

and another indictment has been issued on the same act, the court shall dismiss that indictment (Article 326 sub, paragraph 1 of the Penal Procedure Code).

The Republic of Korea made reservations on Article 14, paragraph 7 at the time of ratification of the Covenant, but reservations were withdrawn on 21 January 1993 following the conclusion that there was no more substantial need for them to be maintained.

## Article 15

128. Article 13, paragraph 1 of the Constitution prohibits *ex post facto* laws by providing that “no citizen shall be prosecuted for an act which does not constitute a crime under the law in force at the time it was committed.” Article 1 of the Criminal Code reconfirms the above principle and goes on to state that “when a law is changed after the commission of a crime, such act thereby no longer constitutes a crime under the new law, and in case the punishment under the new law is less severe than under the previous law, the new law shall apply. If a law is revised after a certain act is punished and if such act thereby no longer constitutes a crime under the revised law, the execution of the punishment shall be remitted.”

Article 47, paragraph 2 of the Constitutional Court Act provides, to the same effect, that “if the law or articles are ruled unconstitutional, they shall lose their effect retroactively.” In the event a guilty verdict was rendered under a law that has been ruled unconstitutional, the accused can request a retrial.

## Article 16

129. The rights in Article 16 of the Covenant are covered by Article 10 of the Constitution, which provides that “all citizens shall be assured of human worth and dignity and have the right to pursue happiness; it shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights.” The intentions of the Constitution are substantiated through relevant laws and regulations by reaffirming paramount respect for rights of individuals.
130. Article 3 of the Civil Code provides that “all persons can enjoy rights and assume duties during their lives,” and under certain circumstances, an unborn child is also capable of enjoying rights. The limited legal capability of an unborn child is addressed in Article 762 of the Civil Code, which states that “an unborn child shall, in respect of its claim for damages, be deemed to have been already born”. Furthermore, Article 1000, paragraph 3, which sets forth that “with respect to the order of inheritance, an unborn child shall be considered to have already been born.” In addition, the Criminal Code stipulates crimes of abortion so that acts of abortion under certain circumstances can be prosecuted.

## Article 17

131. Regarding legal provisions of the Republic of Korea related to Article 17 of the Covenant, the initial report already stated that Articles 16, 17 and 18 of the Constitution stipulate freedom of residence, protection of privacy and freedom of correspondence. The above Articles have been incorporated in the Criminal Code, the Civil Code, the Minor Offense Punishment Act, the Postal Services Act, the Korea Telecom Act, etc.

## **The Act on Protection of Personal Information Regarding Public Institutions**

132. Since 1983, the Republic of Korea has been advancing a master plan for a national computer network. The establishment of a nationwide administrative computer network has shortened the time required to issue papers and connect the national civil service, as well as made joint utilization of administrative materials possible among government agencies. On the other hand, personal information on the average individual in the form of electronic data has greatly increased over the same period, causing some problems such as leakage of electronic data information which would likely lead to infringement of privacy. This situation has increased the need to ensure the protection of an individual's privacy.
133. In response to this need of respecting an individual's privacy in administrative data processing, the Act on Privacy and Protection of Individual Information Regarding Public Institutions was legislated on 7 January 1994.

Under the above Act, public institutions are prohibited from collecting data such as thoughts or beliefs of individuals (Article 4, paragraph 1) that may infringe on fundamental human rights. Individuals may inspect data on themselves that have been processed, and demand that corrections be made for inaccurate information (Article 14). The act of leaking personal information or providing it for another person's use is subject to punishment (Article 23, paragraph 2). Individuals or organizations other than public institutions are punished when they obtain processed data from a public institution by illegal means (Article 23, paragraph 3). As a result, information on individuals is protected to the highest degree.

## **Enactment of the Correspondence Privacy Protection Act**

134. The Correspondence Privacy Protection Act was legislated on 27 December 1993 and carried into effect on 27 June 1994. This legislation is designed to protect the privacy of correspondence and to promote freedom of correspondence by requiring strict legal procedures in case of restricting privacy or freedom in correspondence and communication for the purposes of a criminal investigation, for example.

Article 3 of the above Act prohibits in principle the examination of mail, tapping of telecommunications and recording or listening to private conversations. If restrictive measures on correspondence are crucial and inevitable for crime investigations, the investigating agencies are required to obtain authorization from the Courts (Article 5), while the intelligence agency must obtain authorization from the Chief Judge of the High Court or approval from the President in case unavoidable restriction upon correspondence is necessary for national security (Article 7).

## **Protection of correspondence under the Telecommunication Business Act and the Radio Waves Act**

135. Under Article 54 of the Telecommunication Business Act, no one, including persons who are or have been engaged in telecommunication services, shall violate or leak private correspondence. Furthermore, under Article 42 of the Radio Wave Act, no one shall leak or use other people's secrets obtained through wireless correspondence, hence, avoiding wiretapping and protecting freedom of correspondence.

In December 1991, the Telecommunication Business Act and the Radio Waves Act were revised to include more severe punishment of persons infringing upon other's freedom of correspondence.

### **Protection of freedom of residence in times of search**

136. Police officers may enter other people's land or buildings in case of a criminal act or other extraordinary situations where danger upon human life, body or property is apparent and such entrance is necessary to prevent danger or save the injured (Article 7 of the Police Officer Duty Performance Act). Searching residences for a criminal investigation requires a warrant issued by a judge of the competent district court (Article 215, paragraph 2 of the Penal Procedure Code). Insofar as is possible, the presence of third persons is required during the execution of search warrants. The aim is to fully protect the freedom of residence and, at the same time, preclude arbitrary interference by public authorities (Articles 149 to 152 of the Rules on Investigation of Crimes).

### **Article 18**

137. It was observed in the initial report that the Constitution sets forth the freedom of conscience and the freedom of religion in Articles 19 and 20 respectively-- the rights stated in Article 18 of the Covenant providing for protection of the inner spiritual life of a human being are guaranteed herewith.
138. Article 19 of the Constitution underlines freedom of conscience. The Constitution also stipulates that members of the National Assembly (Article 46, paragraph 2) perform their duties and that judges (Article 103) rule

based on their conscience respectively.

State authorities shall not intervene when individuals make their own decisions based upon their conscience. The state shall neither promote certain ideologies nor suppress ways and means necessary for citizens to freely cultivate their thoughts.

In regard to freedom of conscience, the Constitutional Court observed that “freedom of conscience includes not only the inner aspect but also freedom from coercion”. Namely, the State shall not interfere in moral judgments such as right and wrong. Nor shall it coerce citizens to express their moral judgement (89 HEONMA 160 of 1 April 1991).

The Supreme Court provides substantial protection for the freedom of conscience by deciding that “keeping a diary with contents sympathetic to anti-State organizations, if it does not involve any actual effect in the outside real world, cannot be punished” (Decision 73 DO 3392 of 9 December 1975).

139. The Constitution has not clearly stated freedom of thought, yet freedom of conscience found in Article 19 in the Constitution is interpreted to include freedom of thought.

The Republic of Korea tolerates individuals’ thoughts of any kind, including *inter alia*, communism, and “Juche” ideology of North Korea. However, acts that endanger the existence and security of the State through agitation of violent revolution or attempts to overthrow the free and democratic system by carrying out these thoughts, is subject to punishment. Persons being punished due to the above acts receive correctional education in penitentiaries in order to guide them back to the free and democratic

society. Conversion of thought, however, is left to their own free will.

140. In addition to the provision of freedom of religion in Article 20, paragraph 1, the Constitution states in Article 20, paragraph 2 that “no state religion shall be recognized, and religion and politics shall be separated.” Article 5, paragraph 2 of the Education Act provides that “national and public schools shall not be allowed to carry on religious education for the sake of a religion.”

This signifies that no State religion could exist under the constitutional order of the Republic of Korea, where freedom of religion is guaranteed. The State is prohibited from adopting a policy that interferes in religion or treats certain religions preferentially. Political activities of religious organizations are also forbidden. However, the individual involvement in political activities directly or through participation in a separate association is allowed.

Religious neutrality of the State, as underscored in the Constitution, is not merely a logical conclusion of the freedom of religion. It highlights the function of freedom of religion in an objective order of values by clarifying the equality of religion and prohibiting sacralization of politics and politicization of religions.

At present, various religions including Buddhism, Protestantism, Roman Catholicism, and Won Buddhism coexist in the Republic of Korea; Buddhism and Protestantism are among the largest in number of followers. No regional peculiarity can be perceived, and all religions are equally distributed nationwide.

## Article 19

141. It was already observed in the initial report that the rights under Article 19 of the Covenant are covered by Articles 19, 21, 22 of the Constitution and relevant laws such as the Broadcast Act. Rights regarding freedom of expression provided in Article 19, paragraph 2 of the Covenant are respected to the maximum degree as the core of spiritual freedom and cornerstone of a democratic society.

However, considering the social aspect of the freedom of expression, and unlike the right to hold opinions in Article 19, paragraph 1 of the Covenant or the right to freedom of thought in Article 18 of the Covenant, the freedom of expression has its own inherent limits. As for the limits, Article 21, paragraph 4 of the Constitution provides that "neither speech nor the press shall violate the honour or rights of other persons nor undermine public moral or social ethics." In addition, the following legislation makes clear the special obligation and responsibility involved in the exercise of the above right: provisions on distribution of obscene materials etc. (Article 243 of the Criminal Code), defamation through printed materials (Article 309 of the Criminal Code), prohibition of propaganda on agitation, insurrection and foreign aggression (Article 90, paragraph 2 and Article 101, paragraph 2 of the Criminal Code), prohibition of broadcasts advocating a certain political party or group (Article 5, paragraph 3 of the Broadcast Act) and prohibition of agitation and destruction of national public order (Article 7, paragraph 1 of the National Security Law). These should be deemed the necessary minimum restrictions.



## **Presentation of periodicals to the authorities and freedom of expression**

142. Article 10 of the Act Relating to the Registration of Periodicals prescribes that when a periodical is published, two copies shall be delivered to the Minister of Public Information. This delivery is merely an administrative confirmation of publication and not a restriction prior to the publication of a periodical. The Act Relating to the Registration of Periodicals stipulates sanctions in case some basic information is not printed as registered. This information (for example, the title, publisher, etc.) should be printed as registered and not altered at will. The delivery of books to the Ministry of Public Information is required to decide whether those provisions are being observed.

Concerning the constitutional status of this periodical inspection system, the Constitutional Court has decided that "the delivery system does not signify pre-censorship on speech and press, therefore does not infringe freedom of speech and freedom of press. The fine prescribed to guarantee an effective delivery system is reasonable and therefore not unconstitutional" (Decision 92 HEONBA 26 on 26 June 1992).

## **Review on works of expression**

143. Performances, motion pictures and video works must be reviewed by the Performance Moral Committee instituted by Article 25-3 of the Performance Act. The Performance Moral Committee consists of 18 persons from various circles of society including the arts, the press, publishing, and education; all members being civilians, this Committee is an independent organization.

The Performance Moral Committee, using guidelines such as the protection of basic constitutional orders, maintenance of public order, protection of public morals, protection of children and youth, and sexual morality in family life may minimally restrict the presentation or release of performances for reasons of national security, public order and public morals. The review of the Performance Moral Committee in 1995 has resulted in the following.

	Total	Passed	Censorship required	Rejected
Stage performances	2,419	2,419	none	none
Motion pictures	839	627	182	30
Video works	4,855	3,816	881	158
Advertisement	19,014	16,508	2,092	414

144. In the past, music records were also reviewed by the Performance Morals Committee. But with the possibility of records damaging good public order and customs being low, the necessity of reviewing of records was considered insignificant. As a result, the revised Act relating to Records and Video Works of 6 December 1995 prescribes review on demand only.

### **Present situation of periodicals and broadcasting companies**

145. As of February 1996, a total of 9,893 periodicals, (i.e. 149 daily, 2,920 weekly, 3,748 monthly, 900 bimonthly, 1,473 quarterly, 378 biannual and 325 annual periodicals) are registered in the Republic of Korea.

As for broadcasting, 14 radio and television broadcasting stations and 53 comprehensive cable television broadcasting corporations exist.

Twenty-eight licensed companies are supplying the programmes.

### **Guarantee of neutrality of broadcast**

146. The Broadcast Act, in addition to the guaranteed freedom of broadcast programming, emphasizes the public nature of broadcasting in Article 5 by stating that "News broadcasts shall be impartial and objective; the broadcast shall not support or advocate a certain political party, group, interest, belief or thought." Article 31 decrees that "the broadcasting programme shall be drawn up so that each field of interest; i.e. political, economic, social, cultural, etc. may be expressed harmoniously in a proper ratio," so that broadcasting equally reflects the voice of every citizen and is not being partial to a certain interest or group. The neutrality of broadcast is also guaranteed from the aspect of organization of the broadcasting corporations. This neutrality has been instituted so that persons from various circles including academia, the press, legal professions, and those who are politically and socially neutral, will be selected as members of the executive board.

### **The National Security Law and freedom of expression**

147. The National Security Law was enacted on 1 December 1948 to both cope with North Korean maneuvers to destroy the Republic of Korea and protect the democratic system that guarantees life and freedom for the people living under the special situation found on the Korean Peninsula. The above Law has undergone eight revisions, and its contents have been supplemented and improved not only to protect national security, but also to prevent human rights violations. During the seventh revision on 31 May 1991, a declaratory clause was inserted to provide that "construction and application of the National Security Law shall remain at the minimal level, and shall not

extend the interpretation or wrongfully restrict fundamental human rights of citizens guaranteed under the Constitution.” (Article 1, paragraph 2). Also, provisions likely to cause encroachment of human rights were fully reviewed.

148. As for Article 7 of the National Security Law which concerns praising, encouraging, and propagating anti-State organizations and producing or distributing materials for the benefit of an anti-State organization, a phrase for subjective condition was added (i.e. “taking cognizance of the endangerment of the existence and security of the State or the principle of freedom and democracy”). The application of this article became more strict and specific, compared with other penal laws such as the Criminal Code.

Above all, all the concepts in the National Security Law, since its enactment 50 years ago, have been clearly defined through the jurisprudence of the Supreme Court, the decision of the Constitutional Court and some academic theories. This has diminished the chances of the law being subjected to arbitrary interpretation. As a consequence, abuse by investigation agencies is almost out of the question. The Constitutional Court has firmly defined that “endangerment of the existence and security of the State signifies threatening and infringing the independence of the Republic of Korea, intruding its territory, destroying and paralyzing the function of the Constitution, laws and constitutional institutions; endangerment of free democratic basic order means complicating the self-governing of the people through elimination of violent and arbitrary rule and the suppression of the united constitutional order based on freedom and equality.”

149. The purpose of Article 7 of the above Law is not intended for punishment of those who study or simply express communism or Juche ideology. Rather, it is for cases in which such expressions of thought exceed the

inherent limits and rouse anti-State activities i.e. agitation of violent revolution or assertion of overthrowing the free and democratic system. Therefore, the above Article does not constitute an infringement upon the freedom of expression.

150. It was pointed out that the objectives of the National Security Law could be achieved under the crime of espionage, etc., of the Criminal Code, if the National Security Law were to be abolished. However, the present system of law of the Republic of Korea, starting from the Constitution (Article 3), does not consider North Korea as a State, so the crime of spying in the Criminal Code involving an 'enemy country' is not applicable, making a special law called the National Security Law necessary.

North Korea has persistently adhered to the communization of the Republic of Korea based on revolutionary ideas of so-called 'single Chosun' in the covenant of its Labour Party and Socialist Constitution. The National Security Law is a special law in force that is a minimum legal instrument required to safeguard the national security against the strategies by North Korea.

## **Article 20**

### **Stipulation of the Constitution and laws on the pursuit of peace and the prevention of war**

151. The Constitution is based on the ideal of the pursuit of peace. To realize this goal, "the mission of ... peaceful unification of our homeland" is emphasized and the will to "contribute to lasting world peace and the common prosperity of mankind" is expressed in the preamble of the Constitution. Article 5, paragraph 1 of the Constitution also provides that

“the Republic of Korea shall endeavor to maintain international peace and shall renounce all aggressive wars.”

A person who agitates or propagates to commence hostilities against the Republic of Korea in conspiracy with a foreign country or to spy for an enemy country is punished under Article 101, paragraph 2 of the Criminal Code. A person who propagates war between other states in violation of neutrality orders is punished under Article 112 of the Criminal Code.

### **Efforts of the Republic of Korea in pursuit of peaceful unification under the particular circumstances in South-North relations**

152. The Republic of Korea, unlike other nations, has greatly suffered from division. To overcome this reality, the Republic of Korea has set unification as the ultimate national task and has consistently pursued the principle of peaceful unification founded upon the basic order of free democracy. Article 4 of the Constitution stipulates that “the Republic of Korea shall seek unification and shall formulate and carry out a policy of peaceful unification based on a free democratic order.” Article 66, paragraph 3 states that “the President shall have the duty to faithfully pursue the peaceful unification of the homeland.” The nation’s resolve toward peaceful unification is also declared in Article 92, paragraph 1, which provides that “an Advisory Council on Democratic and Peaceful Unification may be established to advise the President on the formulation of peaceful unification policy.”

153. The Government has made endless efforts toward peaceful unification. On 1 August 1990, the Law on Exchange and Cooperation between the South and the North was enacted to regulate traffic, trade, cooperative projects, and provisions for communication services between the South and the North. The foundation for peaceful unification was strengthened with

simultaneous accession of both sides to the United Nations in September 1991. On 19 February 1992, the Agreement on Reconciliation, Nonaggression, Exchange and Cooperation between the South and the North was reached. It clearly described that "aggression and conflict using force should be avoided, and the relaxation of tension and peace should be guaranteed." In particular, Article 3 of the above Agreement expressed that "the South and the North shall neither libel nor defame against each other." Article 9 sets forth that "the South and the North shall not use force against each other and not aggress each other by using force," while Article 10 declares that "the South and the North have to solve peacefully difference in opinion and contentious problems through dialogue and negotiation." All these provisions have provided a foundation from which war can be prevented on the Korean Peninsula. Moreover an 'Attached Agreement for Execution and Observance of the South-North Reconciliation' has been arranged. For the implementation of these Agreements, North-South dialogue should be resumed as soon as possible.

## Article 21

154. As the initial report mentioned, Article 21 of the Constitution protects the freedom of assembly by providing that "all citizens shall enjoy freedom of assembly. Permission of assembly shall not be recognized." However, the Act Concerning Assembly and Demonstration has been legislated to guarantee peaceful assembly and demonstration and protect citizens from illegal violent assemblies.

155. The Act prohibits assemblies or demonstrations which represent a clear threat to public peace and order through mass violence, intimidation, destruction and arson, or which intend to achieve the objectives of a political party dissolved by a decision of the Constitutional Court (Article 5). Open-air assemblies or demonstrations before sunrise or after sunset (Article 10) and open-air assemblies or demonstrations held in public places such as the National Assembly building and the Court, or on main roads (forbidden or restricted under the presidential decree due to traffic congestion), are prohibited for the maintenance of order.
156. A person who intends to hold an assembly does not need permission from the authorities, but in case of open-air assemblies or demonstrations, reporting to the chief of the relevant police station is required for administrative purposes. A person intending to hold an open-air assembly or demonstration must submit to the relevant police station, at least 48 hours prior to the assembly or demonstration, the necessary papers referring to the purpose, date and time, place, sponsor, contact person, name-address-vocation of the person responsible for the organization, the number of people expected to participate, and the method of demonstration (Article 6).

The police station chief receives the application and uses it for administrative reference. For example, if the assembly or demonstration in the application is prohibited under the Act Concerning Assembly and Demonstration, the police chief may notify the sponsors of this fact within 48 hours from the time of application. This notification does not imply permission of assemblies or demonstrations by the chief of police. The police chief is simply drawing the attention of the organizers to the fact that certain assemblies are forbidden under relevant laws.

157. In the Republic of Korea, the radical and violent demonstration atmosphere formed under the military regimes of the past has yet to completely vanish.



Some demonstrations lead to the occupation of traffic lanes in city centers, the use of fire bombs and stones, and attacks on public offices. Due to the above features of demonstrations, the police reviews the purpose of the assembly or demonstration, the sponsor's previous record of violent demonstration, the inclination of the participants, the ability of the sponsors to control the participants, and the possession of fire bombs. If it is deemed most likely that the demonstration will turn violent, the organizers are notified that it is not allowed under the Act Concerning Assembly and Demonstration. This is not due to the anti-government disposition of the assembly or demonstration, but only because of the anticipated violence.

## **Article 22**

### **Guarantee of freedom of association**

158. Article 21 of the Constitution guarantees the general freedom of association and prohibits prior control over association by providing that "all citizens shall enjoy freedom of association ... giving permission to association shall not be admitted."

In addition, Article 33, paragraph 1 guarantees freedom of association of workers by stating that "to improve working conditions, workers shall have the rights of organization, collective bargaining and collective action." To guarantee workers' rights to organize, Article 8 of the Labour Union Act provides that "employees (who live on wages, salaries and/or other income) may freely organize or join labour unions." This allows two or more workers to organize any kind of a labour union. Article 39 of the above-mentioned Act prohibits management from dismissing an employee

for his or her involvement in the organization and rightful participation in the activities of a trade union. This Article also forbids management from interfering in the operation of a labour union or rejecting a request for collective negotiation from a labour union. The worker or union can bring a case of unfair labour practice on the part of the employer to a labour committee composed of representatives from labour, management and public interest groups. The committee may grant relief and recommend criminal punishment of the employer.

### **Restrictions upon freedom of association**

159. Freedom of association may be restricted by law if absolutely necessary for national security, the maintenance of law and order or for public welfare. Article 37, paragraph 2 of the Constitution describes the general principle of restricting basic rights. Article 33, paragraph 2 of the Constitution provides that only those public officials who are designated by law shall have the rights to organization, collective bargaining and collective action. In accordance with this clause, the Labour Union Act and the National Civil Service Act restrict the above-mentioned rights in regard to public servants. The scope of and reasons for these restrictions are stated in the initial report.
160. Article 66 of the National Civil Service Act and Article 55 of the Private School Act prohibit the organization of teachers' unions. Teachers share common attributes of other workers from the viewpoint that they engage in educational affairs and receive salaries in return. Due to the public and moral dimension that education contains, however, teachers bear the same social responsibilities as other public servants, and this special character of teachers' function is deeply rooted in the minds of the people of the Republic of Korea. Moreover, the prohibition of teachers' union guarantees citizens' rights to education and maintains the nature of the education system for the benefit of the public, given the fact that the work relationship

of teachers cannot be considered the same as that of common workers.

As a practical measure to guarantee teachers' rights to organize, Article 80 of the Education Act provides that "teachers may organize Education Associations at central as well as local levels for the purpose of ... promoting their own economic and social status." The Special Act for Improvement of Status of Teachers, effective as of 31 May 1991, provides in Articles 11 and 12 that the Education Association can negotiate with or consult with the Minister of Education or the Superintendent of Educational Affairs on the improvement of treatment and work conditions for teachers.

161. Regarding the Private School Act, which prohibits the organization of private school teachers' unions, the Constitutional Court decided that since private school teachers can promote their economic and social status through the Education Association, restrictions or prohibition of the exercise of workers' three basic rights (rights to association, collective bargaining and collective action) cannot be said to have violated the essential aspects of their basic rights. These restrictions are not unconstitutional because the legislator has determined that they are necessary and adequate to maintain the nature of the educational system in the interest of the public, and considering in full the special character of teachers' status and historical realities of this nation (Decision 89 HEONMA 106 of 22 July 1991).

In a decision on Article 66, paragraph 1 of the National Civil Service Act restricting the three basic labour rights of public servants, the Constitutional Court stated that "this provision prohibiting labour movements by public officials except for those by actually engaged in labour does not violate the Constitutional provision of equality" (Decision 92 HEONBA 1 of 28 April 1992).

162. Article 3, item 5 of the Labour Union Act stipulates that a planned labour

union will not be approved in case it has the same organizational objective as an existing labour union, or if it aims to interfere with the normal operation of such a union. This provision has taken into account the fact that most of the labour unions are established on an enterprise basis in the Republic of Korea. It is feared that the existence of two or more unions eyeing for the same group of workers who are already members of a union could result in troubles, such as the disintegration of a labour union, weakened negotiation capabilities, complication of the negotiating process, and disputes among workers and between workers and employers. The terms of the Labour Union Act are designed to avoid these developments.

### **Accession to ILO**

163. On 9 December 1991, the Republic of Korea became a member of the International Labour Organization, the last UN specialized agency for the Republic of Korea to join. Since 16 June 1996, the Republic of Korea has been participating more vigorously in its affairs as a member of the Council. After accession to the ILO, the Government has been exerting greater efforts to promote workers' rights and enhance international cooperation in the field of labour.

### **Revision Process of the labour-related laws**

164. In 1987, the present Labour Union Act underwent a major revision in keeping with the general trend of democratization of society. Such restrictive provisions as limitations on the establishment of labour unions were eliminated to guarantee free and independent labour movement. Since then, suggestions have continuously been made from various social sectors

on matters that either do not meet the current industrial realities or could possibly restrict workers' rights. In particular, confrontation between labour and management over the issues of multiple labour unions, ban on third party intervention, replacement of striking workers, flexible work hour system, and dismissal for managerial reasons, has made a reasonable compromise an elusive task. In March 1996, the Government launched the Presidential Committee on Labour Reforms composed of individuals from various fields including employees, employers, scholars, etc. This Committee aims at reforming industrial relations through revisions in labour-related laws and restructuring of the labour administration organizations.

### **Registration of political parties**

165. The initial report already stated that a political party, on view of its importance, is given special protection under the Constitution. In order for an organization to be registered as a political party eligible for such protection, it should secure sub-organs necessary to form citizens' political opinions. According to the Political Party Act, for an organization to be registered as a political party, it must be composed of a central party and district chapters equal to a tenth or more of the total regional electoral districts for the National Assembly members (Article 25) with adequate geographical distribution (Article 26). When the requirements are no longer satisfied, the Central Election Management Committee revokes, *ex officio*, its registration (Article 38, paragraph 1 of the Political Party Act), and the organization is denied the status of a political party. Also when the party fails to win a seat or get more than two hundredths of the total effective votes in the general elections for National Assembly Members, the Central Election Management Committee revokes its registration.

As of June 1996, seven political parties were registered. They

include the New Korea Party (151 National Assembly members), the National Congress for New Politics (79 members), the United Liberal Democrats (49 members), the Democratic Party (12 members), the United National Non-Political-Factionalists, the Christian People's Party, and the Unified Korean Party have been registered.

One change has been made in relation to accession to a political party. Members of the press are now permitted to join parties, whereas, in the past, members of the press were denied admission in order to maintain political neutrality of the press. The revised Political Party Act of 27 December 1993 allows, without any restrictions, these individuals to join political parties (Article 6 of the Political Party Act).

## **Article 23**

### **Paragraph 1**

#### **Protection of families and homes**

166. Article 36, paragraph 1 of the Constitution provides that "marriage and family life shall be entered into and sustained on the basis of individual dignity and equality of sexes, and the State shall do everything in its power to achieve that goal". Men and women under their free will are supposed to maintain a democratic family system on equal footing.
167. Article 779 of the Civil Code prescribes members of the family; notably the spouse of the head of a family, blood relatives (lineal ascendants and lineal descendants; brothers and sisters; lineal descendants of brothers-sisters; brothers-sisters of lineal ascendants; lineal descendants of brothers-sisters of lineal ascendants) and their spouses. But in the social sense, the concept

of a family is understood as a sphere centered around a married couple where close blood relatives live together and lead a joint life based on love and caring. The family is considered the most basic unit of society.

168. In the past, the family system of the Republic of Korea had the rather conservative character of a traditional Confucian patriarchy. With the progress of industrialization, urbanization and increased social participation of women, however, the nuclear family composed of the couple and their children replaced the extended family as the common base unit, and the family system has assumed a more democratic character respecting the dignity of each individual and equality of the sexes. It has already been stated in the initial report that the Civil Code was revised on 13 January 1990 to support the trend mentioned above.

## **Paragraphs 2 and 3**

### **System of Marriage**

169. Under Articles 800, 801, 807 and 808 of the Civil Code, any adult may freely enter into a matrimonial engagement and marry. A minor also can enter into a matrimonial engagement and into matrimony if he has attained 18 years of age or she has attained 16 years of age with the consent of his or her parents or guardian.

As for marriage, monogamy is guaranteed where two individuals join under their own free will; bigamy is prohibited by Article 810 of the Civil Code. An application can be made to the court for an annulment of marriage when marriage was induced by fraud or duress and in cases of bigamy.

170. Marriage among close relatives is forbidden from the dysgenic point of

view and traditional ideas influenced by Confucianism. Article 815 of the Civil Code declares null and void a marriage between lineal blood relatives, collateral blood relatives within the range of third cousin. As for marriage between individuals who share the same surname and family origin, an application to the court for an annulment of that marriage may be made under Article 816 of the Civil Code. There are dissenting opinions on the prohibition of marriage between individuals who share the same surname and place of origin; the possible abolition of that provision is being studied.

171. The place where a husband and wife live together shall be determined by an agreement between them (Article 826, paragraph 2 of the Civil Code). The couple shall exercise the right of proxy for each other on daily household matters (Article 827, paragraph 1 of the Civil Code), and the living expenses of husband and wife shall be borne jointly by them, unless a special stipulation has been made between them (Article 833 of the Civil Code).

Husband and wife may seek divorce by agreement or unilateral application to the court. In 1994, the number of marriages and divorces reported were 304,146 and 50,960 respectively.

## **Paragraph 4**

### **Right of the spouse**

172. It was already mentioned in the initial report that the present Civil Code, effective from 1 January 1991, provides for equal rights and duties between husband and wife through joint exercise of parental authority with respect to a minor child; elimination of discrimination at inheritance; and the right to demand division of properties.



Furthermore, the inheritance law was revised in December 1994. Through this revision, the criteria for gift tax and inheritance tax deductions for spouses were upgraded by a very wide margin. This signifies the recognition of reasonable property rights upon jobless spouses.

## **Article 24**

### **Paragraph 1**

173. It has already been confirmed in the initial report that prohibition of discrimination against children and the protection of children are duly guaranteed under Article 11, paragraph 1, Article 31, paragraph 2, and Article 32, paragraph 5 of the Constitution, in addition to relevant provisions of the Child Welfare Act, the Labor Standards Act and the Education Act. Some additional comments will be made below.

### **Accession to the Convention on the Rights of Children**

174. The Republic of Korea, joining in the United Nation's effort to protect children, deposited the instrument of ratification for the Convention on the Rights of Children with the Secretary-General of the United Nations on 20 November 1991. The first report transmitted on 30 November 1994 was examined by the Committee on the Rights of the Child in January 1996.

## **Protection of working children and decrease in the number of working children**

175. The initial report has observed that Article 32, paragraph 5 of the Constitution provides that “special protection shall be accorded to working children,” and that in accordance with this provision, the Labour Standards Act sets forth restrictions on the working hours of children (Articles 55, 56) and prohibits the engagement of children in any harmful or dangerous work (Articles 51, 58). Moreover, in order to prevent economic exploitation of children, Article 53 of the Labour Standards Act states that no parent or guardian shall be authorized to make an employment agreement on behalf of a minor: in case the employment agreement may be deemed disadvantageous to a minor, the parent, guardian or the Minister of Labor may terminate it. For observance of special provisions on child protection, 45 local labour agencies nationwide guide and supervise workplaces with no less than five workers.

In response to these special protection clauses and increased school attendance of children, the ratio of children under 18 in workplaces with no less than five full-time workers has dropped tremendously from 2.8% (90,625 out of 3,219,442 total workers) in 1980 to 0.4% (23,916 out of 6,167,596 workers in total) in 1995.

## **Responsibility of parents to protect children and respect for the child’s own will**

176. Parents are responsible for raising children. Article 909, paragraph 1 of the Civil Code stipulates that “the child who is a minor, shall be subject to the parental authority of parents.” Article 913 provides that “a person in parental authority shall have rights and duties to protect and educate his or her child.”

In case a person of parental authority abuses that authority or is guilty of gross misconduct, or there exists any other cogent reason for not allowing him or her to exercise parental power, or if a person in parental authority endangers his or her child by mismanagement of the child's property, the court may adjudge his or her loss of parental authority and the right of the management of the property of the child. (Articles 924 and 925 of the Civil Code).

When the person with parental authority is representing a child on occasions in which an obligation is to be assumed requiring any act of the child, the consent of the child shall be obtained (Article 920 of the Civil Code). Also, a minor with the ability to express his or her own thoughts, may conduct business acts with the approval of his or her parental authority (Article 5 of the Civil Code).

When the parents cannot reach agreement on matters concerning custody in cases of legal separation, a child who is more than 15 years old is consulted as to which parent he or she wishes to stay with. In case of adoption of a child age 15 or over, the child shall not be adopted without his or her own consent.

### **The present situation of facility accommodation measures for children in need of protection**

177. Some facilities are required to provide social protection to children who are abandoned or whose protectors are not qualified to raise them. Article 12 of the Child Welfare Act stipulates necessary protective measures for this type of child. As of 31 December 1995, 18,074 children were accommodated in 269 protective facilities.

## **Protection of children under the Minor Protection Act**

178. The Minor Protection Act was legislated in 1961 to guide and care for minors. This Act aims to protect minors by stipulating necessary details and by proscribing minors' smoking, drinking and activities against social virtue.

In accordance with this Act, minors are prohibited from smoking and drinking and from gaining access to certain places including saloon bars and gambling houses. Minors are also not permitted to go into areas designated by the police as off-limits, to prevent misdemeanors by minors.

## **Protection of the minor from violence, maltreatment and sexual exploitation**

179. The Criminal Code strives to protect minors from sexual exploitation and violence. Article 287 provides that "a person who kidnaps a minor by force or inveiglement shall be punished by penal servitude for not more than ten years." Article 242 states that "a person who, for the purpose of earning profit, induces a minor to engage in sexual intercourse, shall be punished by penal servitude for not more than three years or by a fine not exceeding 15 million Won (approx. US\$ 19,000)."
180. Article 34 of the Child Welfare Act stipulates punishment for following acts: forcing a child to perform obscene acts or mediating such activity, having a child under 14 engage in entertaining activities in certain places, including saloon bars, making a child beg, and maltreating a child who is under his or her protection or supervision.

## **Protection of children born out of wedlock**

181. The Civil Code provides equal protection for legitimate and illegitimate children. Children born out of wedlock are protected at first by the establishment of legal family relations. This is established through the recognition of the natural father or mother (Articles 855 and 859 of the Civil Code). In case it is not possible to obtain recognition, a child may bring a suit against his or her natural father or mother to demand recognition (Article 863 of the Civil Code). Recognition shall be effective retroactively as from the time of birth (Article 860 of the Civil Code). As a consequence of establishing a family relationship, illegitimate children are treated equally with legitimate children in support and inheritance.

A child born out of wedlock shall be deemed to be a child born during marriage from the time his or her parents marry (Article 855 of the Civil Code).

### **Paragraph 2**

#### **Name of the child**

182. Concerning the registration and surname of a child, the Civil Code provides that a child shall take his or her father's surname, the family origin, and enroll in the father's family registry. In the case of a child whose father is not recognized, his or her mother's surname and family origin are taken, and the child is enrolled in the mother's family registry. However, a child whose father and mother are unknown, with approval of the court, may create a new surname and origin of surname, and establish a new family.

183. Article 49 of the Family Registration Act requires reporting of birth within one month. A birth report is established by submitting application papers

to the administrative office at the place of birth. In case of in wedlock birth, the child's father or mother has the obligation to file a birth report. In case of birth out of wedlock, the child's mother is responsible for the birth report (Article 51 of the Family Registration Act). As for foundlings, the head of the relevant local administrative office shall, upon authorization of the court, establish a surname and place of origin, and decide on a name and address under which the child is to be registered. (Article 57 of the Family Registration Act).

### **Paragraph 3**

#### **Nationality of the child**

184. Children born out of wedlock, foundlings discovered in the Republic of Korea and children of the stateless acquire the nationality of the Republic of Korea in accordance with Article 2 of the Nationality Act. Therefore the following persons shall be nationals of the Republic of Korea: a person whose father is a national of the Republic of Korea at the time of his or her birth; a person whose father has died before his or her birth and who was a national of the Republic of Korea at the time of death; a person whose mother is a national of the Republic of Korea, if his or her father is unknown or has no nationality; a person who is born in the Republic of Korea and whose parents are unknown or have no nationality (Article 2, paragraph 1). In addition, all foundlings discovered in the Republic of Korea shall be presumed to have been born in the Republic of Korea (Article 2, paragraph 2).

## Article 25

185. The principle that sovereignty resides in the people is declared in Article 1, paragraph 2 of the Constitution, which stipulates that “the sovereignty of the Republic of Korea shall reside in the people, and all state authority shall emanate from the people.” Under this principle, citizens are entitled to directly participate in the formation of the national will through: provisions on national referenda on important policies relating to the national destiny (Article 72 of the Constitution); proposed amendments to the Constitution (Article 130, paragraph 2 of the Constitution); indirect participation in public duties through representatives elected by exercise of the right to vote (Article 24 of the Constitution); and the exercise of their rights to hold public office (Article 25 of the Constitution).

### Overall local elections

186. With regard to performance of public duties through exercise of the right to vote, one of the major changes in the Republic of Korea is the election of the head and council members of local governments.

The establishment of local autonomy to assure participation of local residents in local administration was carried out in the Republic of Korea from 1949 to 1961. This practice was suspended, however, during the military regime and not renewed until arrangements were made for the direct election of local council members in 1991. This was extended to heads of local governments resulting in the complete restoration of the citizen's right to participate. Elections were held on 27 June 1995 under the Public Office Election and Unfair Election Prevention Act for the following government offices: head of the local government, i.e. a Special City, 14 metropolitan cities and provinces; 230 primary areas of Shi(city),

Kun(county) and Ku(borough); and for a total of 5,715 local council members, i. e. 931 greater area level and 4,541 primary area-level elections.

## **Enactment of the Public Office Election and Unfair Election Prevention Act and its main contents**

187. The Public Office Election and Unfair Election Prevention Act was legislated and promulgated on 16 March 1994 to provide a legal basis for the prevention of unfair elections. It also aims to promote better understanding of the electoral system and to balance the administration of each election through the systematization of diverse acts such as the Presidential Election Act, the National Assembly Member Election Act, and the Local Council Members Election Act into a single election legislation.

The Public Office Election and Unfair Election Prevention Act states in Article 1 that “the purpose of this Act is to hold fair elections in accordance with the free will of the citizens and democratic procedures, and to contribute to the development of democratic politics through the prevention of election-related unfairness.” It stipulates, in detail, various matters concerning the method and procedures to be followed during election.

188. The right to vote is granted to citizens over the age of 20. The minimum age for electoral eligibility for citizens is 40 for President and 25 for members of the National Assembly, local councils and head of local government.

However, the right to vote and electoral eligibility are denied to individuals ruled to be incompetent by the court or who have not finished serving a sentence no less severe than imprisonment.



## **Guarantee of universal, equal, direct and secret ballot**

189. Article 41, paragraph 1 and Article 67, paragraph 1 of the Constitution declare the principle of universal, equal, direct and secret ballot. The concrete terms for application of the principle can be found in the Public Office Election and Unfair Election Prevention Act which stipulates the exercise of a single vote per person (Article 146) and the guarantee of secrecy (Article 167).
190. Regarding the equal ballot, the Constitutional Court has expressed the opinion that “according to the constituency chart of the Public Office Election and Unfair Election Prevention Act, ‘Haeundae-ku, and Kijang-kun Constituency of Pusan city’ and ‘Kangnam-ku B-Constituency of Seoul’ exceed the nationwide constituency average of 175,460 inhabitants by more than the allowed 60% variation, and therefore, demarcation of the two constituencies as a derogation of the legislative discretion of the National Assembly and violation of voter equality principle, is unconstitutional.”

## **Article 26**

191. The preamble of the Constitution states that “We the people of Korea ... [have] determined to ... afford equal opportunities to every person ... in all fields, including political, economic, social and cultural life.” Meanwhile, Article 11, paragraph 1 of the Constitution provides that “all the citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status.” Equality before the law and equal protection of law is made clear in those provisions.

Concrete contents have already been illustrated in detail in the relevant sections of the initial and this report, *inter alia*, the section on Article 2 of the Covenant.

## Article 27

192. In the Republic of Korea, as already mentioned in the initial report, every individual enjoys the right to appreciate one's own culture, to profess and practice one's own religion and to use one's own language. Although the minorities in the strict sense of Article 27 of the Covenant do not exist in the Republic of Korea, nationalized overseas Chinese or other non-Korean nationals in the Republic of Korea enjoy their respective culture, religion and language, in accordance with the Constitution and the Covenant.
  
193. In November 1991, the Republic of Korea ratified the Convention on the Rights of the Child. With the acceptance of obligations in regard to provisions on protecting the rights of Minority or Native children (Article 30 of the above Convention), the Republic has reaffirmed its basic policy of protecting minorities' rights.