koh, Kyung-Hwan et al., "The estimation of social expenditures in Korea: 1990-1997, with OECD's methodology of estimation", Korea Institute for Health and Social Affairs, 1999, p.64

Compared with Sweden(33.4% of GDP), France(30.1%), the United States(16.3%), and Japan(14.1%), the Korean level(5.4%) of social expenditure is only one-third or one-sixth that of most developed countries. Within OECD-member states, Korea ranked the lowest with Mexico in 1995.⁵²

220. The Korean government has raised the contribution level of the insured in order to secure the necessary finances, rather than increasing the liability of the government for social security or pursuing tax reforms. Even under the 'Productive Welfare' of Kim Dae-Jung government, the budget related to social security has not been sufficiently expanded. The social welfare budget (including budget of the Ministry of Health and Welfare and budget related to unemployment policies) is only 7.4 % of the whole governmental budget of 2000.⁵³

Table 12. OECD States, Percentage of GDP at social expenditures(1995)⁵⁴

(Unit. %, US \$)

	Gross public social expenditure (a+b)	Direct public social expenditure (a)	Mandatory private social expenditure (b)	Payment per capita*
Sweden	33.38	33.01	0.37	6,190
Denmark	32.58	32.05	0.53	6,890
Finland	32.12	31.97	0.15	5,730
France	30.07	30.07	n.a	6,000
Germany	29.61	28.01	1.60	5,750
Belgium	28.78	27.13	1.65	5,730
Norway	28.48	27.59	0.89	6,310
Netherlands	27.99	27.78	0.21	5,520
Austria	27.11	26.17	0.94	5,400
Luxemburg	25.24	25.24	n.a	7,880
Switzerland	25.22	20.97	4.25	5,270
Italy	23.71	23.71	n.a	4,610
UK	22.79	22.52	0.27	4,090
Spain	21.49	21.49	n.a	3,080
Iceland	19.87	18.62	1.25	4,040
Ireland	19.40	19.40	n.a	3,380
Czech Republic	19.23	19.23	n.a	2,210

⁵² OECD, "Social expenditure database 1980-1996", 1999

⁵³ Special Committee on Budget and Accounts of the National Assembly, "A report on governmental budget of 2001", Nov 2000

⁵⁴ OECD, "OECD Social Expenditure Database 1980-1996", 1999

* Payment per capita = Direct public social expenditure/Total population

New Zealand	18.80	18.80	n.a	3,220
Portugal	18.64	18.26	0.38	2,270
Canada	18.24	18.24	n.a	4,000
US	16.26	15.76	0.50	4,320
Australia	15.73	15.73	n.a	3,160
Japan	14.06	13.80	0.26	3,060
Turkey	6.79	6.79	n.a	390
Mexico	3.67	3.67	n.a	280
OECD average	21.71	21.15	n.a	4,203

Section 4. Aggravation of Poverty

A. Conclusions and Recommendations

221. Since the recent financial crisis, the poverty in Korea has been aggravated as Gini coefficient has grown from 0.283 in 1997, to 0.320 in 1999. With the increasing rate of irregular workers, the rate of working poor is rising. It is required for the Korean government to research the number and actuality of the poor and have the policies and plans to mitigate the current poverty that now indicates new aspects.

222. The National Minimum Living Standards Security Act(NMLSSA) as a program of income security for the poor is more strict than the former Living Protection Act in its eligibility criteria. Its property criterion and 'size of house' criterion as its eligibility criteria, which may break the law and nullify the goal of NMLSSA, should be eased or repealed to ensure the recipients' right to a decent life.

223. The adequacy of the level of cash and in-kind benefits in NMLSSA is the key of the system of income security. However, the level of its living-cost benefits cannot meet the national minimum living cost; its housing benefits are provided as a certain amount unrelated with the level or situation of recipients' housing. In case of healthcare benefits, the poor able to work are discriminated to pay the self-charge that is 20 percents of the total cost(when they are hospitalized). We recommend that the Korean government should allocate sufficient budget in order to increase the level of benefits of NMLSSA so that it can function properly as an income security system.

B. Current Situation and Problems

224. Since the recent financial crisis, lower income brackets have been growing. According to statistics of the Korean government, Gini coefficient has grown from 0.283 in 1997, to 0.316 in

1998, and to 0.320 in 1999.⁵⁵ Also, the Report on Korean poverty sponsored by UNDP indicated that one-fifth of the total population lives below minimum living standards.

225. The former public assistance system, Living Protection Act had an insufficient capacity for mitigating the Korean poverty that has intensified since the recent economic crisis. Therefore, NMLSSA was legislated in August 1999 to ensure that basic needs, including housing, education, and healthcare, are met for all people living below minimum living standards, and started to implement from October 2000. Whereas people who have the ability to work could not receive welfare benefits under the former Living Protection Act, NMLSSA ensures that any person whose incomes do not meet the minimum cost of living, if he/she has the ability to work or not, will receive welfare benefits from the government and stresses national responsibility based on the constitutional right for all people to live a decent life.

226. However, in its implementation, the Korean government made it very difficult for the poor to become its recipients; the government set its eligibility criteria more strictly than the former Living Protection Act. The Ministry of Health and Welfare even set, for example, a 'size of house' criterion as one of its eligibility criteria, which may break the law and nullify the goal of NMLSSA. The government did not allocate the budget needed to guarantee minimum living standards for its recipients within the governmental budget of the year 2000 and 2001. The level of cash benefits is rather adjusted lower than the minimum cost of living in order to meet this insufficient budget. There are thus criticisms that the implementation of NMLSSA would, for the poor, not be better than the former Living Protection Act and it would be only a political propaganda of the government. Although the rate of poverty has grown much since the economic crisis, the number of its recipients has not risen as much, compared with the number in the former system.⁵⁶

227. Also, in the case of healthcare security system, the government policies discriminate against the poor able to work; in other words, much like the former system, differentiate the level of benefits depending on the ability of the poor to work or not. Its goal to guarantee that basic healthcare needs are met for the poor is totally forgotten. If person A is able to work, no matter how poorer he is than person B who is unable to work, person A has to bear more healthcare costs than person B. Even for the beneficiaries who are unable to work, the Korean health care system allows benefits for medical services covered by the National Health Insurance only, and they have to pay the total cost for other services.

⁵⁵ You, Kil-Sang. *ibid*, p35

⁵⁶ Whereas the number of the former Living Protection Act's beneficiaries in 2000 was 1,520 thousand, 1,490 thousand was that of the NMLSSA's in October 2000 when this new law started to implement.

Section 5. Lack of Infrastructure of the Social Security System

A. Conclusions and Recommendations

228. Although the Korean social security was systemized, the level of benefits and the quality of services are low. The reason is there is a shortage of manpower for social security and the administrative system is inefficient. We recommend that the Korean government increase the number of public officials employed in social welfare and improve the administrative system related to healthcare, welfare, and unemployment.

B. Current Situation and Problems

229. In order for the social security system to function effectively and efficiently, the number of welfare professionals absolutely needs to increase, not to mention administrative organization. Although the government has made certain efforts to increase the number of welfare professionals and job-counselors, we still find lack of professional manpower in providing adequate services.

230. The number of NMLSSA recipients is now about 1.5 million as of January 2001, while that of public officials employed in social welfare is now 4800; that is, average number of recipients per one public official is 315. Therefore, it is impossible to expect any quality of social welfare services with this level of manpower.

231. Moreover, there is no nationwide infrastructure, which would serve as the basis for providing services for healthcare, employment, and social welfare. Administrative organizations that are involved in providing services for public health, unemployment, and public assistance are operated separately and unsystematically. In order to improve the efficiency of various programs, it is necessary to establish an administrative infrastructure to get a systematic approach in covering welfare, healthcare, and unemployment. And also the establishment of administrative system centering on recipients will make it efficient and effective to provide services.

Chapter 12. Rights of Women(Article 2, 6, 7, 10)

Section 1. Status of women in politics, policymaking process, and government positions

A. Conclusions and recommendations

232. Political parties need to have a quota of more than 30% women when nominating candidates

from local regions, and a quota of more than 30% women when selecting important party positions; and the government and local government organizations need to expand the participation by women in various committees to more than 30% until the year 2000, and need to apply severe penalties to those organizations that do not meet the yearly quota.

B. Basis on the International Human Rights Law

233. Article 7 of the UN Convention on the Elimination of All Forms of Discrimination against Women requires state parties to take every appropriate step to abolish discrimination against women in political and public life, and to give women the right to carry out public functions in all levels of government positions by participating in drawing bills and carrying out the bill by serving in public official positions with the same status as men. And in the 23rd UN women's special committee in June 2000, the importance that "women need to participate fully in the process of policy decision in all areas including amongst governments, within the government, and in non-government sector" was acknowledged and accepted. Gradually, more countries are taking active measures, and the committee agreed that "the forms of measures are quota system, voluntary agreement, target plan, training programs for women leadership, and the measure that could harmonize responsibilities for family and work for men and women. In this sense, the Korean government has an international obligation for taking active measures to guarantee political and public activities by women.

C. The Government's Response and its Second Periodic Report

234. The second periodic report describes that legal basis was made for setting a target rate for the participation of women in different committees of national and local governments in 1996 and that the system of setting a target rate for hiring women government workers has been conducted since 1996. However, the success rate is very limited in that the participation rate by women in committees of central administrative organizations and local government organizations as of 1998 is a mere 8.2%, which is lower than 9.2% in 1996. Specific methods to guarantee the effectiveness of the quota system have not been devised yet.

D. Current Situation and Problems

235. Although a 30% quota has been set for National Assemblymen according to the Political Party Law of national congressmen(revised in February 8, 2000), only one political party kept this quota for the 16th General Election in 2000.

236. Participation of women to a certain degree in the political area, process of policy making and the area of government position is necessary to reflect a gender balanced view in deciding national policies. However, as of the year 2001, only 16(5.9%) are women out of a total of 273 national assemblymen, which is way below the world average of 12.3%, 35.9% in European countries, and

13.9% in Asian countries. The percentages of assembly women for the third local government assembly election were also low at 5.9% in megalopolis assemblymen and 1.6% in drafting committee members, ranking Korea 95th⁵⁷ in the world for women advancing to the National Assembly.

237. As of 1999, the percentage of women workers in the Administration, National Assembly, and the Judiciary is 29.7%, out of which only 2.0% are in a position higher than Level 4. As of 2001, only two are women Ministers (including the Minister of Gender Equality) with no vice-Minister, 0.7% is a Level 2 public servant, 1.8% Level 3, and 2.0% Level 4.⁵⁸

238. The Korean government is not supporting (such as the system of temporary retirement for housework and the system of temporary retirement for accompanying spouses abroad) women in expanding their scope of participation in politics and high-level policy making process.

Section 2. Ineffective implementation of the law related to women's equal rights and protection of victims

A. Conclusions and Recommendations

239. The scope of potential rape suspects should be expanded to include every person. The victims of sexual violence need to be protected by abolishing a formal complaint from the victim as a prerequisite for prosecution and introducing the system of automatic compensation. A system needs to be set up for actually supporting the victims of domestic violence.

B. International duties of the Korean Government concerning the Status of Women

240. In the UN Commission on the Status of Women in 1998, the Korean government promised to place its effort in abolishing violence against women, supporting NGO activities, taking active measures against all types of human trafficking, protecting the rights of foreign workers, women and children, and supporting investigation of violence against women.

C. The Government's Response and its Second Periodic Report

241. The second periodic report states in para. 146 that it amended in January 1994 and carried out 'Act of the Punishment of Sexual Crimes and Protection of Victims thereof' for preventing the crimes of sexual violence and protecting the victims, and amended in 1997 and carried out 'Prevention of Domestic Violence and Victim Protection Act' to protect women from domestic violence.

⁵⁷ The Presidential Commission on Women's Affairs, "Women Annual Report", 2000

⁵⁸ The Ministry of Government Administration and Home Affairs, "Annual Statistical Report", 1999

242. However, in order for sexual violence to become a punishable crime, the victim needs to prove that she has resisted with all her might. The victim cannot be protected under the above law if the resistance is anything short of strong enough and when the victim's sexual free will has been invaded. And nothing is mentioned on corrective and educational programs by the government for the offenders of domestic violence and preventive education for the victims of domestic violence.

D. Current Situation and Problems

243. **Sexual violence:** As for the number of counseling cases received by the representative civilian counseling center for sexual violence in Korea, "Korea Sexual Violence Relief Center", the number in 1999 was 3,692 cases, which increased by 25.2% from 2,948 in 1998. As for the age of the victims, 56.4% was adults, 19.7% adolescents, and 19.7% children and infants, with minors taking up 39.6% of the victims. Especially with the enactment of Gender Discrimination Prevention and Relief Act in 1999 and the introduction of a new clause dealing with sexual harassment in the workplace within the Gender Equality Employment Law, the number of counseling cases related to sexual harassment and sexual violence in the workplace accounted for 22.2% out of all the counseled cases, increasing significantly from 304 cases in 1998 taking up 14.6%. The number of victims harassed by stalkers was 258 in 1999, which took up 7.4% of all the counseled cases, and is on the rise. Also, 83 cases, or 3.3% out of total, were concerned with exposure to obscenity on-line.

244. However, most of the crimes of sexual violence are crimes requiring a complaint from the victim for prosecution so that no prosecution can be achieved when the victim does not make a complaint. The process of protecting the victims is limited since there is no automatic compensation system in place, where the victim could obtain compensation from the offender in a criminal suit without a separate civil suit. Absence of forceful regulation or punishment leads to lax implementation of the clause, which provides "the victim shall not be disadvantaged in any way." To make things even worse, victims of sexual violence are not guaranteed medical help for treatment of any bodily/mental harm done.

245. The items of obligation clearly stated in 'Prevention of Domestic Violence and Victim Protection Act' are not really obligations but mere recommendations in public health clinical and national medical facilities so that these items are not carried out specifically.

246. Since the regulation of sexual harassment written in Sexual Equality Employment Act and Gender Discrimination Prevention and Relief Act only mentions what punishment the employer is subject to, additional clause needs to be written about the punishment of the offender of sexual harassment.

247. **Domestic violence:** After the 'Special Act for the Punishment of Domestic Violence' has been implemented, 13,500 cases were prosecuted for domestic violence until October 1999. Incidence of domestic violence is continually rising from 420 in July 1998 in the early days of implementation to a monthly average of 920 cases starting October 1999.⁵⁹

248. Most of the victims of domestic violence are women who lack economic independence. The support of government for psychological treatment or for vocational training and job placement is severely limited. And although measures exist to protect the victims of domestic violence such as the temporary measure of preventing the offender to approach the victim and ordering of counseling, these measures lack effectiveness since no punishment is present when these measures are not abided by.

Section 3. Measures for stable and equal employment, and unemployed women workers

A. Conclusions and Recommendations

249. The application of the labor law needs to be expanded throughout workers of all workplaces including irregular workers, household laborers, and small-scale businesses. Management and supervision should be strengthened to watch out for unlawful firing of women. A quota system of more than 30% women needs to be implemented in hiring, placement, promotion, and vocational training in the government sector. Specific process that is effective for equal employment needs to be made. The system of paid leave for child-rearing and day-care facilities within workplace needs to be strengthened and expanded. Leaves should be granted for taking care of sick family members. Paid leave before and after giving birth should be increased to 100 days and paid by social insurance. Paid leave for mothers who had a miscarriage, and leave system for a regular check-up on mother and fetus, and for fathers who had a child should be legalized.

B. Basis on the International Human Rights Law

250. Article 11 of UN Convention on the Elimination of All Forms of Discrimination against Women requires the Korean government to guarantee women the same work conditions that are given to men with equal pay, to protect health and safety of women, to protect women against discrimination due to marriage and pregnancy, and to take appropriate measures so that women can handle both family and work. Article 3(2) of the ILO Convention No. 183 on "Maternity Protection", also recommends that the leave for giving birth should be a minimum 14 weeks, and

⁵⁹ Internal data from the National Police Agency, 1999

Article 4(1) states that appropriate pay and medical benefit are recommended during the leave.

C. The Government's Response and its Second Periodic Report

251. The second periodic report stated in para. 156 that the system of giving leave for rearing child is being carried out. It does not, however, report exactly how many women and workplaces implement and use this system because it wants to hide the truth. Actual dependency rate on this system is very low because full pay is not guaranteed during the leave and the woman is fearful that a bad mark will be left on her personnel evaluation sheet. And the government report does not mention its financial support for day-care facilities within workplace and protection of mothers. Nor does it touch upon the relationship between marriage and work, for example, how married women and women who have been working long in a company are always the first to be dismissed come a wave of layoff.

D. Current Situation and Problems

252. **Problem of irregular jobs and special employment status in women workers:** As of April 2000, 70.5% of women work in workplace with less than 4 employees. However, many women do not get legal benefit since Labor Standards Act and Sexual Equality Employment Act are not fully applied in workplace with less than 4 employees. For instance, provisions related to retirement pay, working hour, extended working hours, holidays under the Labor Standards Act are not applied in workplace with less 4 employees.

253. As of April 2000, the share of women in irregular position is 70.5% out of the total women work force. Women workers in irregular positions, suffering from the same long hours as those in regular positions, receive only 63.1% of male workers' payment and are discriminated in various benefits, leaves and social insurance⁶⁰. Although these women are not guaranteed the rights stated in the Labor Standards Act, there is no investigation and supervision on those workplace invading the Labor Standards Act. There is a lack of policies for protecting those workers in irregular positions.

254. With the employment status of women workers becoming more diversified such as domestic workers and golf caddies, which is an irregular employment status, legal disputes on how to define a job are becoming more frequent. In the case of golf caddies, the early retirement practice is still present, but legal interpretation sees it differently so that legal relief is lacking.

255. **Problems of firing women first and discrimination at the time of hiring women:** In the process of restructuring employment after the IMF economic crisis, new forms of gender inequality

⁶⁰ Special Committee on Women's Affairs, "Women Annual Report", 1999

have emerged, and the most typical form is the practice of "firing women first". At National Agricultural Cooperative Federation, firing of women based on sexual discrimination was done frequently including firing of 691 married women out of 704 married couples through a restructuring program within the organization after the IMF economic crisis. Especially, the illegal form of firing women first was done such as firing married women (double income women, women married to men within the same workplace, and women who are on birth leave), firing long-term employees who are women, and placing women in irregular jobs after firing them. Against this backdrop, unrealistic relief measures prevent these women from seeking substantial help.

256. At the time of hiring only women, age discrimination and appearance discrimination are committed because indirect discrimination such as age discrimination and discrimination according to appearance can artfully dodge the gender equality employment law.

257. **Problem of sexual harassment, abusive language and violence within workplace:** After the item of the 'prevention of sexual harassment within workplace' was newly established in the Gender Equality Employment Law in February 1999 and the law related to preventing and relieving gender discrimination was carried out, the number of cases related to sexual harassment registered with administrative organizations by women workers has been increasing in recent years. According to a survey on 328 women union workers of Lotte Hotel in 2000, 70% of the women surveyed experienced sexual harassment, showing that sexual harassment is still a serious problem within workplace. However, despite the serious nature of this sexual harassment issue, the current law is weak for actually preventing sexual harassment within workplace.

258. Sexual harassment within workplace, abusive language and violence within workplace pose serious threat to the labor rights of women workers. Thus, legal measures are needed to punish and prevent abusive language and violence within workplace.

259. **Helping women to balance between work and family:** The Gender Equality Employment Law gives the women and their spouses with infants younger than one year old up to one year of leave without pay including birth leave, but the rate of carrying out this system of taking leave for rearing children, and the rate of people using this system is low since pay is not preserved during the leave period and disadvantage is given during personnel move in most cases.

260. According to the assumption by 1997 statistical data, the number of children needing day-care service other than those children who can be reared at home is reaching 1,080,000. Among these children, 556,000 children are receiving day-care service at 17,605 day-care facilities at the end of 1998. Among these children, the number of workplace day-care facilities is a total of 184 that can

look after only 5,823 children⁶¹, tremendously lacking in the number.

261. The system of taking leave for housework has been conducted since January 1995 according to the revision of State Public Officials Act and Public Educational Officials Act. According to the statistics provided by the Ministry of Government Administration and Home Affairs in November 1995, the number of government workers who took leave according to the system of taking care of family member is a mere 21 (7 men, 14 women), and this system has not been legalized and only 5.6% of corporations have introduced this system.

262. The current birth leave is defined as a total of 60 days including 30 days of after-giving-birth leave, but this needs to be increased since it does not meet the standards of advanced countries and ILO Maternity Protection Convention.

263. Under the current system of imputing most of maternity protection cost (pay during the period of birth leave, menstruation leave with pay) to the user, businesses avoid hiring women since labor cost other than wage is higher when hiring women compared to hiring men.

264. The initial plan for establishing the basis for women workers' welfare announced the introduction of paid leave system for miscarriage as one of its plans, and currently this system is defined as a Ministry of Labor guideline. According to the guideline of the Ministry of Labor, premature birth or miscarriage after 8 months of pregnancy (or after 197 days of pregnancy, assuming 1 month is 28 days long) is treated the same as full-term pregnancy and is granted 60 days of leave. Miscarriage after pregnancy of between 4 months and 7 months is granted 30 days of leave. Miscarriage after a shorter period of pregnancy requires a doctor's note and other proof, for which the woman receives more than 30 days of leave. However, because this system is not legalized, it is non-binding. It is vital to change the Ministry guideline into a law and the society needs to share the burden of the paid miscarriage leave.

Section 4. The Family Headship System ("Ho-Ju")

A. Conclusions and Recommendations

265. The Family Headship System ('Ho-Ju') needs to be abolished, and the family structure centering around the patriarchal lineage should be improved by giving democratic freedom in selecting surnames.

⁶¹ Special Committee on Women's Affairs, "Women Annual Report", 1999

B. Basis on the International Human Rights Law

266. According to Article 16(g) of UN Convention on the Elimination of All Forms of Discrimination against Women, the discrimination applied to women in family and family relationship needs to be abolished, and women and men should have the equal right to select their surnames.

267. On 1 November 1999, the Human Rights Committee recommended in the Concluding observations on the second periodic report on the Civil and Political Rights in Korean as follows. "The Committee is seriously worried about the law and practice of promoting and strengthening the discriminatory attitude against women. Especially, the 'Ho-Ju' system also reflects and at the same time strengthens the patriarchal society that places women in subordinating role. The practice of determining sex of fetuses, the unequal rate of birth of boys who are born as the second and third child, and risky abortions that clearly induce a high maternal mortality are seriously worrisome. The Committee emphasizes the fact that the failure by the government in carrying out the article 3 and article 26 of the ICCPR, the duty of the government for giving equal rights and equal legal protection to men and women clearly stated in this regulation, is not justifiable due to the attitude of society."

C. The Government's Response and its Second Periodic Report

268. The Korean government has not mentioned anything on the evils of the 'Ho-Ju' system, which is in the center of the patriarchal ideology, or its effort in abolishing this system.

D. Current Situation and Problems

269. In Korean society where the patriarchal ideology is predominant, the Family Headship System exists, which discriminates men and women, husbands and wives, and first sons and second sons.

① When a man and a woman get married, the woman must place her name in the husband's 'Hojeok' (a status registry that records changed items of a person including birth, marriage and death), and when a child is born, the birth of the baby is recorded in the 'Hojeok' of the father. Until the child becomes an adult or gets married, the child cannot take the name out of 'Hojeok' of the father even when the parents divorce. ② Also, when the father('Ho-Ju') dies, the headship is inherited to the sons first (the order of inhering headship is son - grandson - unmarried daughter - wife). ③ The fact that the last name of the children must follow the father's is the essence of inequality. Thus, due to this strong patriarchism, those women who could not bear sons are living under disadvantageous circumstances.

270. Due to the deep-rooted view of preferring males, the number of illegal abortion after determining the gender of the child has increased in the era of having few children; the ratio of

female children vs. male children in 1999 was 100 girls per 109.6 boys, and this male dominance is more distinct in the third-born children. With the current trend, the ratio of groom to bride is predicted to be 123 by the year 2010, forecasting serious imbalance in gender.

271. Also, the regulation of preventing marriage between those having the same surname and place of origin, which was declared to be unconstitutional in June 1997, is still present in the items of law. And the improvement in the 'Ho-Ju' system that has the problems described above is not made at all so that the women sectors and civil organizations have formed solidarity network to demand the abolishment of this system.

Chapter 13. Protection of Children(Article 6, 10, 11)

Section 1. Child Labor

A. Conclusions and Recommendations

272. The Korean government should set up authorities which are fully responsible and able to supervise child labor so that children can be protected from labor exploitation and exercise rights to have fair and favorable labor conditions.

B. Basis on the International Human Rights Law

273. Article 32 of the Convention on the Rights of the Child defines that State Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. Therefore, the Korean government should take relevant measures to protect the child from hazardous labor. As for the labor permitted for children, the Korean government should control and supervise them so that children can have fair and favorable labor conditions.

C. The Government's Response and its Second Periodic Report

274. The second periodic report explains of regulations on child labor protection in para.177. But it doesn't mention the real situation that most child workers are exploited in many ways such as low wage, delays in payment and overwork.

D. Current Situation and Problems

275. The minimum employment age in Korea is 15, except that children between 13 and 15 can be

employed with work permit from labor-related authorities. But the yearly application for the work permit numbers only a few, which means the work permit system which was introduced to protect the child from illegal employment(employment of children under 13 and in areas prohibited to employ the child) is actually ineffective. The exact number of working children between 13 and 15 is not grasped yet.

276. The number of working people between 14 and 18 has been 425,000 in 1997, 411,000 in 1998, 432,000 in 1999, and 449,000 in 2000.⁶² Most of them are doing simple labor such as assistance in kitchen or giving out advertisement leaflets. Representative job areas for a child between 14 and 18 are gas stations, convenience stores, and fast food restaurants. Most children in these areas are working as irregular workers for short time. These stores seem to prefer child workers because of low wages.

277. According to the report of the Ministry of Labor in September 2000, 90% of these stores employ on average 12 children under the age of 18.⁶³ But many children working here suffer from poor working condition without their rights guaranteed. According to the same report of the Ministry of Labor, the average monthly wage of the child working here was 547,000 Korean won(US\$420), only 30% of the average wage of whole workers. Moreover in 172 stores or 48% of stores under survey, the child was overworking(working hours according to the law is 7 hours a day) and working at night and on holidays without permission of local labor authorities which violates the Labor Standards Act. The survey by a NGO also showed that many working children are exploited illegally. According to YMCA's survey over 3,833 children between 13 and 20 in September 2000, 30.4% of them have had a part time job. Among those who have working experience, 60.8% of them have got low wage of under 2,000 won(US\$1.5) per hour, and 22.6% of them haven't got their wages as contracted. 20.5% of them were not properly paid for their overworking.

278. The main reason why these things happen is that there is no governmental authorities fully responsible for child labor and it is not supervised regularly. 'Women Employment Support Division' is in charge of child labor in the Ministry of Labor. In local labor authorities, which should directly control and supervise child labor, there are no officials in charge of child labor. According to the inspection of the government offices conducted by the National Assembly, supervision over child labor for whole year 2000 was implemented only once in July. Even that was limited to 420 stores. As a result, working children are neglected outside protection of law.

⁶² National Statistics Office

⁶³ According to the survey of the Ministry of Labor, among 404 stores in 3 areas(manufacturing, wholesale and retail sale, restaurant and lodging) 90% of them or 366 stores were employing 4347 children under 18.

Section 2. Sexual Exploitation of the Child

A. Conclusions and Recommendations

279. Punishment on child prostitute racketeer should be intensified. Child prostitute should not be prosecuted and measures should be taken to help these children restored to the society.

B. Basis on the International Human Rights Law

280. Increase of children employed in merrymaking business and child prostitutes means that the government is not taking active measures to implement responsibilities regulated in Article 34 ("protection from sexual exploitation and abuse") of the Convention on the Rights of the Child.

C. The Government's Response and its Second Periodic Report

281. The government report doesn't mention sexual exploitation on the child separately.

D. Current Situation and Problems

282. In 1999, the Prosecutor's Office investigated cases of young girls (mostly students) receiving pocket money from older men for their sexual services and out of 8,033 female employees working in bars and such places, 48.1%, or 3,868 were under 18.⁶⁴ It means that child prostitution is already a serious social problem. But suspects of 'money-for-sex relationship between young girls and older men' are not punished properly. Among 61 arrest warrants to suspects of such indecent relationship, 31 cases or 50.8% were denied during first half of the year 2000. The rate is 3.7 times higher than average denial rate of arrest warrants on criminal cases(13.7%). 'Act of Protecting Youth from Sexual Crimes' implemented from 1st July 2000 intensified punishment on child prostitution and sexual crimes to children. But there is an opinion that considering child prostitutes are also victims of patriarchal society, they should be excluded from criminal prosecution as the prosecution makes it harder for child prostitutes' restoration into society. In February 2000, two 16-year-old girls actually committed suicide after being prosecuted for prostitution. With the implementation of Act of Protecting Youth from Sexual Crimes in July 2000, Youth Protection Committee, which belongs to Prime Minister's Office, announced that child prostitutes would be exempt from criminal punishment and properly guided in 4 steps. But in January 2001, Seoul Local Prosecutors Office arrested a 16-year-old child prostitute for violating 'Act of Protecting Youth from Sexual Crimes'.

Section 3. Children skip meals

⁶⁴ Youth Protection Committee, "Number of underage girls working in the merrymaking business and investigation status"

A. Conclusions and Recommendations

283. The Korean government should expand its budget to provide adequate meals to children who skip their meals during holidays and vacation as well as during the school semester. Families unable to cover expenses for children's food should necessarily be beneficiaries of the National Minimum Living Standards Security Act. Local authorities should also support NGOs and community welfare centers to provide children who skip meals with after-school programs to settle their psychological, educational, and physical problems.

B. Subjects of Concern and Recommendations of the CESCR

284. In para.4 of General Comments 12, the CESCR states, "the right to adequate food is inseparable from human dignity, and is integral to achieving other human rights guaranteed by the international human rights bills. It is closely connected to social justice." It stated in para.14 that "all State Parties are responsible for guaranteeing minimum amount of food required for all within the jurisdiction". The following paragraph 15 claims that if an individual or group cannot enjoy the right to eat due to reasons lying outside of their control, the State is responsible for fulfilling that right directly. According to these statements, present measures of the government for children who skip meals are not enough.

C. The Government's Response and its Second Periodic Report

285. Although 164,000 children can't have their meals at home, the second periodic report doesn't mention anything about it.

D. Current Situation and Problems

286. The number of children who can't have adequate meals at home in 2000 is estimated to reach 164,000.⁶⁵ As it is the survey over students attending school, the real number would be much larger if children under school age, children of 1st and 2nd grade in elementary school to whom the school lunch program is not applied, and middle and high school students who refused to get free lunch from school because they don't want to be branded poor are taken into consideration.

287. The Ministry of Education is providing 164,000 children with lunch in school. The Ministry of Health and Welfare also provides supper for children of beneficiaries under the public assistance system, but the number of beneficiaries is only 22,589.⁶⁶ This means that the government can guarantee only one meal for 140,000 children. It also implies that the minimum living expense supplied to low income families by the government is not enough to feed their children.

⁶⁵ The Ministry of Education

⁶⁶ Report by the Ministry of Health and Welfare submitted to the parliamentary inspection to the government offices in 2000

288. As even that one meal is not guaranteed during vacation, children's right to eat, right to adequate living condition are threatened. In March 2000, the Ministry of Education promised to supply starving children with lunch even in vacation and on holidays. But according to the announcement of the Coalition of NGOs for children skipping meals on 7th September 2000, local authorities seldom supported free lunch for children during summer vacation in 2000. Some authorities supported expenses for lunch, but the sum was only 2,000 won for one meal, which is not enough for an adequate meal.

289. According to the survey of a NGO(Korea Left-over Welfare Mission Center) which provides starving children with lunch, among 209 families with children skipping meals, only 36.3% of them were benefited from the public assistance system. It means that families who are too poor to provide their children with lunch are not getting any public aid from the government.

Chapter 14. Right to an Adequate Standard of Living(Article 11)

Section 1. Forced eviction and measures for tenants

A. Conclusions and Recommendations

290. The Korean government should not only modify the regulations that limit legal protection to the tenants evicted due to re-development projects and public development projects but also introduce legal protections for those who are to be evicted due to private developments.

291. The Korean government should expand the extent of applications of measures defined in the Urban Re-development Law such as temporary accommodations and housing loans to every homeowner and tenant forced to quit.

B. Subjects of concern and Recommendations of the CESCR

292. The CESCR General Comment 4 provides that tenure security of those to be forcibly evicted should be legally protected. And, in the Concluding observations on the initial report, the CESCR suggested that the government should ensure that no evictions are carried out without offers of alternative housing.

C. The Government's Response and its Second Periodic Report

293. The second periodic report, in para. 216, refers to the measures such as temporary accommodations or housing loans for those whose houses are demolished due to re-development

projects. The problem is that the Ministry of Construction and Transportation, the competent authority, interprets this measure as applicable only for the homeowners and not for the tenants. It is not taken into consideration that temporary accommodation and housing loans are urgent not only for the homeowners but also for the tenants.

D. Current Situation and Problems

294. The measures for tenants who face forced eviction due to public development projects or redevelopment projects are provided in the "Special Act concerning Acquisition and Compensation of Public Land" and local governments' ordinances relating to housing redevelopment. However, these are not appropriate for those to be forcibly evicted. First of all, they can only be applied to limited people who have to be evicted because of public development projects or redevelopment projects. There is no legal protection for tenants to be forcibly evicted because of private developments. Even for the former, the measures may not be applied if they have moved to related areas less than 3 months before development projects were decided.

Section 2. Housing Problems of Low Income Households

A. Conclusions and Recommendations

295. The Korean government should take immediate steps to resolve the problem of affordability. It should reorganize the distribution and the management system of public rental housing to realize the principle of supplying adequate housing reflecting each family's housing need and affordability.

296. The Korean government should provide alternative policies for the various forms of housing poverty such as homelessness, overcrowding, poor facility and unstable occupancy.

B. Basis on the International Human Rights Law

297. The Universal Declaration on Human Rights and many other UN recommendations and declarations support the right to housing. Especially the Habitat Agenda suggests the precise content of the right to adequate housing.

C. The Government's Response and its Second Periodic Report

298. According to the para. 213 of the second periodic report, the supply of 190 thousand permanent rental housing is one of the governmental measures to resolve the housing problems of the poor. Permanent rental housing had begun to be constructed since 1988 to stabilize the residence of the poor, but those constructions have stopped in 1993. After 1993 the amount of public rental housing construction with budget of the central and local governments has decreased compared to that of permanent rental housing.

299. According to the para. 214 of the second periodic report, the ratio of housing expenses to total expenditure is only 9% in late 1990s. It also says that housing price and rent is stabilized throughout 1990s, therefore the burden of housing expenses is to be diminished. However, this is not the case. According to the survey on urban household income and expenditure in the first half of 1998, the housing expense problem is serious for the tenants. For example, for 25.6% of them, housing expenses comprised more than 30% of total household expenditure. The fact that the Korean government doesn't have proper policy direction concerning housing expenses or countermeasures against excessive housing expenses is another big problem.

D. Current Situation and Problems

300. As far as public rental housing is concerned, the government only supports the construction of housing and it doesn't take a proper measure when it comes to distributing to those who have bigger housing need at affordable rent. The policy of public rental housing should be focused on the distribution reflecting each family's housing need and the rent should be decided considering affordability. The government should consider make legislation for public housing to carry forward public housing policy continuously.

301. The government set the housing minimum standard in 2000. The survey on the situation of housing poverty should follow the setting of the housing minimum standard. And countermeasures have to be prepared to resolve the problem of individuals and families living in the various conditions of housing poverty. The government is preparing the Housing Basic Law, which presents the housing, right concepts and strengthens the housing policy to the poor. Since the minimum standard of housing has not been set, it is impossible for us to know how many people are in the state of housing poverty.

302. According to the National Report on implementing Habitat Agenda, the government recognizes the homelessness as a new problem to solve. According to the Department of Health and Welfare, the number of homeless was over 5 thousand in 2000. However, there are no considerations about homelessness in housing policy.

303. On 4 March 2001, ten family members of a household died in a fire in a "vinyl-house village" which is located in Kangnam-gu, Seoul. Vinyl-house is made of fire-weak materials. There have been many accidents like this fire. But the government has no plans to correspond this problem.

Chapter 15. Right to Health (Article 12)

Section 1. Barriers to health care services utilization

A. Conclusions and Recommendations

304. While it is true that Korean National Health Insurance systems reduced the economic burden of using health care services, the patients are still paying much co-payment money at the point of use. The Korean government should protect the household from spending down to poverty in addition to reducing the co-payment rate to below 20%.

305. Amendment of original "Living Protection Act" into "National Minimum Living Standards Security Act(NMLSSA)" means that Medical Aid needs improvements. But, the government's attitude toward Medical Aid does not seem to have any intention to make health care one of human rights. The different types of Medical Aid should be merged into one and Medical Aid co-payment should be abolished to eliminate the economic barrier for the poor to use health care services.

B. Basis on the International Human Rights Law

306. The Declaration of Social Progress and Development by the UN Assembly in 1969 has Article 10, which provided that the best level of health be achieved and all the possible ways to secure the health of the whole population be free. And, Article 19 provided that health care services be given to all the people for nothing and the accessibility be guaranteed to sufficient curative as well as preventive facilities and social well-being services.

C. The Government's Response and Its Second Periodic Report

307. It is true that the second periodic report mentioned the health care policies in isolated regions, in paragraphs 303-304, describing health status of people in bad conditions, but economic barrier in health care service utilization was not dealt with. The initial report also stated that the universal coverage achieved in July 1989 made all the people enjoy the health care, but it does not have the points regarding the concerns in the current health care system in Korea and the suggestions for combat for them.

308. The second periodic report describes the Medicare in paragraphs 91-94, but it is only an introduction of the systems itself. The recipient of Medical Aid Type II and Medical Assistance are required to pay 20% of the total hospitalized costs but they are paying almost the same amount of money in reality. In addition, the government does not reimburse the providers in time, which can be a good excuse for the providers to avoid the Medical Aid recipients.

D. Current Situation and Problems

309. Twelve years after the introduction of Health Insurance in workplaces with more than five hundred employees in 1977, the National Health Insurance(NHI) could cover all Koreans. With the coverage of NHI, however, patients and their families are still heavily burdened by health care costs. The cost amounts to 70% of the total costs for outpatient care services and to 47% for inpatient care services. For this reason, the National Health Insurance system is sometimes referred to as merely a "discount coupon" in health care, because it cannot relieve households of the economic burden of diseases.

310. The NHI covers only the limited range of services, which is another economic barrier in health care utilization. NHI covers no preventive services except for prenatal care, nor does it cover the sick leave allowance. NHI does not cover ultrasonography, which is widely used for diagnostic procedure. The coverage for oriental medicine which is very popular among the Koreans is very limited, which sets economic barriers in utilization.

311. Medical Aid for the low-income group has exactly the same conditions. Since the range of health care services covered by Medical Aid is the same as those provided by NHI, low-income patients also have to pay for the services not covered by Medical Aid. Recipients of Medical Aid type I pay up to 30-40%, and those covered by Medical Aid pay up to 40-50% of the total costs. High co-payment at the point of utilization plays a role of high barrier for the low-income group, and it prohibits them from using health care.

312. The fact that Medical Aid only covers 3-4% of the whole population shows that Medical Aid is not doing what it is intended to do. This becomes by far worse, considering the fact that many people have lost their jobs and earn less income and finally fallen into the low-income groups (the "new poor") since the economic crisis in 1997.

Table 13. Trend in the proportion of Medical Aid recipients among the whole population⁶⁷

Year	1995	1996	1997	1998
Population covered by	4.32	3.76	3.53	3.04

313. The Medical Aid recipients are not taken care of by the Medical Aid as supposed to be. The costs incurred by the Medical Aid recipients are reimbursed with the budget from the government

⁶⁷ National Federation of Medical Insurance, "98 Medical Insurance Statistical Yearbook", 1999

and local government. But the allocated budget in Medical Aid is less than the money for service reimbursement, and 2,454 billion won remained not given to the providers at the end of 1999. This is one of the major reasons that the providers avoid taking care of Medical Aid recipients.

Section 2. Health care budget and health care policy

A. Conclusions and Recommendations

314. In order to promote the accessibility to the health care by the people, Public health care facilities, currently occupying 10-15% of the total facilities, should be more than 50% of the total health care facilities. And, the Korean government should increase the budget allocation to health care from current 0.3% to 5%.

B. Subjects of Concern and Recommendation of the CESCR

315. In the General Comments 2, the CESCR acknowledges the incremental realization of rights but mentioned that the measures themselves should be made shortly after joining ICESCR. In this regard, the reduction in health care budget by the Korean government that prohibits the sound financial ground of realization of right to health is one of the clues to the unfaithful attitude toward the ICESCR.

C. The Government's Response and its Second Periodic Report

316. The second periodic report pp-1Xs, in para.293, the points in National health care policy but no concrete comment on the budget for policy implementation. It is difficult to check if a reasonable amount was put to secure the people's health since only the total amount of the budget is presented. The currently allocated budget in health care practices is presented as the percentage of the total budget in health care in the following table. The total amount itself is too small and the percentage in the total government budget was reduced in 1995.

Table 14. The trend of the government budget allocated in health care budget⁶⁸

	1980	1985	1990	1995
Out of GNP (%)	0.13	0.14	0.24	0.19
Out of Government Budget (%)	0.73	0.90	1.45	1.26

317. Although it is not presented in the second periodic report, the proportion of the government budget allocated in health care has been reduced during the five year period since the economic crisis according to "Health and Welfare Statistics" by the government.

⁶⁸ Estimation based on the Table 47 in the second periodic report

D. Current Situation and Problems

318. The health care budget in Korea is incredibly small. As the Ministry of Health and Welfare spends most of its budget on social security, only a very small portion of the budget is available for the health care programs. The government alleges that the health care budget has increased quite a lot, but this is not true in terms of the percentage among the total government budget. The health care sector used 0.35% of total government budget in 1995, but it has decreased from 0.36% in 1996 to 0.34% in 1997, to 0.30% in 1998 and to 0.28% in 1999. As of 1999, only 4.64% of the total government budget is assigned to the Ministry of Health and Welfare.

Table 15. The trend in the total amount and the proportion of health care budget in the government budget⁶⁹ (Unit: Billion Won, %)

	1996	1997	1998	1999
Government Budget*	58,823 (0.36)	67,579 (0.34)	75,583 (0.30)	83,685 (0.28)
Ministry of Health and Welfare Budget	2,371 (8.86)	2,851 (7.96)	3,113 (7.29)	4,161 (5.58)
Public Health and Medical Care Budget**	210 (100.0)	227 (100.0)	227 (100.0)	232 (100.0)

* Out of General budget

** The related budget out of Ministry of Health and Welfare budget

319. The Korean health care system is disproportionately dependent on the private sector. In 1998, 90.7% of health care facilities were private, and only 9.3% were public. Private beds were 84.5%, and 15.5% were public in the same year. The restructuring in the public health care facilities after the economic shock in 1997 accelerated the dependency on private sector. The present condition contradicts the Korean government's answer (para.23) to the questions asked by the CESCR in 1995, and it seems that the second periodic report intentionally avoided commenting on these questions.

Table 16. The number of beds in public hospitals and in private hospitals⁷⁰

		1987		1997	
		Number of beds	(%)	Number of beds	(%)
Public	National	11,686	13.70	10,273	6.04
	Public	6,390	7.49	11,156	6.56
	Subtotal	18,076	21.19	21,429	12.60
Private	Corporate	44,680	52.36	109,673	64.53
	Individual	22,571	26.45	38,866	2.87
	Subtotal	67,251	78.81	148,539	87.40
Total		85,327	100.00	169,968	100.00

⁶⁹ The Ministry of Health and Welfare, "Health and Welfare Statistics", 1999

⁷⁰ Korean Hospital Association, "National Membership Roll", Each year.

320. In short, due to the huge private sector, health care facilities provide services in ways to generate more profits. For example, according to the recent report from National Health Insurance Corporation, the average rate of caesarian section operation in Korea is 43%. This is far greater than 10%, recommended by the World Health Organization. This has resulted from the profit oriented health care system and the government's disoriented health care policy.

Table 17. Comparison of the rate of caesarian section operation⁷¹

Korea (1999)	Japan (1998)	U. K. (1998)	U. S. (1998)	WHO Recommendation
43%	15%	16%	20%	10%

Section 3. Health of minority groups

A. Conclusions and Recommendations

321. The Korean government should conduct a periodic survey on health care service utilization as well as the health status of the elderly, the disabled, foreign workers, and the prisoners and report the statistics. Many people got unemployed since the economic shock in 1997 and a lot of people from minority groups in addition to most of the poor have been experiencing the deterioration of health. But the government has never tried to do survey or generate statistics on this issue.

322. The government budget should be greatly increased to secure the health of the people in minority groups. The priority needs to be given to the rehabilitation and return to the community of the poor, especially the mentally disabled. The budget for the health care services for the elderly should be increased to meet the their health care demand.

B. Subjects of Concern and Recommendations of the CESCR

323. Para.34 of the CESCR General Comments 5 mentions the Standard Rules on the Equalization of Opportunities for persons with Disabilities. It points out that States should provide the conditions under which the disabled could enjoy their independent lives, prevent further disabilities, and support their social unity.

324. The CESCR recommends in its General Comments 6 that the government consider the recommendations by Vienna International Plan of Action on Aging. The plan presents the

⁷¹ National Health Insurance Corporation, "Analysis of Reality of Caesarian Section Operation", 2000

comprehensive health policy guides. In order to realize the old people's right to enjoying a satisfactory level of physical, mental health, health care policy needs to secure the old people's health, and provide the preventive, rehabilitative, and hospice services to the elderly.

C. The Government's Response and its Second Periodic Report

325. The second periodic report lacks the concrete comments on the health of people in the minority groups. The initial report roughly mentioned the Health Insurance and Medical Aid for the health care costs of the elderly. And free health checkup and long-term care, home care agent, and so forth are mentioned according to the Elderly Welfare Law. This witnesses the lack of government policy in the health care policy for people in the minority groups—disabled, foreign workers, and the prisoners. Also this is the proof that there has been no improvement in health care policy for them.

D. Current Situation and Problems

326. Statistical data on the health of people in minority groups such as the elderly, the poor, the disabled, foreign workers, and the prisoners have barely been generated. Specifically, there is no data on the health status and health care service utilization with respect to income level. This is one of the proofs that show the administration of health policy for the disadvantaged group by the government is not systematic at all. This explains why the second periodic report could not present detailed statistics and grounds regarding the health status of the minority groups.

327. Looking at the Medical Aid for the poor, the high co-payment rate, the small range of coverage in service benefits, and the providers' reluctance to take them are causes leading to a crippling National Health Insurance. Besides, highly privatized health care system alienates the poor in terms of accessibility to the health care.

328. The number of people over 65 grew from 2.9% in 1960 to 7.1% in 2000 and is expected to exceed 14% by 2020. In spite of this rapid change in population structure, health policy for the elderly is not sufficient. Government does not have enough information on the elderly persons who are living alone. The proportion of government budget for health care of the elderly is incredibly small. The total budget for the elders' welfare including health care is only 0.15%, far below that of Japan (17%), and the United States (25%), not to speak of that of China (3%). There is only the outpatient service provided through the network of public health centers. Since the public health centers are targeting acute illnesses, the health needs by the elders, who suffer mainly from chronic diseases, are not met appropriately.

329. While the number of foreign workers in Korea continues to increase, their working conditions have not improved at all. Foreign workers need to pay a lot of money using health care services

since they are not covered by the National Health Insurance. This prevents them from seeking health care services in time, which aggravates their diseases even further. Their health conditions are also often deteriorated because of language barriers, and in many cases, they are not allowed to leave the workplace to visit health care facilities.

330. The health of prisoners is not protected at all. 37,000 won is designated as the annual health care cost per one prisoner. As health care manpower is not enough, one physician is currently in charge of 1,204 prisoners total, which means he has to see 245 prisoners a day.⁷² The Criminal Administration Act, which provides only "the chief officer of the prison can do this or that", does not assure prisoners' right to health care. Even these provisions remain abstract; not specifying in concrete terms what can be done. Physical examination at the point of admission and regular medical check-ups are not provided to prisoners, although they are in the statute. It is difficult for them to get treated in hospitals outside the prison, even if it is necessary. According to one survey, only 5.2% of the respondents said it was easy or not difficult for them to get treatment in hospitals outside, while 50.5% said it was difficult or impossible to do so. As can be expected, the National Health Insurance does not cover prisoners.

Chapter 16.

Right to Education: Primary and Secondary Education (Article 13)

Section 1. Expenses on private education

A. Conclusion and Recommendation

331. The Korean government should conduct a periodic investigation on private education.

332. Personal estimation and wage assessment according to education level should be changed.

333. Investment on public education should be expanded to create an education environment of an average OECD country

B. Subjects of Concern and Recommendation of the CESCR

334. The CESCR expressed its concern on many factors of Korean education system in the Concluding observations on the initial report. Along with its opinion of 'considering Korea's

⁷² Report by the Ministry of Justice submitted to the parliamentary inspection to the government offices in 2000

economic power, it is proper that free education be expanded to secondary and higher education', the CESCR recommended the government to strengthen the socially vulnerable people's access rights to education. In para. 6(b) of the General Comments, the CESCR states that as part of right to education described in Article 13 of the ICESCR, 'right of access to education' includes 'economic access'. It also mentions that 'the government should gradually expand free education to secondary and higher education', and that 'the government should take prudent, concrete, and clear measures to completely realize Article 13 of the ICESCR.'

C. The Government's Response and its Second Periodic Report

335. Like the initial report, the second periodic report only mentions compulsory elementary education and free middle school education limited to rural areas. In spite of the recommendation of the CESCR, the government hasn't submitted any documents on progress of making middle school education free of charge after the initial report. The second periodic report only submits data from 1992, before the initial report was written.

336. Although the second periodic report says the state party is making various endeavors to lessen the number of students per class, it doesn't mention specific details of educational investment. It also reports that the national average education period is increasing, omitting the fact that most of the expenditure on education is borne by individuals or families. It only reports absolute sum of budget for education and educational expenditure for one student so that it is hard to notice ratio to total budget or difference among other OECD countries.

D. Current Situation and Problems

337. **Role of Education in Republic of Korea:** Until now, education in Korea functioned as a means to enhance one's social status. Job position and amount of salary are determined by education level.

Table 18. Average wage by education level in 1999⁷³

Education level	High school	2 year college graduate	4 year college graduate
Average wage per month (won)	1,088,549(US\$837)	1,126,218(US\$866)	1,650,922(US\$1,269)

338. The statistics above shows that in Korea, education level is one of the most important factors in

⁷³ The Ministry of Labor

deciding wage. It results in excess demand for higher education, and has direct connection with problems of excessive competition for college entrance. It also is the cause of trend that makes entering good university, even though with enormous private expenditure, the foremost purpose of education.

339. **Poor public education environment:** Because of low investment for the last 50 years, public education of Korea is in very poor condition. The number of students per class, and per teacher is higher and education expenditure per student is lower than an average OECD country. About 50% of secondary education institutes are private schools as the Korean government easily allowed their foundation to free itself from the obligation of public education. The government prefers to attribute the responsibility to teachers rather to try to improve the environment.

Table 19. Number of students in a class⁷⁴

Country	ROK	Great Britain	USA	France
Number of Students in a class	39	22	23	25

Table 20. Number of Students per teacher⁷⁵

ROK			Average of OECD Countries		
Elementary	Middle	High	Elementary	Middle	High
31	22.5	23.1	17.1	14.9	15.1

340. As the statistics reveals, education environment of Korea not only fails to reach the level of OECD countries, but also is no better than that of developing countries. This poor condition necessarily results in demand for private education as students taught by private tutors get higher scores on tests.

341. **Expenditure on private education:** One of the biggest problems in Korean education is that while investment on public education is very low, excessive expenditure on private education is bringing about conflict between classes as well as distorting distribution system. According to the survey of the Ministry of Education in 1999, the sum of expenditure on private tutoring was estimated at 6,772 billion won(US\$5,209million).⁷⁶ It is a very large sum of money considering that 1999 budget of the Ministry of Education was 17 trillion won and total sum for public

⁷⁴ Report submitted to the parliamentary inspection to the government offices in 2000

⁷⁵ Report submitted to the parliamentary inspection to the government offices in 2000

education was 28 trillion won.⁷⁷ The sum of expenditure on private tutoring even increase to 7,127 billion won(US\$5,482million).

342. According to the report 'expenditure on education in Korea' by Korea Education Development Institute(KEDI), total expenditure for private education was 29 trillion(US\$22,307million), including 14 trillion won(US\$10,769million) for private tutoring. It means that expenditure on private education is about twice as large as budget of the Ministry of Education. Considering expenditure on private tutoring usually goes unnoticed in Korea, total sum of expenditure on private education may be twice as large as total government budget.

343. The expenditure differs by region. In Kangnam, Seocho districts of Seoul, where the wealthy live, the expenditure was far higher than other districts. 25% of freshmen of Seoul National University, where everybody wants to go in Korea, are from these Kangnam and Seocho districts.⁷⁸ It shows 'the rich get richer, the poor get poorer' situation, and opportunity to get education is no longer equal to everybody.

Table 21. Educational Expenditure as a percentage of GDP, by source of funds⁷⁹

	1997			1995		
	Public	Private	Total	Public	Private	Total
OECD average	5.1	0.76	5.8	4.7	1.2	5.9
ROK	4.4	2.94	7.4	3.6	2.58	6.2
USA	5.2	1.70	6.9	5.0	1.67	6.7
Britain	4.5	-	-	4.6	-	-
France	5.9	0.40	6.3	5.8	0.54	6.3
Italy	4.65	0.15	4.8	4.5	0.01	4.7
Austria	6.05	0.45	6.5	5.3	0.84	5.5

Section 2. Vocational education

A. Conclusions and Recommendations

344. The Korean government should present concrete measures to normalize vocational education.

345. The Korean government should find ways to change education level-oriented social

⁷⁶ The Ministry of Education, "1999 survey on private tutoring expenditure"

⁷⁷ Budget of the Ministry of Education(1999)

⁷⁸ Survey on Seoul National University Freshmen in 2000

⁷⁹ OECD, "Educational Expenditure in OECD Countries", May 2000

consciousness revealed in discrimination of wage or employment by education level.

B. Subjects of Concern and Recommendations of the CESCR

346. The CESCR General Comment 13 specifies the purpose of education mentioned in Article 13 of the ICESCR and says that 'education should put focus on complete realization of human dignity, and let everyone effectively participate in free society'. It is emphasizing balanced education without prejudice.

C. The Government's Response and its Second Periodic Report

347. The second periodic report doesn't mention many difficulties common to most schools for vocational education and only mentions general theory on purpose of vocational school and absolute figure on the number of schools and students for vocational education.

D. Current Situation and Problems

348. **Decrease of students in high school for vocational education:** As seen in the statistics below, vocational schools' classes have not been completely filled since 1997. It is because middle school students usually think that vocational school is not for students who want to pursue a professional career, but only for students with low grade or in poor economic situation. This consciousness is related to wage discrimination or employment discrimination by education level as well as insufficient support of the government to high schools for vocational education. To solve the problem of student shortage, teachers of vocational education school annually visit middle schools to attract students. This shows well the poor recognition of vocational schools by the middle school students.

Table 22. Shortage of students in high school for vocational education by department(person, %)⁸⁰

Department	1997			1998			1999		
	Limit	Entrance	Shortage	Limit	Entrance	Shortage	Limit	Entrance	Shortage
agriculture	13,662	12,414	1,248	12,324	11,497	827	11,248	9,832	1,416
manufacture	131,473	128,904	2,569	122,916	120,707	2,209	112,583	108,824	3,759
business	162,829	156,053	6,776	146,991	141,071	5,920		117,431	11,824
marine	2,946	2,611	335	3,142	2,676	466	3,252	2,838	414
household	2,241	2,232	9	1,900	1,901	-	1,738	1,713	25
Total	313,151	302,214 (96.5)	10,937 (3.5)	287,273	277,852 (96.7)	9,422 (3.3)	258,076	238,168 (92.3)	19,908 (7.7)

349. **Dropout students in school for vocational education:** Dropout ratio in school for vocational education is twice as high as that of general academic school. It shows that attitude of students and

⁸⁰ The Ministry of Education, "Reference for collective measures on high school for vocational education"

environment of high school for vocational education do not provide students with a pleasant experience in preparing for future career.

Table 23. Dropouts in school for vocational education(person, %)⁸¹

Year	General academic school			School for vocational education		
	Total	Dropouts	Dropout ratio	Total	Dropouts	Dropout ratio
1995	1,246,427	16,100	1.29	911,453	29,045	3.19
1996	1,303,874	17,610	1.35	939,433	36,133	3.85
1997	1,376,688	17,470	1.27	960,037	40,066	4.17
1998	1,399,394	18,905	1.35	927,486	43,212	4.66
1999	1,399,389	15,921	1.14	851,751	33,714	3.96

350. **Support of the government for high school for vocational education:** The policy of the government is to support vocational schools only if they have competitiveness, and if not, to switch them over to general academic school.⁸² This policy is derived from the government's attitude of making light of vocational education and emphasizing competitiveness, which is not in accord with the ICESCR demanding support for vocational education. If students don't prefer vocational school, the government should improve curriculum and environment and prevent discrimination against vocational school graduates in job market and society.

Section 3. Negotiation with teachers union

A. Conclusions and Recommendations

351. The Korean government should sincerely negotiate with teachers union and implement contracted negotiations so that legalized teachers union can materially contribute to improvement of status of teachers and development of educational policy.

352. The Korean government should admit teachers union's right to be engaged in educational policy, and actively converge its opinion.

B. Basis on the International Human Rights Law

353. "Recommendation concerning the Status of Teachers, 1966", which is co-stated by UNESCO and ILO states in Article 9 that teachers organization should be admitted as the influential party which contributes a lot to development of education and therefore, teachers organization should have right to be engaged in policy making. It means that development of education and guarantee of teachers' rights is possible through guaranteeing teachers' right to unite. Article 82 and 83 then go

⁸¹ The Ministry of Education, "Reference for collective measures on high school for vocational education"

one step further in making legal and voluntary measures mandatory to guarantee teachers' unions' right to negotiate. Teachers' working conditions are settled through the negotiation process, no longer leaving them up to the employers, including the state, to unilaterally decide wage and working conditions for teachers.

C. The Government's Response and its Second Periodic Report

354. With regard to the status of teachers, the second periodic report only mentioned "Special Act for Enhancing Teachers' Status", which was enacted in 1991 and is not playing an important role these days. It omits important problems arisen during the first collective negotiation with teachers, which took 9 months since Sept 1999.

D. Current Situation and Problems

355. On July 1st 2000, teachers union was legalized at last in Korea. In the first collective negotiation, the Ministry of Education persisted in sectional negotiation and refused main negotiation dealing with whole agenda. It quickly proceeded negotiation with KFTA(Korean Federation of Teachers Associations), which is a mere consultative organization of teachers, but didn't try to talk with KTU(Korean Teachers' Union). Leaving out of the agenda most of the issues proposed by KTU, on the ground that they were irrelevant to education policy, the government didn't accept the fact that teachers organization is the influential party which contributes a lot to development of education.

356. As the negotiation was at a standstill, teachers in KTU collectively asked for vacation and demonstrated against the government. Two teachers who participated in peaceful demonstration were arrested with a justification that teachers' strike is prohibited. They are now going on trial and can be laid off if the verdict of the court pronounces them guilty.

357. Finally, the Ministry of Education, one party of negotiation, didn't reflect results of collective negotiation to the government budget planning in the name of shortage of budget and consequently made teachers union's right to negotiate powerless.

Table 24. Items reflected in Budget Planning from Collective Negotiation⁸³ (Unit: million won)

	Items	Budget
Accepted	5 items including 4.7% of raise	799,291
Not accepted	12 items including introduction of wage for overtime teaching	766,272

⁸² Report submitted to the parliamentary inspection to the government offices in 2000

⁸³ Report by KTU submitted to the parliamentary inspection to the government offices in 2000

Chapter 17. Rights to Education : Higher Education (Article 13)

Section 1. High tuition fees

A. Conclusions and Recommendations

358. The Korean government ought to secure adequate finance for higher education. There should be no one who is eligible for higher education but is denied higher education opportunities only due to lack of money. It must also set up plans which include progressive introduction of free higher education.

359. The Korean government ought to establish the budget so that the number of professors employed full time can be kept above the minimum standard set by the government. It must also try to check effectively the budget to improve conditions for higher education.

B. Subjects of Concern and Recommendations of the CESCR

360. In the Concluding observations on the initial report, the CESCR expressed concerns that "given the strength of the Korean economy it appears appropriate that free education should also extend to the secondary and higher sectors". The CESCR then recommended, "immediate attention be given to enhancing the access of the most vulnerable and disadvantaged groups, and especially women, to secondary and higher education, the need for an expanded higher education sector".⁸⁴

C. The Government's Response and its Second Periodic Report

361. The second periodic report, in para.346, indicates statistics such as the percentage of high school graduates who enter universities, the percentage of students who enter higher educational institutions from the particular age range, and the percentage of students enrolled in higher educational institution from total population. Such description is misleading. Opportunities for higher education in Korea are not so easy as they may look. Paragraph 347 states the following on the public expenditure for subsidizing higher education. "In 1996, the public expenditure for subsidizing higher education in national and public universities was 1.54 trillion won, and 5.36 trillion won for private universities, for a total of 6.9 trillion won." This needs a cautious interpretation. It does not mean that Korean government supports the total expenditure for higher

⁸⁴ E/C.12/1995/3, para. 13

education. 'Public expenditure' for subsidizing higher education in the statement includes not only the subsidies provided by the state(public sector) but also the tuition and fees paid by the households(private sector). Indeed much too heavy a burden is imposed on the private sector. The role of state is minimal. By introducing misleading statistics, the report seems to avoid the state's responsibility on providing expenditure for education.

D. Current Situation and Problems

362. In Korea, expenditures paid by individuals for higher education are much too high. Private universities, which are 279 in all and constitute 83%⁸⁵ of the total 336 post-secondary institutions, have increased tuitions three times as much during the past ten years.

Table 25. The increase of tuition per student at the private university in 1989 and 1997

(Unit: thousand won)

Year	Humanities, Social Sciences	Sciences, Physical Education	Engineering, Arts	Pharmacy	Medicine, Dentists
1989	1,279,000	1,394,000	1,451,200	1,553,600	1,698,700
1997	3,979,500	4,713,200	5,156,200	5,534,800	5,828,600

363. Private universities have increased tuition fees every year, mentioning the price increase as the main reason. They have claimed that they inevitably have to increase tuitions for the purpose of meeting the financial need created by the overall price increase. But their rationale is inconsistent with facts. The next table shows that private universities have increased tuition by two-digit percentage points each year except in 1997 and 1998. Such increase is not only considerably high in itself but two to three times as much as the overall price increase.

Table 26. The increase of student tuition, compared with that of consumer price⁸⁶ (Unit: %)

	1990	1991	1992	1993	1994	1995	1996	1997	1998
State Universities	3.2	7.5	9.6	11.5	11.5	11.2	11.3	5.0	0.7
Private Universities	11.8	15.5	15.5	16.2	13.5	14.6	13.7	6.7	0.5
Increase of consumer price	8.6	9.3	4.5	5.8	5.6	4.7	4.5	4.5	9.0

⁸⁵ Table 55 in the second periodic report

⁸⁶ The Ministry of Education, Korean Promotion Foundation, "Annual Statistics on Education", 1998

364. The problem lies in the fact that the management of universities depends on tuition fees too heavily. Private universities in Korea depend on tuition fees paid by students for up to 65% of cost for managing the school.

Table 27. Private universities' reliance on student tuitions⁸⁷ (Unit: %)

	1995	1996	1997	1998
Contribution of the tuition to the total budget	68.8	67.4	65.8	65.5

365. It is the government that is primarily responsible for the poor condition of higher education. Currently the government's investment for public education is minimal. The government hardly aims to secure the finance that help lessen the households' heavy burden for tuition fees. While the Korean government is unwilling to propose measures for increasing public finance, the increase of tuition is hardly under control. The sharp increase of tuition fees each year particularly puts the lower income class under severe strain. This becomes a major obstacle for the poor to have access to equal opportunities for higher education.

Table 28. The magnitude of higher education expenditure as opposed to GDP(1997)⁸⁸ (Unit: %)

	Korea	France	Japan	Mexico	US	Portugal	German	Canada
Expenditure for school from the Public sector		1.0	0.5	0.8	1.4	1.0	1.0	1.2
Expenditure for school from the private sector		0.14	0.58	0.27	1.29	0.02	0.08	0.35

Table 29. Higher education finance provided by each sector, based on the final financial resources⁸⁹ (Unit: %)

⁸⁷ The Ministry of Education, Korean Promotion Foundation, "Annual Statistics on Education", 1999

⁸⁸ OECD Education Database 1997, Annex 3

⁸⁹ OECD Education Database 1997, Annex 3

		On Average	Korea	Mexico	Canada	US	Japan	Germany	France
Higher education Finance	Financed by public sector	77	22	75	60	51	45	92	85
	Financed by private sector	23	78	25	40	49	55	8	15

366. Conditions for higher education are far from desirable due to the poor budget assigned to higher education. These inevitably have negative effects on the quality of higher education. The number of students per professor illustrates the status of Korean higher education, especially when compared from an international perspective.

Table 30. Number of students per professor: international comparison⁹⁰ (Unit: person)

	On Average	US	Germany	Japan	Hungary	Ireland	Spain
1998	14.6	14.6	12.4	11.8	11.8	18.0	17.2

Table 31. Number of students per professor in Korea⁹¹ (Unit: person)

1992(year)	1995	2000
37.6	35.0	39.7

Section 2. Academic freedom: Professors' insecure status and worsening working conditions

A. Conclusions and Recommendations

367. The Korean government should protect professors from being unjustly and unfairly fired. Legislative and administrative measures, along with strong supervision, must be provided so that they can prevent employers from abusing Professor Reappointment System.

368. The Korean government should recognize and protect by legislation the right to organize

⁹⁰ OECD Education Index

⁹¹ The Ministry of Education, Korean Promotion Foundation, "Annual Statistics on Education", 2000

professor's union that can be the only practical means of guaranteeing basic human rights, as well as enhancing autonomy of education and research.

B. Subjects of Concern and Recommendations of the CESCR

369. In the para.38 of the General Comment 13, the CESCR has formed the view that the right to education can only be enjoyed if accompanied by the academic freedom of staff and students. The CESCR thus emphasizes that staff and students throughout the education sector are entitled to academic freedom. The current Reappointment System is a major cause for the insecure status of professors. It not only threatens the quality of working life; it is destructive to the appreciation of academic freedom. The contract system, along with performance payment system, to be introduced next year, is considered to make the status of Korean professors even worse, especially those working for private universities or two-year colleges.

C. The Government's Response and its Second Periodic Report

370. The second periodic report does not cover such issues as the status of professors and the academic freedom.

D. Current Situation and Problems

371. The professors' status in Korea has weakened since the introduction of the Professor Reappointment Rule in 1976. The Reappointment Rule, by which professors are regularly (usually every 4 to 10 years) evaluated before reappointment, has been exploited to oppress professors who would refuse to conform to military dictatorship. The revision of Private School Law in 1990 even strengthened the Reappointment Rule. As a result, the insecure status of professors has worsened to a point where they could not be protected from totally unjust dismissal. The abuse of Reappointment Rule has become a symbol of oppression. From 1976 on to 1999, 226 professors were denied reappointment, many of whom were unjustly or unfairly fired. Kim Min-Soo, former professor at Seoul National University (SNU), is a typical example. Even though he was fully recognized for his academic accomplishment, he was denied reappointment. The SNU's claim that Kim's research accomplishment falls below the required standard only creates a scandal. Despite the SNU's claim, it was thought that Kim had been actually ousted because of his criticism on senior professor's pro-Japanese activities.

372. The Korean government plans to replace the current Reappointment Rule with the Contract Rule in the year 2002. In the Contract Rule, the university sets up a contract with an individual professor by measuring the professor's performance. Major terms of employment such as the period of employment, the level of performance pay and annual salary, are determined by the university authority. The government proposes this system as a means of producing more research results by

strengthening competition among professors.

373. The government's rationale, however, hardly seems to work. The Contract Rule, to be reinforced by performance payment system, is expected to be even more dangerous to the already unstable professors and the insecure academic freedom. From a long-term perspective, the contract system will definitely threaten the essential quality of research and education. It will also fetter free inquiry and autonomous teaching. It may well turn a tool of manipulation and oppression that threatens the very spirit of university, i.e. critical thinking and action.

374. In this situation professors' associations endeavor to organize a trade union that can help them to keep the freedom of education and research as well as to protect their basic rights at work. However, the article 66 of the Public Officials Law and the article 55 of the Private School Law ban the organization of teachers' union of any kind, which means that professors' trade unions are not to be legally protected. Even the Special Law on Teachers' Union does not guarantee professors the rights to organize unions, by excluding the profession of professors from the category of teachers who can participate in forming unions.

Chapter 18. Right to Cultural Life(Article 15)

Section 1. The level of freedom of expression permitted in Korea

A. Conclusion and Recommendation

375. The Korean government's comprehensive application of the National Security Law to cultural productions is seen as a fundamental limitation. As the North-South Korea's relation has been improved, the Korean government should be concerned about the abolition or modification in whole parts of the National Security Law, which has not the worth to be maintained.

376. Emergently, recover the early object that abolished the deliberation rule and established the new rule of rate and found such institutions as that can share the cultural products that was sentenced to 'out-rated' before.

B. The Government's Response and its Second Periodic Report

377. The second periodic report is very abstractive, so what is problem and how solve this are not stated on the report.

C. Current Situation and Problems

378. Cultural environment in Korea is defined by the environmental factors of the divided country and the unified culture value constituted under the military governments for a long time. Especially, it is very serious the limit to the freedom of presentation by the National Security Law. This has maintained even after the Kim Dae-Jung Government, for the "Red Hunt" has been in the court till this year which was submitted to the 2nd Human Rights Film Festival in 1997, 'Rice-planting' of the artist Shin Hak-Chul is endangered to be almost discarded sentenced to the violation of the NSL. Moreover, the author Cho Jung-Rae of 'Tae-Baek Mountains', the bestseller novels, was accused so many times, and suspected to support the enemy.

379. It is also significant matter that the uniformed standard judged the non-commercial artistic products, although they should not be so. The novel 'Lie to me' of Jang Jung-II and the cartoons 'the myth of heaven' of Lee Hyun-Sae were criminalized for the sexual expressions, the open of the movie 'two, one, and sex' was delayed.

Section 2. The Government's ignorance of cultural exceptions

A. Conclusions and Recommendations

380. It is encroachment on our cultural sovereignty that the Korean government adopts the foreign policy that takes preference of the economic liberalization. Cultural products should never be adopted by the same logic with that of industrial products, and the protection of it is the practice of the cultural sovereignty. Therefore, the Korean government should protect the area of the culture not economically but culturally.

381. Moreover, it is also emergent issue that the government publicly clarify it won't include the cultural products into the neo-liberalistic order and build efficient institutions.

B. The basis on the International Human Rights Law

382. It would ultimately interrupt the subjective existence of Korea's image-products if the Korean government put the 'Screen Quota Law' on the negotiation list during the progress of trade negotiation between Korea and United States. That the world neo-liberalist powers, especially the United States, insists the abolition of Korea's rule on the protection of cultural products is the violation of not only Article 15(2) of the ICESCR, which confirms the protection of culture, but also Article 1 of the ICESCR which clarifies the rights of participating in cultural life.

383. Even in WTO, which insists the economic freedom, the exception of culture was acknowledged in 1993, and also was discussed in MAI in OECD. These things convince that the

cultural values are different from the economic values.

C. The Government's Response and its Second Periodic Report

384. It is very sorry that the second periodic report fails to show any understandings on the unique value of cultural products.

D. Current Situation and Problems

385. Since 1997, the Korean government has tried to solve the economic crisis through the economic liberalization. But in this progress, the points of culture has been ignored relatively to those of economy, as we can see in the discussion for the abolition of the Screen Quota Law(SQL) in the progress of Korea-the United States trade negotiation.

386. The Screen Quota Law is the minimum measure, with the direct distribution of foreign filmmakers, for the protection and improvement of visual industries. Above mentioned, the acknowledgement by the WTO and the discussion in OECD show the difference between the cultural values and the economic values. Nevertheless, the Korean government has thought the problems of Screen Quota just in the categories of economic liberalization.

387. According to the Screen Quota Watchers' surveys on the implementation of the SQL, there were total 34 violations in 1999.⁹² It convince us that the SQL is absolutely necessary for the self-existing of Korean films. But it is possible that the discussions for the SQL would be submitted again on the negotiation table between Korean and the United States. We can notice this possibility in the case of the third opening to Japan popular culture. Our situation is that the Korean government, under the ignorance for the typical cultural resources, could sacrifice our cultural rights in the progress related to the foreign trades.

⁹² Coalition for Cultural Diversity in Moving Images, <http://www.screenquota.org>

요약문

(한글, 영문/ 2001년 4월)

**경제적, 사회적, 문화적 권리에 관한
민간단체 반박보고서(요약문)**

**UN 경제사회문화적권리위원회 제출
2001년 4월**

사회권규약 제2차 반박보고서 연대회의

▶ 규약이행에 영향을 미치는 요소와 장애들

1. 지난 몇 년간 한국의 경제·사회·문화적 권리 상황은, 극심한 경제위기와 그 처방으로 제시된 IMF 프로그램의 영향으로 상당히 후퇴하였다. 특히 IMF가 차관의 조건으로 요구한 구조조정은 노동의 유연화 증대와 동일시되어 실업과 비정규 고용이 증가하였으며, 정규직과 비정규직 노동자간의 간극은 소득뿐만 아니라 사회적 문화적 참여에 있어서도 심하게 벌어졌다. 1998년 도시근로자 소득통계를 보면, 소득상위자 10%의 소득은 4% 증가한데 비해 하위 20%의 소득은 -17.2% 감소했다. 또 97년에 0.283이었던 Gini 계수가 98년에는 0.316으로, 99년에는 0.320으로 증가했다. 이것은 도시근로자 가구만을 대상으로 한 것인데, 전국민을 대상으로 확대, 추계하면 97년 0.399, 98년 0.440, 99년 0.437에 이른다. 이밖에도 한국 정부가 구조조정의 중요 수단으로 실행 중인 전력·통신·의료 등의 사유화정책은 공공서비스의 가격 상승과 더불어 서비스 혜택을 편중시킬 위험을 가지고 있다.

2. 경제위기 극복을 위해 정책의 전반적인 기조가 시장기능의 활성화와 기업에 대한 규제완화에 집중되어, 오염물질 배출·자원파괴에 대한 사회적 통제가 약화되었고 환경파괴 가속화를 방치하는 결과를 낳았다. 또한 공공부문에 관한 정부지출 축소에 따라 보건·위생·의료서비스의 공공성이 약화되었다.

3. 한편 한국은 세계에서 유일한 분단국으로서 남북 대치상황이라는 한국적 특수성을 이유로 국내 인권에 대해서 제한을 가하는 일이 적지 않다. 특히 국가보안법이 자의적으로 적용, 집행되면서 노동운동과 사회운동을 탄압하는데 악용되고 있다. 또한 국가예산의 많은 부분을 국방비에 지출하고 있기 때문에 사회개발 및 복지에 충분한 자원이 투입되지 못하고 있다. 2000년 세출예산 중 전체 정부 지출 중 17.4%가 국방비에 소요된 반면 문화·체육, 인력개발, 보건·생활환경, 사회보장, 주택 및 지역 사회개발을 포함한 사회개발비 전체에 소요된 것은 11.26%에 불과하였다.

▶ 규약의 국내법적 지위

4. 한국정부는 1997년 자유권 규약에 따라 제출한 제2차 정부보고서에서 국내법에 대한 규약의 우선성을 확인한 반면, 1996년 고문방지조약에 따라 제출한 제1차 정부보고서나 1995년 사회권 규약에 따른 제1차 정부보고서에서는 신법우선이나 특별법우선 등의 일반원칙이 적용된다고 밝혔다. 즉, 한국정부는 국제인권조약의 국내법적 지위에 관하여 불투명한 입장을 취하고 있는 것이다. 정부는 규약의 국내법적 지위에 관한 구체적이고 명확한 공식 입장을 표명해야 할 것이다.

5. 한국정부는 제1차 정부보고서 검토회의에서 '규약을 이행하기 위하여 특별한 국내법제정절차를 밟을 필요가 없다'고 답변하고 사회권규약의 이행을 위한 구체적인 입법조치를 취하지 않고 있다. 그러나 사회권규약 대부분의 조항이 자기집행적 효력이 있는 것으로 적용된다고 해도 국제인권규범이 판결의 근거나 기준이 된 경우가 극히 드문 것을 볼 때, 여전히 규약의 권리를 실현하기 위해서는 국내법의 제·개정이 필요하다. 정부는 사회권규약에 가입한 이후 규약상의 권리를 실행하기 위하여 얼마나 진지하게 국내입법을 제·개정하려고 하였는지 밝혀야 할 것이다.

6. 지난 수년 간 한국에서 이루어진 국제인권법의 홍보와 교육은 아직 태동단계에 불과하다. 인권관련 내용이 각급 학교나 교육기관에서 정식과목으로 채택되지 않고 있는 실정이며, 사법연수원에서 국제인권법이 정식과목으로 채택되었다고는 하지만 선택과목으로 소수의 연수생만이 이 강의를 듣고 있을 뿐이다. 정부는 사법연수원에서 국제인권법을 필수과목으로 지정하고, 각급 교육기관에서 사회권 규약을 포함한 국제인권법 교육을 위한 계획을 세워야 한다.

▶ **난민의 권리(제 2조)**

7. 2001년 2월 현재 104명이 한국정부에 난민지위인정을 신청했지만 난민으로 인정된 사람은 단 1명 뿐이다. 난민인정에 매우 경색한 정부의 태도는 난민인정신청기한과 이의신청기한 등에 관한 불합리한 규정과 과도한 입증책임 등을 통해 나타나고 있다. 특히 UNHCR(유엔난민고등판무관실)이 위임난민으로 인정한 경우에도 정부는 난민인정을 거부한 바 있다. 정부는 난민관련법령을 국제기준에 맞게 개정해야 하며, 인권교육을 받은 전문성 있는 관리들이 난민업무를 담당하도록 해야 한다.

8. 난민신청인들은 직업, 의료, 교육 등에 있어 아무런 정부의 지원을 받지 못한 채 방치되어 있다. 난민 및 난민신청자의 법적지위(체류자격)는 국내법상 명백히 규정되어야 하며, 이들의 경제적, 사회적 권리를 보장하기 위한 정부 차원의 물적 지원 및 정책적 조치들이 마련되어야 한다.

▶ **장애인의 권리(제 2, 6, 7, 10, 13조)**

9. 2000년 보건사회연구원의 장애인실태조사연구에 따르면, 1995년 장애인의 실업률은 27.4%였고, 2000년에는 28.4%에 달하고 있다. 이는 전체 실업률의 6.8배이다. 현행 법률 하에서 300인 이상의 사업장은 의무적으로 장애인을 최소 2% 이상 고용해야 한다. 그러나 장애인고용촉진법을 시행한지 오랜 시간이 지났음에도 불구하고, 여전히 장애인 고용 비율은 의무 고용비율을 훨씬 밑돌고 있다. 장애인 고용촉진공단의 통계에 따르면, 민간사업체의 장애인 고용비율은 96년 0.45%, 97년 0.46%, 98년 0.54%, 99년 0.91이다. 99년부터 다소 비율이 늘어난 것 같지만, 이는 사실상 98년 이후 기업의 도산 등으로 대상사업체의 수가 줄었기 때문이다. 기업주들은 장애인을 고용하는 대신 고용부담금을 내고 말겠다는 경향이 강하다. 심지어 정부 및 지방자치단체의 장애인 고용비율도 96년 0.88%, 97년 0.99%, 98년 1.08%, 99년 1.23%에 그치고 있다. 한편, 장애인만을 위한 대형화·현대화된 전문학교를 건립하는 것은 의형상으로는 장애인의 직업창출에 도움이 될 수 있는 듯 보이지만, 훈련공의 제한성·낙후성 등으로 장애인의 적성과 신체적 특성을 고려한 직종개발이 이루어지지 않고 있으며 현재 노동시장에서 요구되는 기술을 습득하지 못해 사실상 취업이 어렵다는 문제를 안고 있다. 1999년 격리된 직업훈련 장애 훈련을 받은 장애인의 이직율은 79.2%로 나타났다. 정부는 기업주들이 장애인 고용 의무를 준수하도록 보다 적극적인 조치를 강구해야 할 것이다. 또한 장애인이 정규노동시장에 통합될 수 있도록 비장애인과 함께 일반직업훈련시설에서 직업훈련을 받도록 해야 한다.

10. 학령기 전 장애어린이에 대한 조기교육은 장애유아의 사회성, 정신능력, 신체적 발달을 촉진하기 때문에 중요한 부분이다. 그러나 정부의 장애어린이 교육에 대한 정책부재로 1999년 학령기 전 장애

어린이 교육 수혜율은 42.3%에 불과하며, 장애어린이 조기교육을 위한 교육시설이 턱없이 부족하여 장애유아를 둔 부모는 과다한 사교육비의 부담을 지고 있으며 이는 가정파탄에까지 이르고 있는 실정이다. 정부는 모든 학령기 전 장애어린이들이 무상교육을 받을 수 있도록 일반학교 내에 유치부를 설치하고, 관인 유치원과 여러 중별 복지관 내의 유치부에는 장애어린이가 3인 이상인 경우 1인의 특수교육교사를 배치하도록 해야 한다.

11. 도로, 공원, 공공건물 및 공중이용시설, 공동주택, 교통수단, 통신시설 등에 편의시설을 설치하도록 하는 법률이 1998년 4월부터 시행되고 있으나, 위 대상 시설물들에 대한 설치율은 74.4%에 그치고 있다. 2001년 1월 22일 장애부부가 지하철역에 설치되어 있는 리프트를 이용하다가 리프트 와이어가 끊어져 추락사한 일이 있었는데, 이는 이미 설치된 편의시설마저 불안전하여 장애인들이 사용하는데 어려움을 겪고 있다는 것을 보여준다. 또한 법률에서 정한 대상시설은 공공기관, 공중이용시설에 한정되어 있어 실제 생활공간인 수퍼마켓 등 일상에서 자주 이용하는 시설물에 대해서는 강제할 수 없다. 정부는 법률에 규정된 시설대상물에 편의시설을 전부 설치하도록 하고, 그 외 장애인이 자주 이용하는 민간 시설물에도 편의시설을 설치하도록 제도를 정비하고 재정 지원을 해야 한다.

▶ **이주노동자의 권리(제 2, 6, 7, 8, 10, 13조)**

12. 한국은 현실적으로 이주노동력을 필요로 함에도 불구하고, 이주노동자들이 합법적으로 취업하고 체류할 수 있는 제도가 없다. 전체 이주노동자의 29.6%를 차지하는 산업연수생들은 실질적으로 노동을 제공함에도 불구하고 노동자로서의 지위를 인정받지 못한 채 노동착취로 고통받고 있다. 연수생들은 하루 12시간의 장시간 노동에 시달리며, 평균 임금은 64만 8천원(동일 노동에 종사하는 한국인 노동자의 60%)이다. 노동부 예규에 따라, 심지어 이 임금의 50%마저도 본인의 의사와 상관없이 사업주에 의해 일방적으로 적립된다. 정부는 '연수취업제'를 신설해, 산업연수 2년을 받은 노동자가 시험을 통과하면 1년 간 노동자의 지위를 받고 일을 할 수 있도록 했지만, 현재 연수취업자는 0.3%에 불과한 데다, 임금·노동시간 등 인간다운 노동조건에 대한 권리를 제대로 누리지 못하고 있다. 이는 곧 미등록 노동자가 증가해 64.5%를 차지하는 배경이 된다. 이들 미등록노동자들에게도 근로기준법의 일부가 적용되기 시작했으나, 불법체류라는 지위 상 사용주가 관련법률을 위반해도 문제삼기가 어렵다. 열악한 노동조건을 감수할 수밖에 없는 것이다. 정부는 연수생제도를 폐지하고 외국인력도입정책을 근본적으로 수정함으로써, 이주노동자의 체류자격을 안정적으로 보장하고 노동권을 보장해야 한다.

13. 이주노동자들은 산업재해보상보험, 의료보험 등 기본적인 사회보험을 "실질적"으로 적용받지 못하고 있다. 미등록노동자들에게 산재보험이 적용되나, 불법체류의 지위 때문에 산업재해가 은폐되곤 한다. 의료보험은 아예 적용이 되지 않는다. 산업연수생들은 정식 노동자의 지위를 인정받지 못하기 때문에 산재를 당해도 보상의 액수가 적다. 의료보험은 당연 적용 대상이나, 사용주가 가입을 기피하고 있다. 미등록 이주노동자들은 결혼과 자녀의 교육에 있어서도 제도적으로나 사회적으로 심각한 차별을 받고 있으며 이는 심각한 가족파괴 현상으로 귀결되고 있다. 정부는 '모든 이주노동자와 그 가족의 권리보호를 위한 국제협약'을 비준해야 하며, 이주노동자들이 실질적으로 한국인들과 동일하게 경제·사회·문화적 권리를 향유할 수 있도록 하기 위한 사회·제도적 장치를 마련해야 한다. 특