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사회권규약1차보고서관련

자료모

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1994-5년 사회권규약 1차 보고서 심의 관련 자료 목차

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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twelfth session

SUMMARY RECORD OF THE 4th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 2 May 1995, at 3 p.m.

Chairperson: Mr. ALSTON

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CONSIDERATION OF REPORTS (continued)

**(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16
AND 17 OF THE COVENANT**

Republic of Korea (continued)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS (agenda item 6) (continued)

**(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16
AND 17 OF THE COVENANT**

Republic of Korea (continued) (E/1990/5/Add.19; E/C.12/1994/WP.11)

1. At the invitation of the Chairperson, Mr. Seung Ho (Republic of Korea) resumed his place at the Committee table.

2. Mr. Seung HO (Republic of Korea) said, in reply to matters raised at the previous meeting by Mrs. Jimenez Butragueño, that according to the 1992 census, the population of his country comprised 21.9 million males and 21.6 million females.

3. With regard to changes in domestic legislation since the Republic of Korea's accession to the Covenant, since January 1990 amendments and new legislation had been enacted in 15 areas. They included revisions to the Civil Code in relation to the family, the enactment of child protection legislation in 1991, a new law concerning the comfort women of the Second World War, and an act prescribing penalties for sexual assault, crime and providing for the protection of victims. In 1994 new provisions had been introduced concerning the status of women. In the same year, a law on State public officials had been enacted governing the duties and responsibilities of government officials. The inheritance tax laws had also been amended. Amendments had been introduced into the agriculture, fisheries and forestry cooperative laws, making women eligible to participate in or become members of cooperatives. Legislation had also been promulgated in 1994 to prevent prostitution. In March 1995 the electoral laws had been amended to eliminate any irregularities. Legislation on unemployment and the payment of unemployment benefit had been introduced in 1993. Lastly, new environmental preservation laws had been enacted in 1994.

4. The CHAIRPERSON invited the delegation to reply to issue No. 4 of the list of issues (E/C.12/1994/WP.11).

5. Mr. Seung HO (Republic of Korea) said that article 2, paragraph 1, of the Constitution set out the fundamental principles of equality by stipulating that all citizens should be equal before the law and that there should be no discrimination in political, social or cultural life on account of sex, religion or social status. The references to sex, religion and social status should be interpreted merely as examples of the various areas for which non-discrimination was guaranteed. Therefore, discrimination in those areas, in respect of economic, social and cultural rights, was also strictly prohibited in accordance with the principle of equality enshrined in the Constitution and other relevant laws. Also, in view of the high level of human rights violations arising from racial discrimination throughout the world, the Republic of Korea had acceded in December 1978 to the International Covenant on the Elimination of All Forms of Racial Discrimination.

6. The human rights and fundamental freedoms of foreigners in the Republic of Korea were also fully guaranteed and protected under the Constitution and other relevant laws. Other rights, as stated in article 6, paragraph 2, of the Constitution, were also guaranteed under the principle of equality and reciprocity as prescribed by international law.

7. Mr. AHMED asked what kind of legislation existed in the Republic of Korea to protect foreign workers and whether there was any special kind of legislation governing the entry and exit of foreign workers, as opposed to trainees. He also asked how many foreign workers were in the country at the present time and whether any specific legislative provisions covering such matters as recruitment, dismissal and compensation for occupational injury existed for them.

8. Mr. Seung HO (Republic of Korea) said that there were estimated to be some 87,000 foreign

workers in his country as of February 1995. Of those, 5,440 were lawfully engaged in technical work with employment visas, while 52,000 were undocumented. In addition, there were 29,500 foreign industrial trainees holding trainee visas, who were working under a cooperation programme for developing countries.

9. Since article 5 of the Labour Standards Act stated that employers should not discriminate against workers on the grounds of sex, religion or social status, his Government considered that there was no need to enact specific legislation on discrimination against foreign workers. It had, however, recently extended compensation benefits for industrial accidents to undocumented foreign workers, and provisions had been introduced to safeguard the labour rights of those workers and prevent the late payment of wages and other unfavourable treatment.

10. Foreign industrial trainees had not been subjected to discrimination of any kind. In order to secure better working conditions for them, the Government had made efforts to ensure their protection in respect of legal working hours, minimum wages and medical and industrial accident insurance.

11. There was no special legislation governing the entry and exit of foreign workers, as the existing provisions were thought to be adequate.

12. Mr. GRISSA said that habits and traditions tended to persist, despite anti-discrimination laws. According to information received, women in the Republic of Korea were frequently forced to give up their jobs on marriage or the birth of their first child. Available statistics also showed that although women accounted for 40 per cent of the total workforce, they accounted for less than 40 per cent of trade union membership and were slower to join trade unions than men. He therefore wondered what recourse women had against traditional attitudes and in particular whether a woman could sue her employer for being forced to leave her work because she was pregnant and whether, as a result, she was able to keep her job.

13. Mr. Seung HO (Republic of Korea) acknowledged that there were problems in his country resulting from established habits and traditions. Certainly, in the past some private companies had been known to dismiss women because of

marriage or the birth of a child, but the Government hoped that the new and strict legislation which had been introduced would put an end to that practice.

14. To the best of his knowledge, there was no discrimination in respect of the salaries paid to men and women performing the same work, and there were opportunities in law to secure fair and equal treatment.

15. Mrs. JIMENEZ BUTRAGUEÑO asked whether any progress had been noted since the incorporation of provisions governing family responsibilities in the Civil Code. For example, did women still need the permission of their husbands to acquire or to dispose of property, to have bank accounts, to buy and to sell? She also wondered whether there was any discrimination between the sexes under the Criminal Code, for example, in cases of adultery, and whether there was any discrimination in jurisprudence. As women's education was frequently not taken to the same level as men's education, she wondered what positive measures the Republic of Korea had taken to encourage the education of women and to eliminate discrimination against women in other spheres. Reports by non-governmental organizations (NGOs) indicated that women had to pay inheritance taxes whereas men did not, and she wondered whether there were any plans to eliminate discrimination in that area.

16. Mr. RATTRAY, referring to the statement by the representative of the Republic of Korea to

the effect that all citizens were equal before the law, said that if that was the only such provision in the Constitution, it would relate only to nationals. He therefore wondered whether there were any provisions in the Constitution which guaranteed non-discrimination for non-nationals and whether in practical terms the use of foreign workers was a way of practising discrimination by avoiding the increasing number of employers' obligations.

17. Mr. TEXIER said that according to information received, people working illegally in the Republic of Korea often encountered difficulties in matters such as industrial accidents when they were not in a position to exercise their rights, and were often expelled. Even illegal workers should have certain rights in labour legislation. Information had also been received that workers who had complied with the administrative and legal formalities still had difficulties in bringing their families into the country for the duration of their engagement. He wondered whether there was any truth in those reports.

18. Mr. WIMER ZAMBRANO, referring to the reply given at the Committee's 3rd meeting that arithmetical averages might be responsible for conveying the impression that there was discrimination against women, thought that the very existence of those averages was in itself proof of discrimination. Although legislation had been enacted to end such discrimination, there was nevertheless a certain degree of historical discrimination which the Committee was trying to eliminate and which could and should be eliminated through the courts.

19. Ms. TAYA said that according to her information, despite recent legislation there was widespread discrimination against women in the matter of

recruitment, particularly in businesses such as banks. She therefore wondered whether any judicial remedies were available to women discriminated against in that regard.

20. Mr. AHMED said that he had been informed that certain categories of employees such as teachers and police or army officers were not allowed to form trade unions or belong to syndicates like other categories of workers. He wondered whether that was true, and, if so, would like to know the reasons.

21. Mr. Seung HO (Republic of Korea) said it was useful to bear in mind the special traditional family values that prevailed in the Republic of Korea. While he did not dispute the concepts of rights and the general principle of equality, he wondered whether making a clear distinction between the rights and obligations of various family members would enhance the status of women.

22. There was no legislation barring women from holding bank accounts. Women were free to have accounts and no approval or permission from a male family member was required. The reluctance of women to do so was due to the fact that in the Republic of Korea, the family's resources were always pooled, without strict divisions of income. It would be more appropriate to ask how many women in the Republic of Korea wanted separate bank accounts. It was a question of traditional values and not a matter of rights and obligations.

23. The punishment of adulterers was based on a suit brought by the victim in a court of law. The legal system gave more protection to women than men in cases of adultery. Much serious discussion had taken place on the concept of adultery as a crime punishable by law and on whether the law could make decisions in such private matters.

24. Primary education was compulsory and free for six years and almost 100 per cent of school-age children were enrolled. In certain parts of the country, for example, in the remote island areas, where it was difficult to provide transportation and other benefits of modern society, even more favourable treatment was granted. In those areas, children received nine years of free education.

The goal of his Government was to provide nine years of free, compulsory education. There was no discrimination on the basis of sex at any level of education but he did not deny that although the numbers of men and women were almost equal, the proportion of men and women at the university level was not necessarily equal. The decision as to which child went on to further education was made within the family and depended on the status of the family and its capacity to meet educational costs.

25. None of the country's legal provisions could be interpreted as discriminatory. There were limits to the extent of government intervention in all aspects of the country's economic life. A free market system existed and it was therefore up to the companies' own sense of responsibility, obligation and justice to determine their employment practices. The Government asked companies to conform to international standards protecting the rights of women.

26. Mr. GRISSA inquired whether companies were so free in the application of the law that they were free to break the law.

27. Mr. ADEKUOYE asked if, as in Africa, women had the right to have joint accounts with their husbands.

28. Mr. Seung HO (Republic of Korea), replying to Mr. Grissa, said neither public nor private entities had the right to break the law. There was no discrimination on the basis of sex, religion or other considerations as far as the law was concerned. It might happen, however, without violating any provisions in law that a particular company preferred to employ a man rather than a woman. He asked for the Committee's understanding of his Government's position. He reiterated that there were no restrictions or limitations on holding bank accounts.

29. The CHAIRPERSON said the Government could ensure that there was no discriminatory legislation and suggested that perhaps consistently discriminatory banking practices did exist.

30. Mr. Seung HO (Republic of Korea) said, to the best of his knowledge, there were absolutely no such practices.

31. Mrs. BONOAN-DANDAN said there was a cultural context in which discrimination against women should be seen and any Government that did not face the issue squarely was deluding itself. She would like to know exactly what the Government of the Republic of Korea was doing to counteract the acceptance of discriminatory practices and to establish the dignity of women. She also asked what laws had been passed to inform women of their rights and what educational structures existed to help to eradicate the centuries-old discrimination against women.

32. Mr. Seung HO (Republic of Korea), completing his answer to an earlier question on inheritance, said that recent amendments to the law had enabled women to inherit property and made for a significant improvement in the status of women in the Republic of Korea.

33. The enhancement of the status of women in society was a very important and sensitive issue and the Government was trying to improve their situation in those areas where it was felt that there was still room for improvement. The Government had conducted media campaigns, seminars and workshops to address the problem.

34. There were a number of historical reasons for the past discrimination against women but the situation had changed. The country was accommodating itself to the changing values that governed relationships and many of the positive and valuable proposals advocated and promoted by institutions, international organizations and NGOs were being adopted, thus helping the country to reach certain standards acceptable to the international community.

35. Mrs. BONOAN-DANDAN said she was interested in knowing what measures the Government had taken to combat discrimination and suggested that if the representative of the Republic of Korea did not have the facts readily available he might respond the following day.

36. Mrs. JIMENEZ BUTRAGUEÑO asked what was needed for women to achieve equality and what discrimination women in the Republic of Korea still suffered. She asked what was being done to provide protection for victims of marital violence and what positive action the Government was taking to avoid such occurrences. Had the Government conducted press campaigns or used the education system to solve the problem? It was not enough to say that certain practices reflected the customs of a country. She cited the example of Spain and the progress it had made in this area.

37. Mr. ALVAREZ VITA said that he would like the representative of the Republic of Korea to indicate whether those factors that could be described as cultural factors contained religious factors and whether the differences that arose stemmed from the religious beliefs practised in his country. It was of course true that discrimination against women existed in many countries. However, it had to be recognized that in many cases religious beliefs perpetuated such discrimination. Was that the case in the Republic of Korea?

38. Mr. Seung HO (Republic of Korea) said the Republic of Korea was striving to attain international standards and that while there were no specific laws governing specific cases, the Constitution guaranteed equality to all. Many cases of discrimination derived from traditional and cultural aspects of family life and were entirely incompatible with his country's legislation.

39. Replying to the question by Mr. Alvarez Vita, he said that Christianity was the dominant religion practised by nationals of the Republic of Korea and, as far as he was aware, there was no discrimination within the tenets of Buddhism or any of the other religious denominations in the country.

40. Mr. ALVAREZ VITA pointed out that he had asked not whether religious discrimination existed, but whether the discrimination that existed was the product of religion.

41. Mrs. BONOAN-DANDAN expressed dissatisfaction with the answers that had been provided by the delegation. More facts were required.

42. Mr. TEXIER, noting that he had raised issues relating to foreign or migrant workers to which he had received no answer, said that only two articles of the Covenant had been covered in the course of the day. He urged greater precision in framing both questions and answers.

43. Mr. GRISSA said that no country was immune from discrimination. Bearing in mind that the Committee had other sources of information available to it, he stressed that its main concern was to learn what progress was being made to eliminate such discrimination as existed. He wished to know, for example, what institutions were being created to enable individuals to ensure that their rights would prevail.

44. The CHAIRPERSON reminded the delegation of the Republic of Korea that, while the Committee appreciated the answers relating to general trends within the country, it had to carry out its legal obligation to inquire into specific policies and practices that might help to eliminate any behaviour that ran counter to the provisions of the Covenant.

45. Mr. Seung HO (Republic of Korea) asked whether he might reply to the written questions posed by the Committee. He could then deal with any additional questions that might arise.

46. The CHAIRPERSON suggested that the delegation should reflect on the specific issues that had been raised and provide more detailed answers the next day. Meanwhile he invited the representative of the Republic of Korea to respond to issues Nos. 5-8, relating to articles 6 and 7 of the Covenant.

47. Mr. Seung HO (Republic of Korea) said that no legislation prescribed a uniform age of retirement. The Aged Employment Promotion Act suggested 60 as the retirement age and employers were discouraged from enforcing retirement at a significantly lower age. Moreover, under the Gender Equal Employment Act of 1988, there was no sexual discrimination with respect to the age of retirement. At most workplaces the retirement age was between 55 and 57. In some occupations, however, there was a set retirement age, such as that for teachers (65) and the judiciary (61-70). Many workers wished to continue working beyond retirement age for economic or social reasons. Thus 4.8 per cent of employees in workplaces employing more than 5 people were over 55 years of age. The process was facilitated by the Aged Employment Promotion Act and by the employment insurance system, due to come into effect on 1 July 1995, under which enterprises with more than 6 per cent of aged employees would be entitled to incentive grants.

48. With regard to article 7, he said that firms with fewer than nine employees were currently exempt from the application of the Minimum Wage Act. The Act aimed, however, at reducing that number to five employees. Seamen, who were subject to the Seaman Act, were also exempt. The minimum wage system - the scope of which would be extended as economic capacity

allowed - enabled the Government to intervene in the wage determination of workers liable to receive unjustifiably low wages. The level of the minimum wage, which was determined every year by the tripartite Minimum Wage Council, was set for 1 September; from September 1994 to August 1995 the monthly minimum wage was about \$340.

49. With regard to sexual discrimination at the workplace, he said that penal provisions had been reinforced to combat any such discrimination. Significant improvements had been made in that regard by leading financial enterprises and other companies. The Government planned to introduce further measures to reduce disparities based on sex, initially applying to enterprises with over 300 employees by the end of 1994, but to be extended to those with over 100 employees by 1997. The average wage of female workers in 1993 amounted to 56.5 per cent of that of male workers, an increase from 52 per cent in 1988. The main factor in that disparity was that a significant number of female workers belonged to job categories in which lower wages were paid, requiring lower levels of education. No court cases had been brought to enforce non-discrimination.

50. On the question of labour inspectors, he said that at the end of 1994 there had been 865 such inspectors, of whom 304 were in charge of monitoring industrial safety. Each inspector was responsible for some 200 workplaces. The workload had increased significantly with greater industrialization and the Government was considering increasing the number of inspectors. In 1993 48,251 cases of infringement had been reported, of which 33,962 had been resolved administratively and the rest through the courts. Of the 43,583 cases of illegal violations, nearly all were violations of the Labour Standards Act.

51. Mr. GRISSA noted that, according to the country's initial report (E/1990/5/Add.19, para. 54), an employer with a business employing 10 or more regular workers had to pay the minimum wage. A large proportion of the labour force was, however, employed in businesses with fewer than 10 employees. He wanted to know what rules applied to those workers and what guarantee there could be that enterprises would not deliberately keep their numbers down in order to avoid paying the minimum wage.

52. Mrs. JIMENEZ BUTRAGUEÑO asked whether there was an obligatory retirement age or whether workers could continue as long as they or the enterprise wished. Secondly, she wondered whether they were entitled to receive a pension while continuing to work. She hoped that that was the case, since she did not believe that people should be obliged to retire.

53. Mr. TEXIER wished to know about staff representation: whether it existed at all, whether it was required to exist by law and in what form. Did, for example, staff have a say in the running of the company? Secondly, with regard to health and safety at work, he asked how accidents at work were prevented, whether there was specific legislation in that domain and, if so, whether it differed from sector to sector. He wished to know whether there were campaigns to draw employers' attention to such matters, whether any form of sanctions applied and how criminal liability was established. As a judge dealing with labour legislation, he had a particular concern in the subject.

54. Mrs. JIMENEZ BUTRAGUEÑO, supporting Mr. Texier's remarks, quoted the case of a student in temporary employment who had had an accident in 1994 and lost the use of his hands. It was a sad case of a young man who had no hope of future employment.

55. Mr. CEAUSU pointed out that, according to the Committee's past practice, delegations had listened to the questions on the first day of their appearance before the Committee and had provided detailed answers the following day, unless an expert on a particular subject happened to be present. One representative should not attempt to answer all the questions. He suggested that the delegation of the Republic of Korea should give the questions due consideration and postpone some of their replies until the next day.

56. Mr. WIMER ZAMBRANO pointed out that in its more recent sessions the Committee had preferred to encourage spontaneous replies, because the process of postponing replies had become complicated and some had got lost. Flexibility was the key, however: obviously, if a delegation was unable to answer immediately, it should wait to do so until the following day.

57. The CHAIRPERSON invited the delegation to respond to matters raised in issues Nos. 9 to 13 of the list of issues.

58. Mr. Seung HO (Republic of Korea), referring to article 8 of the Covenant on the right of association, and specifically to issue No. 9 regarding his Government's intention to ratify any further International Labour Organization (ILO) conventions, especially those relating to freedom of association and labour rights, said that his Government was considering the ratification in 1995 of Conventions Nos. 19 (on equality of treatment), 45 (on underground work) and 138 (on the minimum age), and the early ratification also of Convention No. 29 (on forced labour). It had already ratified the Human Resources Development Convention (No. 142) in 1994.

59. Concerning issue No. 10 and the suggestion that the Republic of Korea's labour laws and its trade union restrictions were incompatible with article 8 and with ILO principles of freedom of association (paras. 96-99 of the report), he pointed out that all employees of public utilities and the defence industry were, in fact, permitted to form or join trade unions, as were any public officials actually engaged in physical labour. Other public officials and teachers, however, were indeed barred from doing so under the Trade Union Act and the Civil Service Act. As stipulated in article 37, paragraph 2, of the Constitution, freedoms and rights could be restricted by law when necessary for national security, the maintenance of public order or the public welfare. Any such restrictions were unlikely to go beyond the narrow range of exceptions provided for in article 8 of the Covenant. However, responding to domestic criticism and ILO advice, the Government was studying the possibility of amending the legislation regulating the right of public officials and teachers to organize.

60. As to issue No. 11 concerning the dismissal of teachers who had attempted to form a trade union and the total number of workers dismissed for union-related activities, the figure of 33,000 put forward by the Korea Trade Union Congress was unfounded. Remedies were available to dismissed union members: they could apply for relief from the Labour Relations Commission under the Trade Union Act or bring a civil suit in accordance with the Code of Civil Procedure. The Labour Relations Commission had in fact accepted almost 1,000 unfair labour practice applications involving about 1,500 workers between 1991 and 1993, and had ruled favourably on approximately 170 of those cases.

61. Regarding the dismissed teachers specifically, the current Government had been holding talks with the Korean Teachers and Educational Worker's Union about their reinstatement, and as of April 1995, only 22 of the approximately 1,500 dismissed had not been restored to their teaching posts owing to continued involvement in union activities, while about 100 others had found other work. The Government was still discussing the possibility of reinstating all teachers originally dismissed.

62. On issue No. 12, he said that the Government was considering a possible amendment of the Trade Union Act to authorize the establishment of multiple unions in a single workplace, but pointed out that the current prohibition (paras. 100-101 of the report) sought to avoid the conflict that might be caused by uncontrolled proliferation of unions in a labour environment in which a single-trade-union system prevailed.

63. With reference to issue No. 13 and the possibility that the National Security Law restrictions on certain human rights in so far as they might benefit the Democratic People's Republic of Korea could inhibit the enjoyment of economic, social and cultural rights, it should be noted that article 37, paragraph 2, of the Constitution did allow for certain limited exceptions to the guaranteed freedoms of speech and the press as well as the freedoms of assembly and association, but only when necessary for national security and the maintenance of law and order or for public welfare, and without violating any essential aspect of those freedoms. That clause of the Constitution did not contradict article 4 of the Covenant. The National Security Law had been enacted to regulate subversive activities and the establishment of subversive organizations seeking to overthrow democracy and the parliamentary system by violent revolution, and not to regulate the expression of opinions or the freedom of association of groups demanding greater rights for citizens.

64. Mr. TEXIER observed that clearly progress was needed in connection with article 8 in general, because a number of pertinent ILO conventions (specifically Nos. 87, 98 and 151) had not been ratified and because unduly strict limits were placed on union rights generally and especially on the right to strike.

65. The distinction made between trade unions and teachers' organizations - which in the West were often the most important labour unions - was surprising, whereas a limitation on unionization of persons in public service like the police or of public officials like the judiciary would have been more understandable. He himself did not see why the unionization of teachers should interfere with their freedom to teach, and felt the Confucian concept put forward in paragraph 96 of the report to be an unsatisfactory explanation.

66. The report cited so many restrictions on the right to strike that one must ask whether it even existed in the Republic of Korea. The three reasons for which the right could be restricted (para. 106 of the report) actually amounted to a definition of the normal aims of any strike: strikes necessarily involved economic loss for both management and labour, affected the national economy, and had an effect on persons not directly concerned.

67. According to information received from non-governmental organizations, the national security laws were applied very severely to organized labour, and he would like to know about the accuracy of reports of police brutality in response to a recent peaceable application for reinstatement by 40 workers.

68. He believed that the Government should make a greater effort to expand trade union freedoms, give broader recognition to the right to strike, and use greater caution in qualifying normal demands for improvement of working conditions as "political". The conceptions of public order and political activity should not be applied so broadly that they hampered labour rights.

69. Mr. GRISSA, agreeing with Mr. Texier that no strike could possibly avoid all of the consequences listed as justification for prohibition, said that there appeared to be no right to strike in the Republic of Korea. He was also concerned by the startling drop in the number of labour disputes recorded in 1990 and 1991 (para. 123 of the report). Such a sharp decline was a suspicious indication of a repressive climate in which the labour movement had realized it must sacrifice its own self-interest for the sake of survival.

70. Mr. RATTRAY observed that he too did not understand the implications of the legislation restricting strikes. While recognizing the cultural context of the country's legislation and also the significant advances it had made in economic development, he wondered whether the restrictions imposed on labour were generally consistent with the free-market economy it had established. The country was still in transition to a fully representative Government after a long period of occupation, and he hoped the restrictions were only temporary.

71. He would like information on what remedies were available to those who were denied the right to belong to a trade union, in order to guarantee proper wages and working conditions. He also wondered whether the significant decrease in labour disputes in recent years was evidence that a significant "union-busting" culture had been created, and whether the Government was trying to move away from such a culture. Also, it was not clear what the consequences would be if workers exercised the right to strike, however circumscribed: could an employer, for instance, justify termination of a worker's contract if he went on strike?

72. Mr. AHMED said that he was amazed at the delegation's contention that teachers would endanger national security if they joined a union - especially in view of the fact that employees of public utilities and the defence industry could join a union presumably without posing a threat. Although the Committee had been assured that the Government was thinking of amending its labour laws in response to domestic criticism and ILO advice, it apparently was still persecuting 22 teachers who had been dismissed for joining a union. Such action was not consistent with the spirit of democracy in the Republic of Korea, and he appealed to the delegation to urge its Government to change its policy to one of greater tolerance of labour rights.

73. Mr. CEAUSU, noting that the report (para. 95) gave as a justification for not removing a prohibition against the right to organize the fact that a majority of the people did not support such proposals, asked whether in the Republic of Korea the Government was legally obliged to consult the population to determine if a majority supported a proposed law. The same justification had been cited (paras. 96 and 97) in connection with the prohibition on the unionization of teachers. It was absolutely normal in a democratic society for teachers to want to reorganize the educational system, and they should not be accused of being radical when they did so. The reasoning was reminiscent of the cold-war thinking and vocabulary of the former communist countries in Eastern Europe, with their constant references to the will of the people. The Republic of Korea should look instead to the future. The time had come for the Government to rethink some positions and laws and be more forthright in adapting to the new situation in the country.

The meeting rose at 6.05 p.m.

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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twelfth session

SUMMARY RECORD OF THE 6th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 3 May 1995, at 3 p.m.

Chairperson: Mr. ALSTON

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CONSIDERATION OF REPORTS (continued)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT

Republic of Korea (continued)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS (agenda item 6) (continued)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT

Republic of Korea (continued) (E/1990/5/Add.19; E/C.12/1994/WP.11)

1. At the invitation of the Chairperson, Mr. Seung Ho, Mr. Yong-Dal Kim, Mr. Jai Gu Chang, Ms. In-Ja Hwang, Mr. Chang Ho Ahn, Mr. In-Taek Lim, Mr. Yang-Hyun Kim, Miss Ji-Hyun Kong and Mr. Keywon Cheong (Republic of Korea) took places at the Committee table.
2. The CHAIRPERSON invited the delegation of the Republic of Korea to respond to the questions raised in connection with issues Nos. 14 to 17 of the list of issues (E/C.12/1994/WP.11), relating to article 10 of the Covenant.
3. Mr. Seung HO (Republic of Korea), answering questions on children born out of wedlock, children born of mixed marriages, those born of foreign parents and adoption, said that his Government valued every individual as equal and therefore endeavoured to treat a child born out of wedlock as the equal of a child born of a legal marriage, both in terms of status and property. The Civil Code and the Family Registration Act barred any form of discrimination against children born out of wedlock. Children born of mixed marriages and those born of foreign parents faced no particular problems in any aspect of their lives and were considered in the same manner as children born of nationals of the Republic of Korea. All children, including children born out of wedlock, foundlings or stateless children, were guaranteed nationality under the Nationality Act. These measures applied to a person whose father was a national of the Republic of Korea at the time of his birth, a person whose father died before his birth and was a national of the Republic at the time of death and a person whose mother was a national of the Republic. In addition, a person born in the Republic of Korea of an unknown father or having no nationality, was a citizen of the Republic. However, a child born of a mother who was a national of the Republic and a father whose country followed the *jus solis* principle could be in the position of having no nationality.
4. Adoption, administered by the Civil Code and the Special Adoption Act, was classified as either domestic or inter-country adoption. Permission for adoption could be granted only if the adoption were deemed beneficial to the child.
5. In response to the question on disability raised in issue No. 15, he said disabled persons were considered to be the same as any other member of the family and society. There were various laws and institutions in the Republic of Korea which guaranteed the rights and equal opportunity of disabled persons. The 1977 Law for the Promotion of Special Education, the 1981 Welfare Law for Disabled Persons and the 1990 Law for the Promotion of Employment of Disabled Persons were among the measures taken by his Government. The Central Committee for the Welfare of Disabled Persons in the Ministry of Health and Welfare functioned as an advisory organization on the welfare policy for disabled persons. Disabled persons received sympathy and help; they were considered neither a dishonour to their family nor were they lacking in status. Thirty-five laws, including the Food Hygiene Law and the Seamen Law, which previously restricted the licensing of disabled persons had been amended.
6. The 1988 Seoul Paralympics had provided momentum for the enhancement of public awareness, concern for disabled persons and their status within society. Media campaigns and various cultural and sports events were held in collaboration with government agencies during Disabled Persons Day (20 April) and Disabled Persons Week. These activities allowed disabled persons to participate in social activities.
7. The education of disabled persons was enforced under the Education Law and the Law for the

Promotion of Special Education which, revised in 1994, established the Central Deliberative Committee on Special Education within the Ministry of Education and, the Local Deliberative Committee on Special Education in each province, compulsory elementary and middle-school education, free-education at the kindergarten and high-school levels and compelled superintendents of educational institutions to provide the necessary measures to educate disabled children through special facilities in medical institutions or in the home.

8. Moving on to issue No. 16, on the question of discrimination against foreign workers, he said that, as of February 1995, the number of foreign workers in the Republic of Korea was estimated at about 87,000. That number included 5,440 technical workers with valid working visas and 52,000 workers who were undocumented. There were 29,500 foreign industrial trainees who held trainee visas. Article 5 of the Labour Standards Act prohibited discrimination against workers on the basis of sex, nationality, religion or social status. There was therefore no need to enact a specific law on discrimination against foreign workers. Moreover, the Government had recently extended compensation benefits for industrial accidents to undocumented foreign workers. There were also provisions for administrative guidance to safeguard the labour rights of those workers and to prevent the delayed payment of wages and other unfavourable treatment. Foreign industrial trainees with trainee visas had not been discriminated against in any way. Neither domestic trainees nor foreign trainees were eligible for the full privileges provided by the country's labour laws. In an effort to provide better working conditions for foreign trainees, however, the Government had taken steps to ensure appropriate policies on legal working hours, minimum wage, and medical and industrial accident insurance. Those measures had been reinforced on 1 March 1995.
9. Responding to questions on marital violence and the protection of women, he said that the actual number of acts of violence was in general difficult to estimate because of the lack of research into the matter and the taboos surrounding the admission of violence against women. A survey conducted by The Korean Institute of Criminology, reporting on domestic violence in Seoul, had stated that 45.3 per cent of the 640 women surveyed had been subjected to some form of violence within their marriage. His Government acknowledged that any form of violence against women was a violation of their human rights and had introduced measures for providing shelters and counselling services to victims in conformity with the Mother-Child Welfare Act. The Government had established six such shelters in cities throughout the country and 122 counselling centres staffed by 376 counsellors.
10. The negative implications in terms of economic and social rights of the partial continuance of the "traditional patriarchal family" mentioned in paragraph 176 of the report (E/1990/5/Add.19), has no direct implications on family violence. A concerted effort had been made to remove the remaining negative elements of the patriarchal family system. To that end, as described in paragraph 177 of the report, the Civil Code had been amended and women were allowed to become the head of family.
11. The CHAIRPERSON invited the delegation to respond to the questions put at the 4th meeting.
12. Mr. Chang Ho AHN (Republic of Korea) referred to Mr. Rattray's question on the protection of foreign workers, and said paragraph 2, article 6 of the Constitution of the Republic of Korea guaranteed the status of aliens in accordance with international law and treaties. Article 2 of the Covenant bound States parties to guarantee the rights enunciated in the Covenant without discrimination of any kind. In the light of these two articles, it was clear that the rights of foreigners were legally guaranteed under the principle of equality and reciprocity as prescribed by international law. The basic rights related to the dignity and value of human beings and the right to seek happiness were regarded as human rights.
13. Miss Ji-Hyun KONG (Republic of Korea) said that she would endeavour to clarify the legal

remedies available to women who had suffered discrimination. They were entitled to file for administrative litigation or appeal, to request reparations under the Civil Code and to file criminal suits. In cases where there were no relevant laws or legislation, victims of discrimination could appeal to the Government to implement specific legislation. When a woman suffered discrimination through the exercise or non-exercise of administrative agencies, or due to a case of legislation or non-legislation, she was eligible to file a constitutional petition. In addressing the issue on gender discrimination and recruitment, she said the Gender Equal Employment Act prohibited discrimination in recruitment practices. Violations of the Act were punishable under the Gender Equal Employment Act. She cited a case in which the Government had upheld the provisions of the Act against an enterprise that had been accused of hiring women on the basis of their physical appearance.

14. Since 1993, in order to improve the awareness of gender equality issues, her Government had conducted tours of industrial complexes to encourage debate with employers on equal employment opportunities. The Government intended to designate October each year Equal Employment Month in a publicity drive to raise awareness of the important issues and challenges facing the employment of women. Furthermore, the Government had called upon companies and enterprises to change discriminatory employment practices voluntarily and had planned to review the discriminatory regulations within enterprises. The review would be extended to all enterprises with more than 100 employees by 1997.

15. Ms. In-Ja HWANG (Republic of Korea) drew attention to the specific measures including education that had been introduced in order to eradicate a centuries-old pattern of discrimination. After examining the legal instruments to identify and remove all discriminatory elements, her Government had amended the family-related provisions in the Civil Code to improve the status of women in the family and the act on government officials. It had also enacted a nursery law for babies and infants and a special law concerning violence against women. As a result of those measures, *de jure* discrimination had been virtually eradicated. It was true that *de facto* discrimination against women still occurred in the guise of traditional cultural practices. Other measures had also been taken to improve the situation by strengthening the mandate of the Ministry for Political Affairs which was the national focal point for women and by designating specific women's focal points within 40 government agencies. A special committee for women's affairs had been established in the National Assembly and the Korean Women's Development Institute had been designated as the headquarters for the study of women's issues. The Government had also launched a national education programme to discourage discrimination, review restrictions on female admission to special universities, replace discriminatory practices in government personnel offices with new guidelines that promoted the employment of women in the public sector and reinforced the Gender Equal Employment Act.

16. Turning to Mrs. Jimenez Butragueño's question on gender equality, she said the Government had focused on improvements in legal and institutional areas in order to ensure equality between women and men. In 1988, on the initiative of the Minister of Political Affairs dealing with women's issues, certain measures to promote gender equality had been implemented. The measures included an education programme for government officials and teachers to dispel the gender-bias attitude inherent in the traditional culture, and social education programmes for women had been strengthened. The Government had granted financial and other assistance to women's organizations as a contribution to women's rights activities and had publicized women's issues through public advertising and information films in collaboration with women's organizations.

17. Also in association with women's organizations, the Government had launched a nationwide campaign to combat violence against women. Under the Penal Code, family violence, including wife beating, was subject to criminal penalties. Victims of battery could file for divorce and claim financial compensation for their suffering.

18. Mr. Jai Gu CHANG (Republic of Korea) noted that Mr. Rattray had also asked whether illegal foreign workers were being substituted for national workers to enable companies to avoid their legal obligations under the relevant labour laws. The labour market in the Republic of Korea was characterized by a shortage of labourers and the situation was particularly severe in certain small and medium-sized enterprises which were unable to recruit domestic workers. His Government therefore allowed the entry of foreign workers in the numbers required by the industrial sector and it was wholly committed to the protection of the workers' rights. Companies were categorically prohibited from recruiting undocumented foreign workers, particularly in order to relieve themselves of their legal obligations under the Republic's labour-related laws.

19. In answer to Mr. Texier's questions on the rights of workers, both legal and illegal, he said no country provided illegal workers with protection equivalent to that of legal workers. Since February 1994, however, his Government had extended the compensation benefits for industrial accidents to undocumented foreign workers on humanitarian grounds. Legal foreign workers who had work visas were allowed to bring their family members to the Republic of Korea.

20. Replying to questions from Mrs. Jimenez Butragueño, regarding a mandatory retirement age and the situation with regard to pensions, and from Mr. Grissa, who, noting that the Minimum Wage Act applied only to enterprises with more than 10 employees, had expressed concern about the situation in smaller enterprises, he said that the number of workers in the Republic of Korea currently exempt from the Act amounted to approximately 390,000, the majority being employed in enterprises with between 5 and 9 employees. Such workers were not, however, necessarily paid less than the minimum; although they were not legally protected, the Government had set out recommendations that they should receive the minimum wage. The Government was now endeavouring to improve the situation by reducing the number of workers exempt from the Act. As for retirement, he referred the Committee to the information supplied at the 4th meeting, contained in document E/C.12/1995/SR.4. With regard to pensions, he confirmed that it was possible to work and to draw a pension at the same time. As a rule, people who had joined the National Pension Programme were eligible to receive a pension, even if still employed, once they had worked for a minimum of 20 years. Those eligible under the Programme received between US\$ 280 and US\$ 980 per month, the minimum monthly cost of living being some US\$ 250.

21. With regard to Mr. Texier's question relating to health and safety at work, he said that the relevant laws were the Industrial Safety and Health Act of 1981, the Act Relating to the Prevention of Pneumoconiosis and Protection of Pneumoconiosis Workers of 1984 and the Act of Establishment of Korea Industrial Safety Corporation of 1985. They gave clear stipulations as to the employers' obligations with regard to every aspect of safety and health at work. Other laws on the subject were the Fire Service Act, the Traffic Safety Act, the Atomic Control Act and the Mining Security Act. As for the specific case cited by Mrs. Jimenez Butragueño, the trainee concerned, Mr. Choon Ik Koh, had lost a third of his thumbnail and had been completely cured after a week's medical treatment. He had been granted US\$ 600 for medical treatment and accepted US\$ 6,400 in compensation from his employers. Such compensation was provided for under the Industrial Accident Compensation Insurance Act. Where the conditions of compensation were unacceptable, the individual could bring a civil suit against the employer. If the victim was dismissed on the basis of poor quality of work resulting from his injuries, the employer would be punished under the law for discriminatory dismissal.

22. With regard to Mr. Grissa's question relating to the sharp decline in the number of labour disputes, both legal and illegal, he recalled that prior to the democratization process which had begun in 1987, there had been a relatively small number of trade unions in his country. Since then, the number had increased rapidly. The new unions had been unfamiliar with the procedure of effective collective bargaining, with the result that initially there had been a large number of strikes.

With greater experience of collective bargaining, management-labour negotiations had been more effective and working conditions had improved, leading to a decrease in the number of strikes. As of 1992 132 working days per 1,000 people had been lost owing to strikes. In contrast, in Japan only 4.5 working days per 1,000 people had been lost and in the United Kingdom and France 24 and 25.5 working days respectively. He added that in 1994 the average annual wage of workers in the Republic of Korea was US\$ 15,664.

23. Turning to Mr. Rattray's comment that he did not comprehend the legal regime regarding the right to strike and his query as to the existence of anti-union sentiment, he said that most legal experts believed that the right to strike might legitimately be restricted, so long as the essential aspects of such rights were not infringed. The Constitution and legislation thus provided for the minimum possible restriction of the right to collective action where necessary to preserve national security or protect public welfare. Given the sensitive political and security situation in his country, restrictions might have been expected to be tight. Vast improvements had, however, been made to enhance the rights of workers to collective bargaining and the right to strike in areas not relating to national security. For example, employers who did not respond to collective bargaining faced strict punishment and were prohibited from replacing striking workers. There was no history of anti-union sentiment in his country. Although employers had been hostile to unions in the early stages of industrialization, relations had been gradually improving. Most managements regarded unions positively and punishment for those employers who engaged in anti-union activity had become stricter.

24. Mr. Ahmed had asked, in reference to the Trade Union Act and the Civil Service Act, how the formation of teachers' unions could in any way comprise a threat to national security. Mr. Ceausu had in addition asked whether there were legal provisions obliging the authorities to seek public approval before passing legislation on teachers' unions. The answer was that teachers were regarded as public servants. Their authority was so great, they were so highly respected and the education of children was so highly valued that the general public was opposed to the formation of teachers' unions, since the public welfare was so closely involved. In 1991, the Constitutional Court had ruled that the restriction of teachers' union rights was not unconstitutional.

25. As for the question about the obligation on authorities to seek approval before passing legislation, he said that if the enactment of a law or a decree had a direct impact on people's daily lives, the content and objective of such laws had to be published in government newspapers and daily newspapers. Those affected were entitled to express their opinion by letter and in some cases public hearings could be held in order to accommodate the opinions of the people concerned.

26. The CHAIRPERSON invited comments from the Committee.

27. Mrs. JIMENEZ BUTRAGUEÑO said that she had not received a satisfactory answer to her question, which had concerned not legislative provisions against discrimination, but the existing situation with regard to discrimination, both *de facto* and *de jure*.

28. Mr. RATTRAY asked whether participation in a strike could be regarded by an employer as a repudiation by the employee of his contract of employment.

29. Mr. TEXIER said that he was not happy with the reply given to his question regarding accidents at work. He had asked not about legislation, but what was being done to reduce the number of such accidents. With regard to teachers' right to strike and engage in trade union activities, he understood their status in society, but surely to deny them trade union rights ran counter both to the Covenant and to the Constitution of the Republic of Korea. Lastly, he suggested that restrictions on the right to strike were sometimes so tight that they amounted to a prohibition of that right. He referred the delegation to the specific case he had raised earlier.

30. Mr. AHMED found unacceptable the argument to the effect that the Republic of Korea respected teachers so much that they were deprived of the right to strike. They were placed on such a pedestal that their actions could affect public order, whereas workers in the defence industry or public utilities were entitled to form unions. The answer was so worded as to hide the fact that discrimination existed, as he suspected the Government of the Republic of Korea itself recognized.

31. The CHAIRPERSON invited the Committee to ask questions in relation to article 10, in order to give the delegation of the Republic of Korea more time to answer the points that had already been raised.

32. Mr. CEAUSU said that from his reading of the report and from the written replies to questions he received the impression that the concern of the Republic of Korea for disabled people was focused mainly on assistance to those who could be rehabilitated or trained to learn a profession. He wished to know, however, what happened to those who could not be rehabilitated, but depended on support from their families. He inquired what support, if any, such families received from the State.

33. Mrs. VYSOKAJOVA asked whether there was any special body with responsibility for counselling disabled people. If no such body existed, she wished to know how they gained access to employment services.

34. Mr. GRISSA expressed alarm that a child born of a Korean mother and a father whose country followed the birthplace principle in determining nationality might itself have no nationality. The child was guiltless in those circumstances. Secondly, he asked why adoptions had fallen by nearly 10,000 between 1986 and 1990 in relation to the previous five years, and since then had fallen still further to some 3,000 a year. Thirdly, he wondered whether he had understood correctly that citizens of the Republic of Korea were not allowed to adopt foreign children, although the reverse was the case. He also queried the assertion that children applied for adoption. Children surely lacked the awareness or ability to apply for adoption. He trusted that the offending phrase was merely a misuse of the English language. Lastly, he noted that as part of government protection programmes for victims of domestic violence, in accordance with the Mother-Child Welfare Act, 376 women counsellors were employed at counselling centres. He considered that in a country containing some 23 million women, of whom some 15 million were adult, the number of counsellors was completely inadequate.

35. Mr. ADEKUOYE, noting that a child born out of wedlock could not be discriminated against under the Civil Code, asked whether there was any provision to compel absent fathers to pay maintenance for their children.

36. Mr. ALVAREZ VITA said that from the remarks of the representative of the Republic of Korea it seemed that a mother could not transmit her nationality to her child. Apart from the harmful consequences that might arise, it also constituted another form of discrimination.

37. Mr. Seung HO (Republic of Korea) said, regarding issue No. 14 and the nationality of a child born of a mother who was a national of the Republic of Korea and a father who was a foreign national, that *jus soli* would apply, even though normally in his country nationality was derived through the father in accordance with *jus sanguinis*. Such a child was not automatically a national of the Republic of Korea at birth, but could later apply for naturalization without difficulty.

38. Mr. Chang Ho AHN (Republic of Korea) added that according to the Civil Code of the Republic of Korea, a child born out of wedlock could take its father's citizenship simply by being acknowledged by the father.

39. Mrs. JIMENEZ BUTRAGUEÑO said that she did not understand the information that had been given about opportunities for disabled people. The requisite legislation might exist, but her concern was whether there were any job quotas for disabled people, as there were in many other countries. There were many jobs in which disabled people could hold their own, like blind people who worked as telephonists. Elsewhere - in Paris, for example - paraplegics were provided with cars, enabling them to earn their own living. She asked the delegation to comment on the case of a street seller, disabled in a motor accident, who had immolated himself because he was unable to find work and support his family.

40. The CHAIRPERSON invited the delegation of the Republic of Korea to respond to matters raised in the list of issues (E/C.12/1994/WP.11), relating to article 11 of the Covenant.

41. Mr. Seung HO (Republic of Korea), replying to issue No. 18, said that the incidence of relative poverty had become a significant social problem in his country, partly because the nature of its economic growth had limited the fair distribution of wealth to the poor. The poverty line in the Republic of Korea in 1995 was US\$ 3,000 and all those with income below that level - about 1,755,000, or 3.9 per cent of the total population - received public assistance. Anti-poverty programmes had had some effect, but greater efforts were still required to alleviate poverty. For statistical purposes, the poverty line was estimated by the sum of the minimum cost of a basket of 10 items including food and drink, housing, expenditure on light, heat and water, furniture and utensils, clothing and footwear, medical care, education, culture and recreation, transport and communication and other consumption.

42. On issue No. 19, he said that the Government's way of dealing with the problem of the urban housing shortage was to build between 550,000 and 600,000 dwellings a year in the mainly urban areas of his country. As well as constructing complexes for commercial and dwelling purposes, the Government's policy was to remodel existing low-quality dwellings and to rebuild old houses. The primary victims of the housing shortage were people whose accommodation was on a short-term basis. Those within the capital, where the population was most highly concentrated, were suffering most from high rents.

43. In response to issue No. 20, he said that it was the opinion of the Government that the establishment of minimum dwelling standards was both desirable and necessary in order to improve future housing levels. It was ready to consider adopting such standards.

44. Regarding issue No. 21 concerning prosecutions for illegal forced evictions by landlords (para. 270 of the report), he said that the Civil Code dealt with such matters. After successfully bringing a civil suit, a landlord was entitled to evict a tenant forcibly when the lease expired if the latter did not move voluntarily. In cases where the landlord committed an act of violence in the process of a forced eviction, he would be prosecuted under criminal law for the commission of crimes of violence, injury or actual compulsion.

45. Mr. TEXIER said that he was interested in knowing about any mass evictions carried out for some public purpose. For instance, a non-governmental organization, Habitat International Coalition, had informed the Committee that at the time of the Seoul Olympics, 720,000 people had been evicted, and it would be interesting to know what had happened to those people. That same organization said that 16,000 others had been evicted since February 1992, and, according to local tenant groups, 4,000 evictions had taken place in 1994. Explanations should be given as to why so many people were being evicted, and how they had been relocated.

46. Mr. WIMER ZAMBRANO asked whether there were any plans to increase the legal minimum house size from the stipulated 25.5 metres as of 1990. Even in a country like Panama, which was

only fairly well developed, a bill was under consideration to raise the minimum area to at least 36 or 42 square metres.

47. Mr. RATTRAY, noting that shelter was a component of the question of poverty, asked what percentage of the new housing built or remodelled each year was allocated, if at all, to the almost 2 million officially listed as living below the poverty line; and whether any preference was given to them.

48. Mrs. JIMENEZ BUTRAGUEÑO asked for more information on the criteria for assigning public housing.

49. Mr. Seung HO (Republic of Korea) explained that the 1990 figure of 25.5 referred not to metres but to a measurement used in the Republic of Korea that was equivalent to 3.3 metres, so that the legal minimum area actually came to 84 or 85 square metres.

50. Ms. In-Ja HWANG (Republic of Korea), responding to questions about discrimination against women raised at earlier meetings, said that the recent revision of the Civil Code had been one of the Government's efforts to reduce the gap in *de jure* and *de facto* equality between men and women, although women's groups were agitating for further revisions to remove the remaining gender bias in the laws. As usual, in her country when it was the wish of the people, the legislation would be amended, at some time in the future. In the meantime, the Government was seeking to root out gender bias.

51. The figure of 376 that had been given for the number of women counsellors represented only the women officially employed by the Government who staffed public counselling centres for women. In addition, there were many social workers working in numerous private women's centres across the country, some of them sponsored by non-governmental organizations, providing social welfare services, including counselling by women to women victims of abuse or discrimination. The Government had now begun to support the activities of those private groups.

52. Mr. Seung HO (Republic of Korea), reverting to the discussion at the 4th meeting as to why teachers' unions were prohibited in his country, said that the law did not provide for such an eventuality. The principle that was involved hinged on traditional values and society's view of what was seen as a very dignified profession. A distinction was made between workers and teachers, and it was generally accepted that the right to association was appropriate for manual workers but not for intellectuals, even when the manual workers were involved in defence work. To a citizen of the Republic of Korea, the difference was clear and natural, and he asked the Committee to make an effort to understand that state of affairs. Of course, traditional views were slowly changing and the legislation would slowly be modernized but, despite the urging of some non-governmental organizations and some teachers themselves, most Koreans did not want an immediate revision of the prohibition of the unionization of teachers. Even while admitting that a change would be to the good, one must bear in mind every aspect of the community and society in the Republic of Korea.

53. Mr. GRISSA said that the delegation's argument was a very difficult one to accept, and he could not understand the plea for indulgence towards a conspiracy against unfortunate teachers who could not even defend their own interests. He wondered whether there had been any actual referendum on the question. In any case, it should be noted that teachers' unions - and in Tunisia, his own country, they were among the oldest of the unions - were generally less aggressive than, for instance, unions in the transport sector, and represented less of a disruptive force.

54. Mrs. JIMENEZ BUTRAGUEÑO asked whether teachers had any other means of expressing themselves, or whether they must remain oppressed by tradition.

55. Mr. RATTRAY pointed out that no one was arguing that teachers should be compelled, against their own cultural views, to join a trade union, but only that the prohibition against their doing so should be removed. The issue at stake was the exercise of a democratic free choice to join a trade union made by a majority of teachers in a secret ballot.

56. Mr. Jai Gu CHANG (Republic of Korea), responding to questions raised on the right to strike, said that strikers in his country had the best protection in the world against the risk of losing their jobs if they did so: even where the International Labour Organization (ILO) Committee on Freedom of Association sanctioned temporary replacement of strikers provided workers were not laid off, the Republic of Korea prohibited even that practice. In other countries - the United States, for instance, or the United Kingdom - it should be noted that lay-offs and replacements were common.

57. Korea was the only divided country left in the world, and the nuclear threat posed by the North Korean regime against his country was so serious, amounting to a constant risk of war, that the right to strike could not be given the same latitude as in other countries not in such a predicament.

58. The Republic of Korea had no more restrictions on the right to strike than many other countries. Such restrictions were intended to prevent violence and ensure the maintenance of safety facilities, and were recognized by the ILO. Furthermore, the ILO Freedom of Association Committee had acknowledged that certain procedures needed to be followed before strike action was taken, such as conciliation and mediation procedures.

59. Restrictions were also applied under emergency adjustment provisions, in accordance with the Labour Dispute Adjustment Act. Those provisions could be involved when the national economy or the daily life of the public was put at risk, as in the case of the recent risk of war from the north, when the provisions had had to be invoked on two occasions.

60. A country's entire system of labour relations could not be appreciated from an examination of special restrictions alone. Like other countries, the Republic of Korea based its system on democratic principles and, as in other countries, the system had its own characteristics resulting from the nation's political code and its economic and social circumstances. The Committee should therefore look at the labour relations system as a whole.

61. In reply to Mr. Ahmed's question on teachers' unions, he reiterated that the Republic of Korea placed the greatest value on children's education.

62. Mr. Yong-Dal KIM (Republic of Korea), referring to Mr. Texier's questions on industrial accidents, said that his Government was making efforts to reduce industrial accidents by introducing new legislative measures at various levels, such as the establishment of protection standards on 19 types of highly-dangerous machines and giving appropriate guidance to industrial enterprises. It also placed great emphasis on instruction on machinery protection systems and safety and health management systems in industrial enterprises for workers and employers. It had also set up a special fund to reduce industrial accidents in small and medium-sized enterprises and in cooperatives. An industrial health campaign had been implemented in conjunction with the media and, as a result of all the measures taken, the rate of industrial accidents was falling year by year.

63. Mr. Yang-Hyun KIM (Republic of Korea), replying to questions on the disabled, said that the employment of disabled persons was governed by article 34 of the Employment Promotion Act, which stated that companies should endeavour to employ not less than 2 per cent of disabled persons.

64. Mr. In-Taek LIM (Republic of Korea) added that his Government was becoming increasingly aware of the needs of the disabled and was making great efforts to help them.

65. Amongst other things, it was attempting to expand its welfare facilities and institutions to improve the quality of the programmes which provided comprehensive protection for persons with severe and multiple disabilities. It had also implemented measures to improve the quality of life of the disabled including welfare allowances to enable them to be self-supporting, medication, aids and appliances, medical aids and all medical expenses, tax benefits and the establishment of comprehensive and special welfare centres. The functions of those centres included rehabilitation, counselling, training and social services.

66. Efforts were also being made to enable disabled persons to participate in social activities, including special facilities on roads and in public buildings. A national rehabilitation and medical centre had also been set up for the disabled.

67. His delegation had been shocked to learn of the disabled person so badly treated following a car accident. The citizens of his country viewed such matters most severely and imposed severe punishments in such cases.

68. His Government had successfully implemented a family planning programme some years earlier. It would, however, submit more information in writing.

69. Mr. Keywon CHEONG (Republic of Korea), replying to questions raised by Mr. Grissa on adoption, said that the reason for the decline in the number of adoptions in the 1990s was due to the success of a programme implemented in the 1980s and early 1990s, and to the application of the principle of the best interests of the child. His Government believed that success in reducing population growth was a prerequisite for social development, but rather than providing contraceptive facilities alone, it aimed to bring about a change of attitude in society and in the economic status of women. The success of the family planning programme had brought the birth rate down to 2.1 per cent in 1983 and to 1.5 per cent in 1991. The number of children born out of wedlock had thus been sharply reduced.

70. The Government's policy on children, furthermore, was based on the principle that parents should bear the main responsibility for their children's maintenance and upbringing. Parents were considered to be the most important persons in a child's life, and they received considerable community support. Every effort was made to ensure that children were born and brought up in a family environment, which was considered to be essential for their healthy growth and development. However, because many parents were unable to provide such an environment, the number of child-care institutions had been increased in the 1990s. In 1993, 2,900 children had been placed in residential care.

71. The CHAIRPERSON invited the delegation to take up issues Nos. 22 to 24 of the list of issues, relating to article 12 of the Covenant.

72. Mr. Seung HO (Republic of Korea), referring to issue No. 22, said that, legally and practically, the Constitution's recognition of the right to a healthy and pleasant environment (para. 280 of the report) guaranteed citizens an environment that provided a good quality of life and not simply freedom from pollution. If the Government infringed that right, various remedies were available, including petition, administrative litigation, appeals and State compensation. If private persons infringed the right, victims could bring civil suits. An illustration of the practical implications was the Pusan University case referred to at a previous meeting in connection with issue No. 2.

73. Turning to issue No. 23 concerning the quality of health care for the disadvantaged (para. 352 of the report), he noted that, in 1977, the Medical Assistance Programme had been established for those unable to pay for medical care: those below the poverty line and unable to work (Class I) received free medical services; and low-income workers (Class II) received 80 per cent of hospital costs and a small lump-sum for outpatient expenses. One of the shortcomings of the system, however, was that the premium-rate reimbursement to hospitals designated to care for patients covered under the medical insurance system, as against the flat-fee reimbursement to the far fewer hospitals designated to serve recipients of medical assistance, reduced the access of the indigent to medical services. The Ministry of Health and Welfare had made efforts to improve the situation and the number of hospitals for recipients of medical assistance had risen from about 9,000 in 1988 to about 25,000 in 1994. Another problem to be overcome was the weakness of public-sector health services. The Republic's health-care system depended heavily on the private sector, which focused mainly on cure rather than prevention and thus did not respond properly to the prevailing health problems of the elderly, the mentally disabled or the chronically ill. Placing a high priority on improving the quality of health services, especially in the public health sector, his Government was planning to implement the Health Care Management Act for the Aged.

74. As to issue No. 24 concerning assessments of the economic and social costs of environmental damage in major industrial areas, his Government had been conducting continuous studies on the levels of air, water, ocean and noise pollution in major cities and industrial areas. Any which had incurred severe environmental damage were designated as "special protection areas" eligible for urgent measures such as stricter emission controls, sewage system improvements and prohibition of further factory construction. Thus far, only the Ulsan-Onsan Industrial Complex, the largest in the country, had been designated as a special protection area. A study done in 1984 on the economic and social costs resulting from environmental damage there had revealed that residential areas as well as farm land and fishing grounds had been polluted. The Government response had been to relocate residents to safer places, to provide compensation for damaged land and fishing grounds, and to take steps to make the Complex once again an environmentally safe zone.

75. Mrs. BONOAN-DANDAN asked with regard to health care, what fertility-control programmes the Government had in place. Also noting that nothing had been said in the report about the growing AIDS problem, she said that some statistics, and information on the Government's AID strategies, would be welcome.

76. Mr. Seung HO (Republic of Korea) said that his delegation had endeavoured to produce the best possible answers for the Committee. That had taken a good deal of time mainly because of the linguistic difficulties involved. A number of issues were still outstanding, such as those on evictions and the housing of poor people. They were major issues for the Government, which did its best to resolve them. He was not in a position at present to provide any statistical data or details of measures being implemented but would submit written replies at a later stage, if the Committee so agreed.

77. The CHAIRPERSON assured the delegation of the Republic of Korea that the Committee fully appreciated the linguistic difficulties involved and was grateful to the delegation for its efforts to work in one of the working languages of the United Nations.

78. The responsibility rested with the delegation to provide whatever replies it thought appropriate in response to the questions raised. The Committee would make its own assessment of the responses and the report the following week and would be happy to receive any additional information in writing, within the next few days if possible, which would help it in its deliberations. He invited the Committee to raise any matters not already taken care of in the delegation's replies.

79. Mr. GRISSA said that the written replies, generally speaking, were not sufficiently detailed. In the Republic of Korea, because primary education was compulsory, all children went to school, but at high school level, education was not free of charge and there appeared to be a consequent decline in attendance, undoubtedly mostly among females. In that sense discrimination was practised. The tables provided showed clearly that, according to 1994 data, females accounted on average for only 31 per cent of the total university population, whereas in most countries, including very poor countries, the proportions of male and female students were very close. That "discrimination" affected all kinds of disciplines - in some cases the proportion of females fell to 15 per cent or less - and accounted for the considerable discrepancy in income between males and females, as the females were mostly employed in the poorly paid jobs.

80. According to data provided by NGOs, 60 per cent of the female labour force in the Republic of Korea worked in industrial enterprises employing less than 10 people. They were consequently not covered by minimum wage and other protective legislation. The most important factor which determined equality between people and between the sexes was education. Unless there was equal opportunity in education, there would be no equal opportunity in other areas. He asked the delegation to supply data on attendance by both sexes in primary, high school and university establishments.

81. Mrs. BONOAN-DANDAN said that no breakdown had been given for the levels of expenditure for public and private universities, referred to in paragraph 466 of the report (E/1990/5/Add.19). She therefore wondered what education in a private university might cost as compared with education in a public university.

82. She also asked for an explanation for the large influx of students from the Republic of Korea looking for educational opportunities in other Asian countries. The numbers now looking for university places in Manila was unprecedented and an explanation of the situation in the Republic of Korea and further information on the country's university admission policies would be most helpful to the Committee.

83. Mr. Seung HO (Republic of Korea) said that his delegation would submit further details in written form.

84. On the question of education, translation errors might be responsible for conveying the wrong impression. In his country, higher education referred to universities, while high schools were secondary schools. Ninety-eight per cent of girl students who completed primary school went on to high school.

85. In conclusion, he said that there was great competition for university places in his country; that situation was causing serious problems.

86. The CHAIRPERSON said that the Committee had concluded its current stage of consideration of the report and would rely for the remainder on any written responses provided by the delegation. The next phase would be a discussion by the Committee in a closed meeting to adopt its concluding observations. Those observations would be made public on the last day of the Committee's session (19 May 1995) at approximately 1 p.m.

87. He thanked the delegation of the Republic of Korea for its cooperation and the many replies provided, which had considerably helped the dialogue and had given the Committee a better understanding of the situation. The Committee looked forward to further cooperation in the future.

The meeting rose at 6.05 p.m.

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사회권 규약 정부보고서에 대한 민간단체의 질의

일반사항

1. 규약의 비준 이후 한국 정부는 규약의 내용과 의미를 국민들에게 홍보하기 위하여 어떠한 조치를 취하였는가. 그리고 법원 공무원을 포함한 공무원들에 대해 규약의 내용과 의미에 대해 어떠한 교육을 실시하였는가.
2. 규약의 비준 이후 한국 정부는 규약의 실시를 위해 어떠한 국내법적인 준비를 하였고, 법원의 판결례에 어떠한 변화가 있었으며, 규약상의 권리를 침해당한 개인이 그 구제를 받기 위한 절차는 무엇인가. 규약의 조항이 곧바로 법원에 의해 청구권으로서 인정되는가.
3. 한국의 민간단체들이 정부보고서를 작성하는 과정에 참여하지 못한 이유는 무엇이고, 특히 한국의 민간단체들이 정부보고서의 제공을 요구하였을 때 거부한 이유는 무엇인가. 그리고 한국 정부는 정부보고서를 출판하는 등의 방법으로 일반 국민들에게 공개하였는가.

개별조항

근로의 권리(제 6조)

4. 현행 실업률 산정방식의 문제점을 인정하고 개선된 산정방식으로 실업률을 파악할 구체적인 방안이 있는가. 또한 실업자 및 실업자와 다름없는 불완전 취업자들의 생계에 대한 정부의 대책은 무엇인가.
5. 기업의 경영합리화에 따른 기업주 측의 감량경영으로 인하여 심각한 고용불안상태에 있는 노동자들의 근로안정권을 보장할 수 있는 정부의 대책은 무엇인가.
6. 현행법상 노동조합 외에는 못하게 되어 있음에도 불구하고, 실제적으로는 불법적인 용역(파견근로)가 광범위하게 이루어지고 있는데, 이를 근절할 정부의 방안은 무엇인가.
7. 현재 공식적인 직업안내소를 통해서 직업을 얻는 비율이 지극히 낮은 실정을 고려하여, 인력수급의 과정을 효율적으로 운영하기 위한 공신력 있는 국공립 직업안내기관을 대폭 확대하고 전문인력을 배치할 계획을 가지고 있는가.
8. 현재 국공직업훈련기관이 전체 훈련기관 중에서 16%에 지나지 않고 있으며, 또한 그나마 내실있게 운영되고 있지 못한 실정을 감안하여 전문성을 가지고 내실있게 담당할 수 있는 공신력 있는 직업훈련기관을 확대할 구체적인 계획은 있는가.

노동조건(제 7조)

9. 정부는 임금인상에 대한 협상은 노동자들의 기본적이고 생존적인 권리임을 인정하고 노사간의 자율에 의해서 임금협상이 이루어질 수 있도록 보장할 용의는 있는가.
10. 정부는 최저임금법의 적용을 10인 미만 사업장까지 확대할 용의는 있는가. 또한 현행

사회권 조약 정부보고서에 대한 민간단체의 질의

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1. 규약의 비준 이후 한국 정부는 규약의 내용과 의미를 국민들에게 홍보하기 위하여 어떠한 조치를 취하였는가. 그리고 법원 공무원을 포함한 공무원들에 대해 규약의 내용과 의미에 대해 어떠한 교육을 실시하였는가.

2. 규약의 비준 이후 한국 정부는 규약의 실시를 위해 어떠한 국내법적인 준비를 하였고, 법원의 판결례에 어떠한 변화가 있었으며, 규약상의 권리를 침해당한 개인이 그 구제를 받기 위한 절차는 무엇인가. 규약의 조항이 곧바로 법원에 의해 청구권으로서 인정되는가.

3. 한국의 민간단체들이 정부보고서를 작성하는 과정에 참여하지 못한 이유는 무엇이고, 특히 한국의 민간단체들이 정부보고서의 제공을 요구하였을 때 거부한 이유는 무엇인가. 그리고 한국 정부는 정부보고서를 출판하는 등의 방법으로 일반 국민들에게 공개하였는가.

개별조항

근로의 권리(제 6조)

4. 현행 실업률 산정방식의 문제점을 인정하고 개선된 산정방식으로 실업률을 파악할 구체적인 방안이 있는가. 또한 실업자 및 실업자와 다름없는 불완전 취업자들의 생계에 대한 정부의 대책은 무엇인가.

5. 기업의 경영합리화에 따른 기업주 측의 감량경영으로 인하여 심각한 고용불안상태에 있는 노동자들의 근로안정권을 보장할 수 있는 정부의 대책은 무엇인가.

6. 현행법상 노동조합 외에는 못하게 되어 있음에도 불구하고, 실제적으로는 불법적인 용역(파견근로)가 광범위하게 이루어지고 있는데, 이를 근절할 정부의 방안은 무엇인가.

7. 현재 공식적인 직업안내소를 통해서 직업을 얻는 비율이 지극히 낮은 실정을 고려하여, 인력수급의 과정을 효율적으로 운영하기 위한 공신력 있는 국공립 직업안정기관을 대폭 확대하고 전문인력을 배치할 계획을 가지고 있는가.

8. 현재 국공직업훈련기관이 전체 훈련기관 중에서 16%에 지나지 않고 있으며, 또한 그나마 내실있게 운영되고 있지 못한 실정을 감안하여 전문성을 가지고 내실있게 담당할 수 있는 공신력 있는 직업훈련기관을 확대할 구체적인 계획은 있는가.

노동조건(제 7조)

9. 정부는 임금인상에 대한 협상은 노동자들의 기본적이고 생존적인 권리임을 인정하고 노사간의 자율에 의해서 임금협상이 이루어질 수 있도록 보장할 용의는 있는가.

10. 정부는 최저임금법의 적용을 10인 미만 사업장까지 확대할 용의는 있는가. 또한 현행

최저임금액의 수준을 최소한 최저생계비까지 상향조정할 의사는 있는가.

11. 현재 노사양측으로부터 불신을 받고 있는 근로감독관제도를 개선하기 위한 방안은 무엇인가.

12. 한국여성노동자의 모집, 채용, 대우에 있어서의 차별대우를 철폐하고, ILO조약에 비교하여 미치지 못하고 있는 모성보호를 위한 구체적인 방안을 마련하고 있는가.

13. 무분별한 외국인력의 유입으로 인해 한국 노동자들의 고용사정이 불안해지고 있는데, 이에 대한 정부의 근본적인 대책은 무엇인가.

14. 불법체류상태 또는 산업기술연수생이라는 이유로 노동법상의 노동자로서의 법적 보호를 받지 못하고 있는 한국내 외국인 노동자들을 국내 노동자들과 동등하게 대우할 구체적인 계획을 수립하고 있는가.

15. 노동3권을 박탈당하고 있는 외국인 노동자들에게도 한국 노동자들과 동등하게 노동3권을 보장할 계획이 있는가.

16. 높은 산업재해률을 보이고 있는 영예사업장의 산업안전관리를 위한 대책은 무엇인가.

17. 산재보험의 재정에서 관리운영비만이라도 정부가 책임지고 부담할 용의는 있는가.

18. 장기상병이 해당업종의 부담으로만 남겨진 현행 산재보험체계의 불합리성을 인정하고 전산업적 위험분산차원에서 공동부담할 수 있는 특별기금을 제도내에 새로이 마련하는 방안을 모색할 용의는 있는가.

19. 산재급여기준을 완화하여 출퇴근사고나 과로사에 대하여도 산업재해로 인정할 용의는 있는가.

20. 현행 평균임금을 기초로 한 소득비례 방식에 의한 산재급여액의 산정이 저소득노동자에게 매우 불리한 실정을 감안하여 이들의 실질적인 생활보장을 위한 '급여제도의 보완을 위한 어떤 구체적인 계획을 가지고 있는가.

노동3권(제8조)

21. 한국이 ILO에 강비하여 비준한 조약 현황은 어떠한가. 그리고 ILO의 가장 기본적이고 대표적인 조약이라고 할 수 있는 제87호, 제98호, 제151호 조약을 비준할 의사는 없는가.

22. ILO 이사회에 의하여 노동자의 결사를 침해하는 것으로 지적받은 불소노조금지 뿐만 아니라, 노조의 정치행위금지, 제2자개입금지, 직권중재, 공무원과 교원노조의 설립 및 가입금지, 공무원과 방산업체 종사자의 쟁의행위금지 등 노동자의 노동3권을 부당하게 침해하는

조항들을 개정할 의사는 없는가.

23. 정부는 문민정부 출범후 노동조합활동과 관련하여 구속기소되거나 수배중인 사람들의 현황을 정확하게 파악하고 있는가. 또한 이들의 복직을 위해서 정부가 노력할 의사는 없는가. 특히 1994년에 있었던 철도노동자들의 파업과 현대중공업의 파업과 관련하여 구속기소되거나 수배된 사람들에 대해 수배해체 또는 사면 등의 조치를 취할 의사는 없는가.

24. 공익사업장에 대하여 직권중재가 행해진 예와 당시 사용자측과 노동조합의 요구사항은 무엇이었으며, 중재결정의 내용은 무엇인가. 또한 얼마나 많은 노동자들이 공익사업자의 직권중재에 반발하여 파업을 했다는 이유로 사법처리를 당했는가.

25. 노동조합 간부나 노동조합 자체에 대하여 불법파업을 이유로 사용자가 손해배상책임을 추궁하여 민사소송을 제기한 예와 그 결과는 어떠한가. 이에 대한 정부 및 법원의 입장은 어떠한가, 위와 같은 민사상 손해배상 청구소송의 제기로 말미암아 노동계에 미친 영향은 어떠한가.

사회보장(제 9조)

26. 각 사회보장연금의 기금상태와 그 운영방법은 어떠한가, 조만간 기금이 고갈될 것이라는 우려도 있는데 이에 대한 정부의 대책은 무엇인가.

27. 현행 생활보호사업의 보호수준은 최저생계비의 약 40% 수준인데 이를 수준까지 상향 조정할 계획을 수립하고 있는가.

28. 노령연금과 실업급여의 산정방식을 개선하여 수혜자 누구나 최소한 최저생계비 ??수준으로 이상으로 받을 수 있도록 상향적으로 조정할 계획을 가지고 있는가.

29. 현재 전에 근로자의 약 35%에 해당되는 상시근로자 5인 미만의 사업장 근로자는 사회보험의 당연가입대상에서 제외되어 있는데, 이를 영세기업 근로자에게까지 확대할 구체적인 계획을 수립하고 있는가.

30. 현행 사회보장체제는 사회적 위협에 대한 포괄적인 보호라는 측면에서 매우 미흡한 실정인데 이를 보완하기 위해서 가족수당, 상병수당, 노인수당, 주택보조수당, 장애수당 등 생활보조수당을 신설할 계획이 있는가.

31. 1993년 현재 사회보장비는 전체예산에서 약 9.3% 수준에 머무르고 있는데, 20:20 계약의 정신을 준수하여 이를 전체 예산 중 최소한 20% 수준으로 증가시킬 계획이 있는가.

가정, 여성, 아동, 장애인 (제 10조)

32. 1990년 개정된 가족법에 아직 동양의 가장중심의 전통적 가족제도에 기반한 동성동본 불혼제도와 남녀차별적인 호주제도, 이혼여성의 불리한 재산분할권, 구타당하는 여성에 대한

미흡한 법적 보호 등이 개선되어 있지 않은데 정부의 대책은 무엇인가.

33. 정부는 요보호 모자 가족을 위해서 아동부양수당제도를 도입할 구체적인 계획을 가지고 있는가. 또한 모자가정에게만 국한되어 있는 공적부조제도를 편부모가족에게 확대하고, 지원할 수 있는 활성화 방안은 무엇인가.

34. 정부는 고용에만 국한된 남녀고용평등법에서 한 발 더 나아가 교육, 훈련, 정치참여 등 전사회적인 영역에서의 실질적인 남녀평등을 보장할 수 있는 남녀특별법을 제정할 용의는 있는가.

35. 민간보육시설의 영리화를 막고 대상자들에게 실질적 도움을 주며 민간탁아사업을 활성화하기 위해서 정부는 어떠한 정책적, 재정적 지원을 하고 있는가.

36. 정부는 아동학대예방법을 제정하여 아동학대의 범위와 기준을 설정하고 법적 처벌 근거를 마련할 계획을 가지고 있는가.

37. 정부에서는 소년소녀가장이 건전한 사회구성원으로 성장하도록 돕기 위해서 실질적으로 생활이 가능하도록 물질적인 도움을 주고 있는가. 또한 정신적 도움이 중요한 만큼 정부 주도로 후원자제도를 폭넓게 실시하고 있는가.

38. 정부는 노인문제 해결을 위해서 현재 정부가 취하고 있는 노인문제에 대한 가족해결주의 원칙을 버리고 사회적 책임의 방향으로 정책의 전환을 할 필요성을 느끼고 있는가. 있다면 구체적으로 어떠한 계획을 가지고 있는가.

39. 정부는 장애인 교육권, 재활권, 취업권 그리고 접근권을 보장하기 위한 근본적인 대책을 마련하고 있는가.

40. 정부는 장애인 생종권 보장을 위해 현재의 생계보조수당 3만원을 최저생계비 수준으로 상향 지급할 의향이 있는가.

인간다운 생활권(제 11조)

41. 정부는 저소득 무주택자의 주거권을 보장하기 위해서 공공임대주택 관련예산을 증액할 용의가 있는가. 또한 소형주택건설 촉진책을 마련할 계획을 가지고 있는가.

42. 현행 공공임대주택의 배분체계에는 열악한 주택상태에 있는 가구가 공공임대주택에 들어가지 못하는 문제점이 있는데, 정부는 이를 해결하여 공공주택의 주거복지효과를 극대화할 용의가 있는가. 있다면 구체적인 계획은 무엇인가.

43. 현행공공임대주택의 정부는 재개발이나 주거환경개선사업에서 저소득층의 주거환경을 개선한다는 제도의 취지를 살리지 못하고 오히려 저소득층이 입주하기 힘든 상황을 초래하

고 있는데, 실제 저소득층의 주거상태를 개선시킬 수 있도록 제도를 개선할 의도는 있는가. 있다면, 어떤 계획을 가지고 있는가.

44. 정부는 강제철거가 없다고 하지만 현실적으로 정부의 묵인하에 공공연히 폭력이 행사되고 있는 사태를 적시하고 어떠한 형태의 강제철거도 이루어지지 않도록 하는 대책을 마련할 의지가 있는가. 있다면, 어떠한 계획을 가지고 있는가.

45. 정부는 사문화된 '주택임대차보호법'을 실제로 임차인을 보호할 수 있는 현실적인 제도로 만들기 위한 어떠한 계획을 가지고 있는가.

46. 정부는 주택 및 토지가격을 안정시키고 부동산 투기를 근절시키기 위하여 어떠한 계획을 가지고 있는가. 특히 토지와 주택에 대한 공개념적 입법을 강화할 계획은 있는가.

47. 정부는 주거안정을 보장하고 투기를 억제하기 위한 주택금융과 주택세제에 대한 개선의지를 가지고 있는가. 있다면, 구체적인 계획은 무엇인가.

보건권(제12조)

48. 현행 환경기준이 외국의 환경기준과 비교하여 볼 때 매우 미흡한 상태임을 인정하고 보다 철저하고 엄격한 환경기준을 마련할 계획은 있는가.

49. 정부는 대기오염, 수질오염, 해양오염을 근원적으로 방지할 수 있도록 어떠한 행정저장 노력을 하고 있는가.

50. 정부는 정부에 의한 환경정책의 결정과정에 주민들의 의사가 제대로 반영될 수 있도록 어떠한 계획을 가지고 있는가.

51. 국가경쟁력 강화라는 이유로 기업에 대한 환경규제를 완화하였는데, 환경보호를 위한 중장기적인 계획을 수립하고 있는가.

교육권(제 13조, 제 14조)

52. 정부의 교육개혁안에는 경쟁일변도의 비교육적인 입시 위주의 교육풍토를 근본적으로 개선하기 위한 어떠한 계획을 갖고 있는가? 또한 고교평준화 해제의 논거가 학력의 제고를 통한 국제경쟁력 강화라는 것인데, 과열열풍으로 인한 사교육비의 증가, 교육의 입시위주로 인한 학교교육현장의 공동화, 황폐화 등에 대한 구체적인 방지책은 마련되어 있는가.

53. 정부는 헌법에 보장된 기본권인 노동3권과 정치활동의 보장을 교사들에게도 부여할 의의는 있는가.

54. 학교급식과 관련하여 모법인 학교급식법에는 그 시설설비비용을 당해학교의 설립자가

부담하도록 되어있는데, 정부는 의무교육과정인 초등학교의 학교급식의 실시를 위한 시설설비비용의 부담주체를 국가나 지방자치단체 또는 학부모 중 누구로 설정하고 있는가. 또한 이를 위한 국가예산은 어느 기준으로 얼마를 산정하고 있는가.

55. 정부는 방송통신대학의 교수확보비율과 방송통신대학의 산업체 근로자 비율을 높일 계획은 있는가. 또한 대학재단에 의해 영리목적으로 운영되는 현행 사회교육프로그램의 개선책은 무엇인가.

56. 정부는 현행 GNP대비 3.7%에 불과한 교육예산을 최소한 5%수준 이상으로 증가시킬 구체적인 계획이 있는가.

57. 정부는 장애인 교육의 내실화를 위하여 어떠한 대책을 강구하고 있는가.

58. 정부는 열악한 교원의 근로조건과 사회적 지위를 개선하기 위한 어떠한 근본적인 대책을 수립하고 있는가.

59. 정부는 현재 국정, 검인정교과서 제도를 통해 교육내용을 독점하고 있으며, 교육과정 편성권을 장악함으로써 교육을 통제하고 있는데, 이를 즉각 중지할 용의는 없는가.

60. 정부는 현재 교장에게 집중되어 있는 학교운영의 책임과 권한을 교원들과 공유할 수 있는 방안을 마련하고 있는가.

문화적, 과학적 권리(제 15조)

62. 정부는 정부의 문화예술정책의 기초가 통제중심에서 지원중심으로 전환되어야 함을 인식하고 이를 구체적으로 실천하기 위한 계획을 수립하고 있는가.

63. 정부는 통제할 문화예술과 지원할 문화예술을 민주적 의사결정과정을 거쳐 정해될 수 있도록 제도적으로 보장하기 위하여 어떠한 행정적인 노력을 하고 있는가.

64. 정부는 영화 등에 대하여 전근대적인 사전심의제도를 폐지할 용의는 없는가. 또한, 부적절한 사전심의에 의하여 상영 배포가 금지되거나 혹은 작품이 훼손된 경우에 대처할 수 있는 즉각적이고 효율적인 구제수단이 마련되어 있는가. 만일 구제수단이 있다면 그에 따라 실질적으로 구제된 사례는 얼마나 있는가.

65. 정부는 문학, 미술, 학술 등 문화적 권리를 침해하는 국가보안법을 폐지하고, 현대 국가보안법에 의해 구속기소되어 유죄판결을 받아 복역중인 사람들에 대해 사면과 복권 및 석방의 조치를 취하할 용의는 없는가.

Questions for the Korean Government

General Questions

1. What kinds of efforts has the Korean government undertaken to publicize the ratification and contents of the Covenant to the Korean people? Also, what kinds of efforts has the government undertaken to increase awareness concerning the Covenant among public officials, including judges and law enforcement officials?

2. Concerning the status of the Covenant in the domestic legal system, what reforms has the government enacted in order to bring domestic laws in accordance with the Covenant? Have there been important changes in court decisions? What are the procedures under which individuals can find legal relief for human rights violations? Have the articles of the Covenant been fully recognized as legal rights by the courts?

3. For what reasons were non-governmental organizations prohibited from participating in the process of preparing and submitting the government's Report? In particular, why did the government refuse to provide the non-governmental organizations with a copy of the Report at their request?

Questions Concerning the Right to Work (article 6)

4. Unemployment is increasing among the highly educated while there is a labor shortage in small and medium-sized manufacturing enterprises, indicating that the government's labor market policy has been ineffective. Does the government have any intention of enacting more active labor market policy to strengthen the economic and social conditions of workers in manufacturing?

5. What measures has the government taken to protect workers' right to job security in the face of increasing job insecurity due to the management rationalization process?

6. Despite the fact that it is prohibited under current labor laws, except under the auspices of trade unions, the use of illegally contracted labor is becoming increasingly widespread. Does the government have any plans to address this problem?

7. Considering the fact that an extremely small number of people gain employment through the official Job Information Bureaus, does the government have any intention of greatly increasing the number of such offices and hiring job placement specialists to improve the efficiency of meeting the supply and demand of the labor market and gain public trust in such services?

8. The number of government-sponsored vocational training facilities accounts for only 16 per cent of all vocational training facilities, and their operation is far from perfect at that. Does the government have any intention of increasing the number of such facilities and improving their operation to gain public trust in such services?

Questions Concerning Working Conditions (article 7)

9. Regarding the negotiations for wage increases, does the government have any intention of attempting to ensure that the negotiations are self-regulating and respectful of the rights of workers which are fundamental and necessary for their subsistence?

10. Does the government intend to increase the application of the Minimum Wage Law to include workers in workplaces with fewer than ten regular employees? Also, does the government intend to adjust the minimum wage to bring it in line with minimum living costs?

11. How is the government planning to reform the system of labor inspection, in which both labor and management currently lack all confidence?

12. Does the government have any specific intentions to eradicate discrimination in the recruitment, employment, and salary of female workers in Korea? Also, does the government intend to provide a higher level of maternity protection, which currently falls short of the standards in the relevant ILO Convention?

13. While the job security of Korean workers is being threatened by the indiscriminate influx of foreign workers, how will the government fundamentally address this issue?

14. As foreign workers currently receive no legal protection as "workers" since they are either illegal workers or technical trainees, does the government have any specific intentions of giving equal legal treatment to foreign workers as it gives to Korean workers?

15. Does the government intend to provide equal protection of their three basic labor rights to foreign workers as it provides to Korean workers?

16. Please describe the measures the government has undertaken to address the very high rate of industrial accidents, particularly in small businesses.

17. Does the government intend to assume financial liability for administering the Industrial Accident Compensation Insurance?

18. Does the government have any intention of broadening its definition of "industrial accidents" to include illnesses caused by overworking or those arising during the commute to and from work?

19. Considering that the current method of calculating the amount of compensation for industrial accidents in direct proportion to the injured worker's level of income is extremely unfavorable to workers earning low incomes, does the government have any specific plans to supplement the amount of compensation to ensure their livelihood?

Questions Concerning the Three Basic Labor Rights (article 8)

20. Which ILO Conventions have been ratified by the government since Korea gained ILO membership? Does the government have any intention of ratifying the most representative and fundamental ILO Conventions Nos. 87, 98, and 151?

21. In light of the ILO Recommendations, does the government have any intention of reforming its legal provisions which violate workers' exercise of their three basic rights of labor, namely, the prohibitions of multiple trade unions, trade unions' political participation, third-party intervention, the formation of unions for teachers and public officials, the participation of public officials and employees in collective actions, and the provision stating binding governmental arbitration?

22. Since the inauguration of the civilian government, what is the exact number of individuals and for what reasons have workers been prosecuted, imprisoned, or are currently "wanted" for arrest by the police for the involvement in trade unions and other related activities, particularly those involved in the railway strikes and the Hyundai Heavy Industry strikes in 1994? Does the government have any intention of undertaking efforts to reinstate workers who had been dismissed for such activities?

23. Please describe cases of governmental arbitration of disputes involving public officials and teachers. What were the demands made by the labor and management sides, and how did the government ultimately resolve such disputes? How many workers have been dismissed or otherwise punished for participating in strikes to protest unjust results of governmental arbitration?

24. Please describe cases in which the management has demanded financial compensation from trade union leaders or the trade unions themselves for damages resulting from their participation in illegal strikes, the civil suits filed against them, and the results of such litigation. What stance have the government and courts taken on such cases? What effects have such civil suits had on the labor community?

Questions Concerning Social Security (article 9)

25. Please describe the status of each national social security or insurance fund and the management of this fund. In what ways is the government responding to fears that these funds

will soon be depleted?

26. As the level of allowance provided in the Livelihood Protection Plan currently amounts to only 40 per cent of the minimum living costs, does the government have any intention of adjusting the level of allowance to meet minimum living costs?

27. Does the government have any intention of increasing the level of old-age pensions and unemployment benefits to match at least the minimum living costs?

28. As the scope of recipients eligible for governmental social insurance programs only applies to employees in workplaces with five or more regular employees, or 35 per cent of the total workforce, does the government have any intention of broadening the scope of recipients to include workers in workplaces with fewer than five regular employees?

29. As the current social insurance system is insufficient in providing citizens comprehensive protection against threats to their livelihood, does the government have any intention of providing financial assistance to families and senior citizens, housing assistance allowances, disability allowances, and other allowances to guarantee the minimum livelihood of its citizens?

30. As the social welfare spending currently amounts to only 9.3 per cent of overall government expenditure, does the government have any intention of increasing its social welfare spending to at least 20 per cent of the total budget, in accordance with the 20/20 Plan proposed at the World Summit on Social Development?

Questions Concerning the Protection of Women, Children and the Family (article 10)

31. Does the government have any intention of reforming its family-related laws which are based on notions of traditional Asian feudalism, such as the provisions stating the prohibition of marriages between individuals with the same last name and family origin, the system of registering family names based on fathers' surnames, the division of property during the divorce process which places women at a disadvantage, and the lack of legal protection for victims of wife abuse?

32. Does the government have any plans for instituting a system to provide child support allowances to female-headed households in need? Also, does the government have intend to provide public assistance to male-headed households in need as well?

33. While the Gender-Equal Employment Act prohibits gender discrimination in employment, does the government have any intention of enacting the Special Gender-Equality Act to prohibit discrimination in education, job training, and political participation?

34. What kinds of policies, including those of financial support, is the government planning to enact in order to increase the functions of private childcare facilities which truly help its recipients and to block those which are operated only for profit?

35. Does the government have any plans to enact the Child Abuse Prevention Act which would provide legal and institutional channels for prosecuting acts in violation thereof?

36. Is the government providing material assistance to orphaned children to ensure their present and future livelihood? Also, is the government initiating a "supporter" program in which volunteers provide important emotional support to these children?

37. Does the government, which is responsible for addressing problems concerning the aged, realize the need to discard its notions of relying on individual families and to enact policy fulfilling its social responsibility concerning the aged? If so, what specific measures has it undertaken in these regards?

38. Is the government undertaking efforts to provide the disabled the exercise of their right to education, right to special medical care, right to gainful employment, and the right to access?

39. Does the government have any intention of increasing the level of livelihood protection it provides the disabled from the current 30,000 won a month to a level which meets the minimum living costs?

Questions Concerning the Right to an Adequate Standard of Living (article 11)

40. Does the government intend to increase its public housing expenditure to protect the right to housing of low income and homeless individuals? Does the government plan to expedite the construction of small-sized public housing units?

41. While inadequately housed individuals are effectively excluded from the public housing allotment system, how does the government plan to increase the effectiveness and equity of its public housing welfare programs?

42. While the government's redevelopment and housing improvement projects were meant to improve the housing conditions of low-income persons, they actually hinder low income individuals' access to housing. What reforms, if any, does the government plan to enact to improve the housing conditions of low-income individuals?

43. In light of the fact that despite the government's denial, many homes built without permits have been forcibly demolished, sometimes with the use of violence under the tacit consent of the government, what specific measures, if any, does the government plan to take in order to prevent such abuses?

44. Does the government have any plans to improve the implementation of the Renters' Protection Act, dead-letter legislation, to provide active protection to renters?

45. Does the government have any plans to stabilize housing and real estate prices and

root out excessive real estate speculation? In particular, are there any specific plans to strengthen legislation concerning housing and real estate?

46. What are the government's specific plans, if any, to reform housing finance and tax regulations to suppress excessive real estate speculation and stabilize housing costs?

Questions Concerning the Right to Physical and Mental Health (article 12)

47. Does the government have any plans to tighten its environmental and environment-related health regulations, which are very poor in comparison to other nations' regulations?

48. Has the government undertaken any administrative efforts to prevent and reduce air, sea, and tap water pollution?

49. Does the government have any intentions of instituting environmental policies which reflect public interests and opinions in the process?

50. While the government loosened environmental regulations on industries in the name of promoting national economic competitiveness, does the government have any long-term plans to address the growing problem of environmental destruction?

Questions Concerning the Rights to Education and Free Compulsory Education (articles 13, 14)

51. Does the government have any plans to address the problems arising from the fact that the educational system is focused students passing the college entrance examinations? Also, the government justifies its abolishment of the system of assigning students to high schools based on their geography rather than middle-school grades by arguing that such policy would increase the quality of Korean education, and thereby increase national economic competitiveness. How would the government plan to address the resultant distortion of the educational system and increased private schooling and tutoring expenditure?

52. Does the government have any intention of protecting teachers' exercise of their three basic labor rights and freedom of political activities, rights enshrined the Korean Constitution?

53. Presently, while the School Meals Act states that the school institutor assume financial liability for school meals facilities, among itself, the municipal government, and the parents of students, whom does the government actually hold liable for the financial burden? What portion of the educational budget does the governmental allocate for the school meals program?

54. Does the government have any intention of increasing the number of professors and students who are industrial workers at the air and correspondence college? Also, the does the

government have any plans to improve the social educational programs administered by universities?

55. Does the government have any intention of increasing educational spending from 3.76 per cent of overall expenditure to a minimum of 5 per cent?

56. What measures has the government taken to improve special education for the disabled?

57. Does the government have any plans to institute policies to improve the working conditions and social status of teachers?

58. Does the government have any intention of abolishing the system of approving and authorizing textbooks, which allows the government to monopolize textbook content and educational curricula?

59. Does the government have any plans to institute educational reforms so that the headmaster, who currently holds most responsibility and authority over school management, shares such responsibilities with the teaching staff?

60. Does the government have any intentions of raising the level of compulsory education to a middle-school level from the current grade-school level and to include pre-schools in the scope of regular education?

Questions Concerning the Right to Take Part in Cultural Life and Enjoy the Benefits of Scientific Progress (article 15)

61. Does the government have any intentions of shifting the focus of its arts and culture policy from one of regulate (i.e. censor) to one of support?

62. What administrative measures has the government undertaken to democratize the process in which it decides to regulate or to support artistic works and events?

63. Does the government have any intention of reforming its system of pre-production regulation of written works? Also, does the government have plans to provide immediate and effective legal remedy for cases of inappropriate censorship which resulted in prohibition or other damage? If so, please describe cases which demand remedy?

64. Does the government have any intention of repealing the National Security Law, under which the cultural rights of writers, artists, and academics have been severely curtailed? Also, does the government have any intention of granting amnesty to those who are currently imprisoned or wanted by the authorities and restoring the civil and political rights of those who have had such rights suspended for violation of the National Security Law?

사전심의 작업분과에서 확정된 1차 질문상황요약(28항)

I. 일반사항

가. 인권을 보호하는 일반적인 법제도에 관한 질문

1. 사회권규약의 국내법상 지위? 사회권규약상의 권리가 침해된 개인을 구제하는 구체적인 제도는?

2. 헌법상 경제적 사회적 권리에 대한 형식적 인정에 따르는 법적, 정치적, 실제적 효과는? 그에 따른 법적 적용 사례(판례)는?

나. 사회권 규약의 권리에 대한 정보제공 및 홍보에 관한 질문

3. 한글로 번역되어 배포되었는지 여부와, 공무원, 판사, 사회활동가, 일반인에 대해 지금까지 실시된 교육, 규약의 내용을 설명하는 교육적 홍보적 자료에는 어떤 것이 있는가?

II. 규약의 일반 조항에 관련된 내용(1~5조)

4. (2조 2항: 차별방지) 한국 헌법상 차별방지 조항이 성, 국적, 종교, 사회신분에만 기초하고 있는 것이 사실인지, 그렇다면 인종, 피부색, 언어, 정치적 의견, 재산, 출산에 따른 경제사회문화적 권리 적용의 차별을 방지하는데 국가의 의무를 어떻게 수행하고 있는가.

III 규약의 각각의 구체적 조항에 관련된 내용

5. (6조 노동권) 남녀 정년퇴직 연령, 퇴직정년 이후 노동상황, 그 이유.

(7조 노동조건)

6. 최저임금법의 적용을 받지 않는 노동자 범주 모두 예시. 대통령령이 정하는 예외도 명시

7. 남녀고용평등법이 여성의 동일노동 동일임금에 미치는 실제 효과. 유엔 인간발전보고서(1993)에 서처럼, 여성 평균임금이 실제로 남성의 47%인가? 정부의 조치는?

8. 근로감독관의 숫자는? 그 규모와 활동의 타당성

(8조 결사의 자유)

9. 한국이 비준한 ILO 조약은? 결사의 자유, 강제노동, 최저노동연령, 고용평등에 관한 조약을 비준할 계획은?

10. 교사 등 공공기관 종사자들의 노조결성 및 가입금지와 본 규약 8조와의 불일치-ILO 권고대로 노동법을 개정할 의향이 있는가?

11. 지난 3년간 해고된 노동자는 모두 몇명인가? 전노협에서 밝힌 '1993-3만 3천여명 해고'라는 숫자를 정부는 인정하는가? 노조결성관계로 해고된 교사들은 어떻게 되었나?

12. 한국정부가 유엔인권이사회에 보고한 '복수노조금지 조항의 개정을 적극 고려'에 관련해 진행

된 사항은?

13. 국가보안법상 북조선인민공화국을 '이롭게' 한다는 이유로, 경제 사회 문화적 권리의 변화와 관련된 사람들의 결사 및 의사표현의 자유가 어떤 방식으로 제약되고 있는가?

(10조 가정 어머니 아동의 보호)

14. 서출 아동, 혼혈아동의 법적 실제적 상황, 해외입양 현황

15. 장애인 권익보호 조치

16. 외국인노동자의 차별대우. 새 입법의 필요성

17. 사정내 여성폭력. 정부의 보호조치. "전통적 가부장제(정부보고서 176항)"가 여성의 사회권규약상 권리실현에 미치는 부정적 요소는?

(11조 생활권)

18. 최저생활 이하의 삶을 사는 사람들의 비율. 사회보호대상의 기준치가 기아선인가 최저의 인간적 생활인가?

19. 도시의 심각한 주택부족현상에 대한 정부의 조치. 주거권실현상의 불평등 상황과 그 이유.

20. "최저 주거기준치" 부재의 문제. 그를 설정할 의향은?

21. 건물주에 의한 강제퇴거가 불법인데 그에 따른 기소사실은?

(12조 정신적 육체적 건강권)

22. 헌법상 보장된 '건강하고 유쾌한 환경을 가질 권리'가 갖는 법적 실제적 효과는 무엇인가?

23. 소외계층 건강관리의 질을 높이는 데서 정부가 직면한 문제점은?

24. 정부는 주요 산업지역에서 나타난 환경파괴가 야기한 경제적 손실을 조사한 적이 있는가?

(13, 14조 교육권)

15. 여성문맹율이 남성보다 5.6%로 높는데 이에 대한 구체적 조치는?

26. 장애아동의 교육현황

27. 의학, 과학, 법학, 경제학, 공학, 언어학, 경영학 등 대학의 중요학과의 진학한 학생 중 여성의 각각의 비율은?

28. (15조 문화생활에 참여할 권리) 이에 대한 제약은? 국가보안법은 어떤 방식으로 문화적 표현의 제약을 위해 적용되었나?

-1994년 7월 1일 확정-



PERMANENT MISSION OF THE REPUBLIC OF KOREA
GENEVA

Answers by the Republic of Korea to the questions in connection with the consideration of the Initial Report of the Republic of Korea concerning the rights covered by Articles 1 to 15 of the International Covenant on Economic, Social and Cultural Rights.

2 May 1995

Republic of Korea

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I. General Information

1. Please indicate the status of the Covenant in domestic law. If the Covenant has the same status as domestic law, does the *lex posteriori* rule give precedence to any later domestic legislation? What specific remedies are available to an individual who claims that his or her rights under the Covenant have been infringed?

1) The Status of the Covenant in domestic law:

The principles of the Covenant are provided for by the Constitution of the Republic of Korea. Paragraph 1, Article 6 of the Constitution ensures the same status and effect of the Covenant by stipulating that: "Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea." The Constitution thus holds that this Covenant has the same effect as domestic law. It is not necessary to incorporate the Covenant into the system of domestic law with special legislative measures or procedures because it has been ratified and proclaimed by the government with the consent of parliament. In certain cases where the provisions of domestic law contradict those of the Covenant the general principles of law, including the *lex posteriori* rule or the principle of the precedence of special law, will naturally apply.

- The Constitution makes it impossible to enact domestic laws which will run counter to the Covenant. Article 10 of the Constitution, for example, specifies that: "All citizens shall be assured the dignity and value of human beings 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 of individuals".
- In this sense, the freedom and rights of all citizens cannot be disregarded due to the absence of specific provisions in the Constitution. Although human rights can be limited in Korea, in cases of absolute necessity, by laws, concerning national security, order or public welfare, the essential principles of rights and freedom cannot be infringed upon.
- Therefore, judging from the provisions of the Constitution described above, domestic laws should not contravene the Covenant.

- 2) Remedies for the infringement of Rights under the Covenant:
 - o An individual whose rights have been violated may seek a specific remedy by legal action. An exception to this rule is applicable to certain cases in which freedoms have been curtailed by the law. [With respect to these certain cases, both the Covenant and the Korean Constitution offer strict definitions of the conditions under which rights and freedoms may be limited by law. For example, article 4 of the Covenant stipulates that: "the State may subject those rights provided by the State only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society." Furthermore, paragraph 2, Article 37 of the Korean Constitution stipulates that: "The freedoms and rights of citizens may be restricted by law only when necessary for reasons of national security, the maintenance of public order, or for public welfare. Even when such restriction is imposed, no essential freedoms or rights shall be violated."] Remedies to any other violations of rights and freedoms may be pursued through legal procedures.

- o When such legal action is under taken in cases where the rights or interests of citizens are infringed upon by governmental agencies, various methods and/or remedies such as Petition, Administrative Litigation and Administrative Appeal, National Compensation and Reparation for Damages and Constitutional Petition can be applied:

[I] Petition:

Citizens who claim that their rights and interests have been infringed upon by governmental agencies can petition the relevant governmental agencies for the purpose of being compensated for damaged rights and interests, to challenge an infringement of rights caused by the unreasonable or illegal acts of public officials, or to amend the making of a particular law. [In this regard, paragraph 1, Article 26 of the Constitution states that: "All citizens shall have the right to petition, in writing, to any governmental agency under the conditions as prescribed by law."]

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ii) Administrative Litigation and Administrative Appeals:

Citizens who suffer from "any infringement of rights or interests due to an illegal or unreasonable disposition, exercise, or non-exercise of public power by administrative agencies", can demand relevant governmental agencies to redress the infringement, and can be relieved, according to Administrative Appeals Act A.1, "through the procedure of administrative appeal"; Citizens who suffer from "an infringement of rights or interests (inflicted) by an illegal disposition, exercise, or non-exercise of public power by administrative agencies", can demand compensation for damages from relevant administrative agencies "through the administrative litigation procedure" (Administrative Litigation Act A. 1). These procedures can be accomplished through such measures as demanding the annulment of the disposition made by the administrative agencies, for example.

iii) National Compensation and Reparation for Damages:

When citizens are harmed by public officials, who violate the provisions of laws and regulations in the course of performing their official duties, those who suffer from such damages are entitled to make claims for compensation.

iv) Constitutional Petition:

When the basic economic and social rights of citizens are infringed upon by the State, affected citizens can pursue the constitutional violation through the appeal procedure. These rights are embodied in the Constitution, therefore violations of such rights have legal repercussions.]

- There are, of course, other cases in which the rights of a citizen may be violated. When rights and interests are violated by private persons, such measures of recourse as accusatorial procedure and the compensation for damages in conformity with the Civil Code may be pursued :

[I] Accusatorial procedure:

Citizens whose rights and interests, as described in this Covenant, are violated by private persons can seek relief by demanding, from the prosecutor's office or the police authority, the punishment of the accused in accordance with relevant laws.

ii) Compensation for damages in conformity with the Civil Code:

Citizens whose rights and interests are violated may file a suit, in accordance with the provisions of Civil Code, against the accused for compensation of both mental and material damages. The rights and interests of the claimant, in these cases, will be addressed by the court system through impartial trials.]

2. **What is the legal, political and practical significance of the formal recognition in the Constitution of various economic and social rights? Please give details of any court cases where such rights have been formally applied.**

The economic and social rights of citizens enunciated in the present Constitution have supreme legal standing, and the specific rights derived from them are duly guaranteed by the pursuant legislation. In this respect, the economic and social rights guaranteed in the Constitution entitle citizens to the right to claim vis-a-vis the state. By nature, these rights oblige the state to take relevant legislative measures in support of the Constitution. The present Constitution recognizes right to appeal to government agencies regarding constitutional violations. In cases of individual violations, the plaintive may proceed with their appeal confirming constitutional violation, and demand the restoration of their rights from the Constitutional Court.

In April this year, the right to an education in a healthy and pleasant environment was recognized by the Pusan Higher Court in a civil suit, which Pusan University filed against a construction company, demanding that the Company should stop building a high-rise apartment near the University. The Court decided that construction should be stopped, stating that the right to an education in a healthy and pleasant environment takes precedence over the right of property.

3. **What publicity has been given to the Covenant within the Republic of Korea. How has the text been made available in the languages used in Korea, what has been done for the education of government officials, judges, social workers and the general public, and what educational and public information materials have been produced explaining the contents of the Covenant?**

- 1) **Publicity Activities relating to the Covenant**
 - Several symposiums have been held on the subject of the accession to the International Covenant with the vast participation of scholars, lawyers and citizens.
 - The Covenant was ratified and promulgated to the nation following a process whereby relevant government agencies examined issues relating to its implementation, and both Cabinet and National Assembly consent was achieved.
 - As the result of government publicity activities, articles relating to International Covenant on Human Rights have appeared in most daily newspapers. [For example, in March 1990, it was reported that the proposed accession to the U.N. Covenant on Human Rights was passed by the Foreign Affairs and Reunification Committee of the National Assembly; Also, the effect of the International Covenant on Human Rights was reported in July 1990.]

- The Korean Government has endeavored to explain the Covenant on Human Rights to the population through workshops, seminars, neighborhood news, and slides. The Government has also encouraged college students to explain the Covenant to people while conducting voluntary activities in remote place during summer vacation.
 - Since 1992, the Government has distributed 110,000 copies per year of the book "Law and Life" which introduces basic legal principles, including the Covenant, to the people.
 - The Covenant is among the issues discussed in government sponsored symposiums which are held on the occasions of the Universal Declaration of Human Rights Day (December 10), and Human Rights Week (Early December).
- 2) Education of government officials concerning the implications of the Covenant
- As most examinations for government officials include subjects related to law, applicants for government posts must study the contents of the Covenant.

- The curriculum of special education sessions for public servants, which are held periodically, includes a Constitution class where the basic national laws, and the contents of the Covenant are examined.
 - [Also, for public servants in charge of investigation in Prosecution Offices and National Police Agencies, etc. there are special classes concerning our national laws and international covenants.]
- 3) Several books on the Covenant have been issued by the Korean Government (1,000 copies each):
- [Collected cases of the International Covenant on Human Rights (I); June 1990.
 - Report of the International Covenant on Human Rights; April 1991.
 - Collected cases of the International Covenant on Human Rights (II); December 1991.
 - Collected Materials of the International Covenant on Human Rights; February 1994]
- Also, it should be noted that most textbooks on "The Constitution" and "International Law" published in Korea explain both the content of the Covenant and the details of Korea's accession to the Covenant.

II. Article 2.2: Non-Discrimination

4. Is it the case that anti-discrimination legislation only covers discrimination based on sex, nationality, religion or social position? If so, how does the state party discharge its obligation to ensure that relevant rights are exercised free of discrimination based on race, color, language, political or other opinion, social origin, property, birth or other status?

Paragraph 1, Article 2 of the Constitution of the Republic of Korea sets out the fundamental principles of equality by stipulating that "All citizens shall be equal before the law, and there shall be no discrimination in political, social or cultural life on account of sex, religion or social status." The references to sex, religion and social status should be interpreted as merely examples of the various areas for which non-discrimination is guaranteed. Therefore, discrimination based on those areas related to economic, social and cultural rights is also strictly prohibited in accordance with the principle of equality enshrined in the Korean Constitution and other relevant laws.

Also, in recognition of the high instance of human rights violations arising from racial discrimination throughout the world, the Republic of Korea acceded to the International Covenant on the Elimination of All Forms of Racial Discrimination in December 1978.

With respect to the human rights and freedoms of foreigners in Korea, such rights are also guaranteed under the Constitution and other relevant laws. The basic rights directly related to the dignity and the value of human beings, as well as the right to seek happiness, are regarded as the rights of all human beings. Therefore, the fundamental freedoms and human rights of foreigners are fully respected and protected. Other rights of foreigners are, as stipulated in paragraph 2, Article 6 of the Constitution, also guaranteed under the principle of equality and reciprocity as prescribed by international law.

III. Article 6: Right to Work

5. **What are the respective retirement ages for men and women and what proportion of the eligible are in fact retired? Please explain why virtually all people appear to continue working after retiring age?**

There is no legislation that uniformly prescribes an age of retirement. In cases where a mandatory retirement age is determined by the employer, the Aged Employment Promotion Act suggests a benchmark retirement age of 60 or more years. The employer, therefore, shall not seek to enforce a retirement age remarkably lower than 60 years of age (Article 19-20).

In addition, the Korean government established the Gender Equal Employment Act in 1988, which removes sexual discrimination with respect to retirement age.

Some studies of retirement practices at Korean workplaces have yielded the following results:

- The findings indicate that, at most workplaces, retirement is generally carried out after 55 to 57 years of age.

- The age of retirement varies by occupation and business category. [In some particular occupations, such as administrative officers (55-61), teachers (65) and the judiciary (61-70), for example, there are provisions for retirement age.]

The findings also show that many workers who reach retirement age want to continue working for reasons of prolonged life expectancy and economic or sociopsychological motivations.

- As of 1994, workers over 55 years of age account for 4.8% of employees in workplaces of more than 5 people.

Measures are being taken to provide for the elder members of Korean society who want to work. For example, through the Aged Employment Promotion Act, the Government provides re-employment services for retired people who wish to continue working.

- Another measure is the employment insurance system, which has been in effect since July 1st 1995, under which enterprises with a certain number of aged employees (over 6% of all employees) will be entitled to grants for employing aged workers as an incentive to promote the hiring of old aged persons.

IV. Article 7: Right to just and favorable conditions of work

- 6. Please list all those categories of workers not covered by the Minimum Wage Act and indicate any groups specifically excluded by Presidential Decree.**

At present, under Article 2 of the Enforcement Decree of the Minimum Wage Act (MWA), firms with less than 9 employees are exempt from the application of the MWA. However, the Minimum Wage Act aims at ultimately reducing this number to 5 employees or less. Also exempt are seamen who are subject to the Seaman Act.

The Minimum wage system allows the government to intervene in the wage determination of those workers who are likely to receive unjustifiably low wages. The application of this system has so far proved to be very favourable to wage earners from a social and economic standpoint.

[The Minimum Wage System is not without drawbacks, however. For example, it is likely to contribute to such unfavorable side effects as the decline of both business performance and employment levels, especially for marginally small firms. These negative consequences would be intensified if the minimum wage rate were to be fixed at an extremely high level, or applied to a broader range of employees.]

The scope and level of the Minimum Wage System will be gradually extended, as economic capacity allows. The level of the minimum wage in Korea is determined every year through the deliberation and unanimous accord of the tripartite members of the Minimum Wage Council. Since 1993, the Act has called for the determination of the minimum wage level on September 1st of each year, in order to balance the increases in wage rates which are derived from the collective bargaining agreements finalized prior to that date.

Firms with more than 10 regular employees are currently subject to comply with this system, but the range of the system is expected to expand in the near future.

For the period of September 1994 to August 1995, the monthly minimum wage amounts to around \$340.

7. **How effective has the Gender-Equal Employment Act been in achieving equal wages for equal work for women? Is the average female worker's wage only 47% of that of her male counterpart, as reported in the Human Development Report 1993? What measures is the Government taking to reduce existing disparities? Have any court cases been brought to enforce non-discrimination in this area?**

Since the Employment Equality Act (formerly the Gender-equal Employment Act) was initiated in 1988, penal provisions have been reinforced, and continuous efforts have been made to alleviate discrimination in wages, employment and working conditions between male and female workers. Particularly, there have been significant improvements in the cases of leading financial enterprises, 30 large conglomerates and government-invested or affiliated corporations.

Moreover, the Korean Government plans to introduce a policy to reduce disparities in employment, wage and other working conditions based on sex in workplaces with over 300 employees by the end of 1994. These measures will apply to workplaces with over 100 employees by 1997.

Concerning the relative wage level, recent findings show that female workers' average wages in 1993 have increased to 56.5% of male workers' average wages, from 52.0% in 1988. This figure, however, indicates the average wage of all female workers relative to that of male workers. The main factor leading to such disparity is that a significant number of female workers belong to those job categories with lower wages. Differences in wages mainly result from job experience and different level of education.

Finally, in reference to the question of court-cases brought to enforce non-discrimination of wages, there has been no such lawsuits raised thus far.

8. **How many labour inspectors are there and how adequate does the Government consider the current numbers to be? How many prosecutions have been undertaken as a result of the work of these inspectors?**

At the end of 1994, there were 865 labour inspectors in Korea. Of them, 561 were deployed for labour inspection purposes and 304 were in charge of monitoring industrial safety. Each labour inspector keeps watch on, or inspects, an average of 200 workplaces.

As a result of the rapid pace of industrialization, the activities of labour offices have become more diverse and complicated, and thus there has been a significant increase in the workload for the current number of inspectors. The government is therefore considering increasing the number of inspectors.

Regarding the results of the work of these inspectors, in 1993, 48,251 cases of infringement were reported. 33,962 cases were resolved through administrative actions. The remaining 14,289 were judicial cases.

Among the 43,583 cases of illegal violations: 97.9% of the cases (42,658) violated the Labour Standards Act, 614 cases (1.4%) were violations of the Trade Union Act, 75 cases were related to the Labour Dispute Adjustment Act and 12 cases to the Labour-Management Council Act, Minimum Wage Act, and Employment Equality Act respectively.

V. **Article 8: Right of association**

9. **Since joining the ILO in 1991, the Republic of Korea has ratified three Conventions (relating to labour inspection, medical examinations for seafarers and employment policy). Does the Government plan to ratify any further conventions, especially those relating to the freedom of association, forced labour, minimum age and non-discrimination in employment?**

Korea ratified its fourth ILO Convention 142, the Human Resources Development Convention, in January of 1994.

Moreover, the Korean Government is considering the ratification of Convention Numbers 19 (equality of treatment), 45 (underground work) and 138 (minimum age) in 1995.

We expect to accede to other Conventions including Convention 29 (forced labour) as soon as possible.

10. The Report indicates that teachers and many of those working in public utilities and the defense industry are not permitted to form or join trade unions (Paras. 96-99). How is this compatible with the narrow range of exceptions to this right which are provided for in Article 8 of the Covenant? Does the Government intend to reform its labour laws, as recommended by the ILO Committee on Freedom of Association in its final recommendation on case No. 1629 of June 1994, so as to bring them into conformity with the principles of freedom of association?

It is not true that workers in public utilities and in the defense industry are not permitted to form or join trade unions. It should therefore be noted that:

- Public officials who are actually engaged in physical labour are, in fact, permitted to form or join trade unions. Other public officials and teachers, however, are not allowed to do so due to the Trade Union Act and Civil Service Act, provisions of the Constitution.
- However, all employees of public utilities and the defense industry are permitted to form or join the trade union of their free choosing.

As stipulated in Paragraph 2, Article 37 of the Constitution, the freedoms and rights may be restricted by law only when necessary for national security, the maintenance of public order or public welfare.

The exceptions stemming from this provision are unlikely to disagree with the narrow range of exceptions provided in Article 8 of the Covenant.

Given domestic criticism and ILO advice concerning the right of public officials and teachers to organization, a study of these issues, in connection with the amendment of the labour law, is under way.

11. How many workers have been dismissed over the past three years for union-related activities? Does the Government accept the estimate of 33,000 in 1993 suggested by the Korea Trade Union Congress? What has happened to those teachers who were dismissed because of their attempt to form a trade union?

In Korea, there exist routes through which dismissed unionists may inquire into the justice of a dismissal. One way is to apply for relief from the Labour Relations Commission as provided for by the Trade Union Act. Another is to initiate a lawsuit in Civil Court for the repeal of the dismissal, according to the Code of Civil Procedure.

The Labour Relations Commission has accepted 982 applications (1,531 workers) for relief against unfair labour practices, including the dismissal of unionists, in the past 3 years (1991 to 1993). Among those claims, 169 cases for 262 union members were given a favorable decision by the Labour Relations Commission.

Concerning the estimated number of unionists dismissed in the past three years, findings indicate that the figure of 33,000 is unfounded.

Concerning the specific case of dismissed teachers, the current Government has been making continuous efforts, since taking office in 1993, to return the Chunkyojo (KTU: Korean Teachers & Educational Worker's Union) related teachers to their jobs within current legal boundaries. Its efforts aim at bringing more former teachers back to schools by engaging in extensive dialogue with the KTU representatives, and extending the application period for those wishing reinstatement.

As of April 1995, 1,342 out of 1,490 dismissed teachers have returned to teaching, and only 22 have not been reemployed due to continued involvement in KTU activities. Most of the remaining dismissed teachers do not wish to return to school because they are now employed in other jobs.

The Government of the Republic of Korea is discussing the possibility for reinstating those teachers dismissed from their jobs including the 22 teachers to the original teaching jobs.

12. In 1992, the Government reported to the Human Rights Committee (CCPR/C/SR 1150, para. 10) that authorization to establish multiple unions in a single workplace was being actively considered. What reforms have taken place in this respect?

Paragraph 5 of Article 3 of the TUA prohibits the organization of more than one union in an enterprise if the new union has the same object as the existing union, or if it aims to interfere with the normal operation of the existing union.

This rule exists because of the negative consequences that may be derived from an uncontrolled proliferation of unions. In the present labour environment, where a single trade union system is prevalent, multiple unions may give rise to conflict or confusion.

There have been arguments in favour of plural unions put forward by various circles, and an examination of the possibility of such an amendment to labour-related laws is currently under way.

13. In what ways does the National Security Law, which seeks to regulate the exercise of certain human rights in so far as they might "benefit" the Democratic People's Republic of Korea, inhibit the enjoyment of the freedoms and association of groups advocating change in relation to economic, social and cultural rights.

The Constitution of the Republic of Korea guarantees: "freedom of speech and the press, freedom of assembly and association" in paragraph 1, Article 21. It also provides some limited exceptions to these basic rights, stating that: "The freedoms and rights of citizens may be restricted by law only when necessary for national security, the maintenance of law and order, or for public welfare. Even when such restrictions are imposed, no essential aspect of freedom or rights shall be violated." (A. 37, (2)). This clause of the Constitution does not contradict the contents of Article 4 of the "International Covenant on Economic, Social and Cultural Rights", but is rather in accordance with them.