

월 내에 답변을 줄 것"이라는 요청을 받은 바 있다. 또한 민화가 이현세의 '천국의 신화'라는 작품은 청소년에게 음란의 설물을 배포했다는 이유로 올해 벌금형을 선고받았다. 또한 감독 장선우의 '거짓말'은 사전심의제도를 대신한 등급분류 제도에 의해 '등급보류' 판정을 받고 몇 군데의 수정을 거친 후에도 개봉을 할 수 있었다. 이러한 사례에서 볼 수 있는 것은 창작자의 창작물에 대한 판단이 작품의 맥락에서 전체적으로 이해되지 않았다는 것이다. 오히려 특정한 부분이 독립적으로 문제시되거나 작가의 의도와는 전혀 다른 이해를 바탕으로 사법적 판단이 내려진 경우라고 생각된다. 물론 같은 작품에 대한 다양한 견해는 존중해야 할 것이지만 특수한 판단에 불과한 사법당국의 판단으로 법적 처벌을 받는 것은 사회권규약 제1 조에서 규정하고 있는 창작자 자신의 문화적 발전에 심대한 제약이라는 것이 우리의 판단이다.

▶ 질의 사항

- (1) 문화적 창작물에 대한 사회적 논의가 사법적 판단보다 우선되어야 한다는 견해에 대해 한국 정부는 생각하는가?
- (2) 사법적 판단의 근거가 되는 국가보안법의 경우 국내법상 상위법인 대한민국 헌법은 물론, 국제법과도 상충하는 바가 많은데 이를 전면개정 혹은 폐지할 의향은 없는가?
- (3) 등급분류제도가 지니고 있는 실질적인 사전검열조항인 '등급보류' 등의 소극적인 제한 조항을 폐지하고 그 대신 등급의 전용관 설치 등 다양한 문화 창작물을 수용할 수 있는 적극적인 정책을 수립할 의향은 없는가?

3. 문화적 주권의 제약

사회권 규약 제15 조 2 항은 "가입국이 문화적 권리의 완전한 실현을 이룩하기 위하여 취하는 조치 중에는 과학과 문화의 보전·발전·보급에 필요한 조치가 포함된다"고 밝힘으로써 개별국가의 문화산업에 대한 권리를 규정하고 있다. 그 중 우리가 주목하는 것은 스크린쿼터 제도이다. 실제로, 한국의 영화산업의 자생성을 확보하기 위한 제도적 장치인 스크린쿼터 제도는 지난 93년 WTO 체계의 출범 속에서도 문화적 예외조항으로 인정되었으며, 최근 OECD 국가간의 다자간 협상과정(MAI)에서도 문화적 예외조항의 문제가 제기된 바 있다. 이러한 현상은 경제 교역의 호혜적 성격이 문화 자원에까지 확대되지 않는다는 최근의 국제적 흐름을 보여주는 것이라고 할 수 있다. 하지만, 한국정부는 미국과의 양자간 무역협정을 토의하는 과정에서 이러한 스크린쿼터제도를 다른 통상부문의 교섭대상으로 바라보는 시각을 드러내었다. 이는 한국 정부가 스크린쿼터제도를 단순히 산업의 측면에서만 바라볼 뿐, 문화적 다원성이라는 보편적 가치를 지켜나가는 제도라는 측면을 고려하지 않음을 보여주는 것이다. 우리는 한국 정부의 이와 같은 인식이 사회권규약 제15 조 2 항(문화의 보전의무) 뿐만 아니라 동조 1 항(문화적인 생활에 참여할 수 있는 권리)에 대해 서도 실제 향유할 수 있는 선택의 범위를 줄인다는 측면에서 침해의 소지가 있다고 평가한다. 문화에서의 자생적 발전은 바로 문화적 주권과 직결된다는 것이 우리의 생각이다.

▶ 질의 사항

- (1) 문화관광부는 스크린쿼터제의 존속을 주장하는 반면, 외교 통상부는 스크린쿼터 제도폐지를 주장하고 있다. 이와 같이 동일한 행정부의 다른 부서 사이에서 나타나는 스크린쿼터 제도에 대한 상이한 이해는 현 한국정부의 문화정책에 대한 혼선을 보여주는 것으로 평가할 수밖에 없다. 즉, 현재 한국정부는 스크린쿼터 제도로 대표되는 문화의 자생적 발전에 대한 명확한 인식은 물론, 이와 같은 사항이 문화적 주권과 밀접하게 연관된다는 것을 인식하지 못하는 것으로

보인다. 한국정부는 문화적 주권, 보존이라는 측면에서 스크린쿼터 제도의 유의미성에 대해 어떤 생각을 가지고 있는가?

4. 문화 접근권 강화 (이용자 중심의 공공문화시설 운영 활성화 방안 모색)

도서관, 미술관, 박물관, 문화의 집 등은 지역주민들이 문화예술을 직접 체험하고, 그들의 눈높이에서 이를 직접 창작할 수 있도록 문화 프로그램 및 관련 정보를 제공하는 공공문화시설을 의미한다. 공공문화시설에 대한 지역주민들의 참여가 활성화될 때, 지역주민의 감수성 및 창의성은 신장될 것이며 문화민주주의에 기초한 지역공동체가 형성될 수 있다.

공공문화시설의 중요성이 날로 높아감에 따라, 한국정부는 그 동안 대폭적인 재원투자를 통해 상당수의 공공문화시설을 개편하였다. 90년대에 들어 서울은 물론 광역자치단체 수준에서는 웬만한 규모를 갖춘 대형 박물관이나 미술관 혹은 도서관들이 개편·운영되고 있다. 이러한 상황을 볼 때, 한국 정부는 적어도 가입국의 문화발전 및 보급에 대한 책무 조항을 명시한 사회권 규약 제15 조 2 항에 대해 상당한 실천 의지를 보이고 있다고 판단된다.

그러나, 21세기 문화의 세기를 목전에 두고 국가적 차원에서 문화 경쟁력의 제고를 위해 노력해야 하는 시점에서, 공공문화시설이 단순한 양적 확충을 넘어 기능의 정상화와 활성화라는 새로운 차원으로 전환되어야 한다는 시급한 과제가 제시되고 있다. 여기서 기능의 정상화 및 활성화란 양적인 관리차원을 넘어 질적인 차원에서 공공문화시설 운영의 전문성을 강화하고 관리자 중심에서 이용자 중심으로 운영 마인드가 전환되는 것을 의미한다.

위와 같은 맥락에서 본다면, 그동안 운영되었던 한국의 공공문화시설은 많은 문제점들을 안고 있다. 대표적 문제점으로 지적될 수 있는 사항은 ① 전문인력의 부족 ② 이용자 중심의 프로그램 부재 ③ 노후한 시설 ④ 열악한 재정지원 ⑤ 여타 문화시설과의 네트워크 부재 ⑥ 일관된 운영 활성화 정책의 부재 등을 들 수 있다.

▶ 질의 사항

- (1) 공공문화시설에 대한 한국정부의 정책은 여전히 양적 팽창에만 관심이 집중되어 있다. 물론 서울 및 대도시를 제외한 나머지 지역이 문화소의 지역으로 널리 분포되어 있기는 하지만, 공공문화시설의 본래적인 기능 정상화를 위해서는 운영에 관한 질적 관심 및 정책이 필요하다. 공공문화시설에 있어 질적 운영의 관건은 '이용자 중심'으로 운영의 패러다임이 바뀌는 것을 의미한다. 이에 대해 한국 정부는 어떠한 생각을 하고 있는가?
- (2) 공공문화시설의 기능 정상화를 위해서는 현재 방만하게 운영되고 있는 기존 시설들에 대한 정확한 실태조사가 필요하다. 이러한 실태조사를 기초로 각 시설들의 운영에 대해 객관적인 평가가 이루어질 수 있을 것이다. 공공문화시설의 운영 평가에 대한 한국 정부의 대책은 무엇인가?

ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN SOUTH KOREA

NGOs' Counter Report (Summary)
to the Pre-Sessional Working Group
of the UN Committee on Economic, Social and Cultural Rights
on the Second Report submitted by the Republic of Korea
Under Article 16 & 17 of the International Covenant
on Economic, Social, and Cultural Rights

August 2000

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CRHCO(Council of Representatives of Health Care Organizations)

Preface

In June 1999, the Korean government submitted the second government report to the UN Committee on Economic, Social and Cultural Rights under Article 16 and 17 of the International Covenant on Economic, Social and Cultural Rights. However, in our view, this government report is far from adequate in its contents as well as in the process in which it was prepared and submitted, and thus it can easily lead to a false understanding of the real situation in South Korea.

This Counter Report prepared by Korean NGOs summarizes important information and facts concerning economic, social and cultural rights in Korea. It is intended to help you, Committee Members, to understand the situation in Korea. We sincerely hope that our report will be given serious consideration.

The 16 NGOs participating in the preparation and submission of this document are as follows.

CNCR(Citizen Network for Cultural Reform), GKU(Green Korea United), JCMK(Joint Committee for Migrant Workers in Korea), KFWSH(Korean Federation for Worker's Safety and Health), KOCER(Korea Center for City and Environment Research), KCTU(Korea Confederation of Trade Unions), KTEU(Korea Teachers' and Educational Workers' Union), KPAF(Korean People's Artists Federation), KWAU(Korea Women's Association United), MINBYUN(Lawyers for a Democratic Society), NAPDS(National Association of Professors for a Democratic Society), PHAC(People's Health Association for Community), PSPD(People's Solidarity for Participatory Democracy), PSSP(People's Solidarity for Social Progress), RIHRK(Research Institute for the Handicapped Rights in Korea), SARANGBANG(Group for Human Rights)

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Chapter 1.

The Overall Assessment of the Korean Government's Report

1. The Republic of Korea has been recognized as a symbol of marvelous economic development until the mid-1990s. However, the economic crisis of 1997-1998 revealed that Korea's economic development had been far from being human-oriented and sustainable development. The unemployed and the poor became the main victims of the economic crisis, owing to the lack of social welfare programmes. Moreover, the structural adjustment programs imposed as conditions for loans by the International Monetary Fund have become serious obstacles to the implementation of the ICESCR, exacerbating the inequalities among the classes.

2. However, the Korean government does not explain in its report the factors and difficulties that influence the implementation of the Covenant. This is incompatible with the objective of the report specified in the para. 8 of the CESCR General Comment 1 that "it is essential that States parties report in detail on the "factors and difficulties" inhibiting such realization."

3. In addition, the government report does not describe fully the worsening situation after 1997 in the realization of the economic, social and cultural rights, which raises suspicion that it might be an intentional omission by the Korean government. There are some important indexes that show us the current situation of the economic, social and cultural rights – for example, unemployment rates, women employment, income distribution, and the industrial accidents incidence rate. However, the figures after 1996 or 1997 do not appear in the government report. Here, we point out that one of the objectives of reporting is "to ensure that the State party monitors the actual situation with respect to each of the rights on a regular basis and is thus aware of the extent to which the various rights are, or are not, enjoyed by all individuals...(General Comment 1. para. 3)"

4. Another objectives of reporting is to demonstrate that such principled policy-making has in fact been undertaken (General Comment 1. para. 4) and to include in the periodic reports information which shows the progress over time (General Comment 1. para. 7). However, the government report presents only the policies and the legislations adopted by the government, and does not properly assess what changes have been made after the execution of those legislations. The data presented for the assessment are usually incommensurable with international standards. In addition, it does not make any reference about some governmental measures adverse to the realization of the economic and social rights – for example, the introduction of mass layoffs and of worker dispatch programmes, the loosened regulation on industrial safety and working environment, indiscriminate exploitation of natural resources, and privatization of public medical institutions.

5. The government is not taking enough responsibility to actively publicize the ratification and

entry into force of the ICESCR. In addition, the government did not announce to its citizens the drawing out process and the submission of the report. Korean NGOs had already pointed out this problem in 1995 during the review process of the initial report. This time again, the government submitted the report in June 1999, and the NGOs came to know of it after a few months only through the Committee. This is also incompatible with the objective of reporting, which is to "facilitate public scrutiny of government policies with respect to economic, social and cultural rights and to encourage the involvement of the various...sectors of society in the formulation, implementation and review of the relevant policies." (General Comment 1. para 5)

6. In conclusion, it is our assessment that the government report is one-sided and only highlights the efforts of the government authorities. The report does not meet the essential objectives of the economic, social and cultural rights, which is to eliminate obstacles and to set directions for future policy making. It is clearly incompatible with the view of the Committee that "it would be incorrect to assume that reporting is essentially only a procedural matter designed solely to satisfy each State party's formal obligation to report to the appropriate international monitoring body" (General Comment 1. para 1).

Chapter 2.

The factors and difficulties in the Implementation of the Covenant

1. Financial crisis and IMF's Restructuring program

The financial crisis and general depression resulted in a decline of living conditions and retreat in the protection of economic, social and cultural rights. The solution suggested by the International Monetary Fund (IMF) concentrated on opening the Korean financial market to foreigners, deregulating the real estate purchases by foreigners and blocking efforts to protect the domestic economy. The 'restructuring' programs imposed by the IMF affected every facet of the individual's micro-life domain, and caused substantial damages.

Above all, 'the Crisis' was used as a convenient excuse to neglect the demands for economic, social and cultural rights of laborers, and the poor. Moreover, the policies for social welfare, education and environment were subordinate to economic policies.

2. Neo-liberal adjustment policies and widening gap between the rich and the poor

IMF's "Korea Report" concluded that the major cause of the economic crisis was the government's interventionism. As a corollary, the solution presented was a "free market economy". Neo-liberal adjustment policies over-emphasized the role of the market and called for a "small government" system; deep reduction or elimination of subsidies and price controls, drastic deregulation of trade and exchange rates, high interest rates and reduced public expenditure.

The adjustment policies resulted in increased unemployment, decline of real wages, widened gap between the rich and the poor. According to National Statistical Office (NSO), the income of the highest 10% has increased by 4%, while that of the lowest 20% decreased by 17.2% (Urban Worker Income Status Report of 1998).

To compensate the loss of family income, women's burden became heavier and children's rights and welfare declined. For the first time in history, the education budget was cut.

Deregulation in the industrial sector led to the increased output of pollutants, and the general weakening of the social awareness on environment protection resulted in rapid destruction of the environment. Furthermore, as social and environmental costs were omitted from the restructuring program, the government had no resources to take action against these problems.

In the area of national health care policy, the cutback on medical and health budgets, increased prices of imported medical supplies, and the user-pays principle all contributed to undermining the public good of health care service.

3. Division of the Korean Peninsula, excessive defense spending and the National Security Law

Korea is the world's only divided country – the last trace of the Cold War. Consequently, the Korean government speaks two languages – post-cold war language externally, and cold-war language domestically. Korea's unique political situation is also reflected in the concept of human rights. Externally, the Korean government supports the universal value of human rights, but internally the same government tries to restrict those rights under the name of national security.

In addition, this results in large expenditures on defense, and although in a declining trend, the defense budget is still very large. The rate of defense budget was 20.8% in 1996, 20.7% in 1997, 18.3% in 1998, 16.4% in 1999 and 16.7% in 2000. It is distorting the resource-allocation for social welfare programs.

Another remnant of the cold war obstructing progress of economic, social and cultural rights is the National Security Law (NSL). The arbitrary application of NSL is still abused as a means to suppress the social and labor movements.

Chapter 3.

The Status of the Covenant in domestic jurisdiction and the Realization of the rights recognized in the Covenant

1. During the past years the Korean government's position over the status of international human rights treaties that have been ratified by Korea, including ICESCR, has been vague. The government report, which was submitted to the Human Rights Committee under Article 40 of ICCPR in 1997, stated "[i]n the event that a law enacted prior to the Covenant's ratification is in conflict with provisions of the Covenant, the Covenant has greater authority. No law enacted in the Republic of Korea may encroach on the rights provided in the Covenant; any such law would be viewed as unconstitutional."(CCPR/C/114/Add.1, para. 9). Furthermore, in 1992 when the review of the first government report was held under the ICCPR, the government's delegate confirmed the superiority of the Covenant over domestic law (CCPR/C/SR. para.8).

Meanwhile, in the government's initial report in 1996 under the CAT, the Korean government stated "when conflicts between domestic laws and the Covenant arise, the *lex posteriori* and *lex specialis* rules shall be applied"(CAT/C/32/Add.1. para. 20). This position of the Korean government can also be found in the response of the government as of 2 May 1995 to the questions by the ICESCR Committee. The reply states, "[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 *lex specialis* rule, will naturally apply."

This seems to mean that in some cases domestic laws passed after the Covenant can take precedence. As a result of such vague position of the government, the Committee expressed concern as to the status of the Covenant in national law at the concluding observation to the first government report. The Committee remained concerned that no mechanisms exist that can ensure compatibility between domestic legislation and the provisions of the Covenant (E/C.12/1995/3, para. 7).

2. The Korean government stated in the review of its first report that under the current constitutional structure, it is not necessary to take any special legislative procedures for the purpose of incorporating the Covenant into the domestic legal system. This seems to be positive in that the rights recognized in the Covenant can be applied domestically without further

incorporation process. However, we note that in many instances legislation is highly desirable and in some cases may even be indispensable in order to realize the Covenant rights. For that reason States Parties to the Covenant have generally been conscientious in detailing legislative measures in order to ensure the domestic application of Covenant rights. In this regard, we are doubtful as to how much the Korean government has sincerely tried to enact domestic laws aimed directly at the realization of the rights recognized in the Covenant.

3. In order for human rights norms including the Covenant to be implemented in domestic jurisdiction, wide publicity and education are necessary, particularly to legal enforcement officers. However, Korea is only at the initial stage in this regard. International human rights law has not yet been introduced as regular curriculum of most educational institutions across the country. According to the government report, international human rights law was introduced in 1997 as curriculum of the Judicial Research and Training Institute, where law courses focused on legal practice are offered to law students who have passed the bar exam. (Report para. 6). However, only few students have so far participated in the course because that course is not mandatory, but elective.

► **Recommended Questions**

(1) What is the official position of the government concerning the legal relationship between the Covenant and domestic law?

(2) In the case that domestic laws are passed after the government's ratification of the Covenant, which one (Covenant or domestic laws) takes precedence? The government has stated that in the event the provisions of domestic law contradict those of the Covenant, the general principles of law, including the *lex posteriori* and *lex specialis* rules, will apply. Does this mean that domestic laws, which are enacted after ratification of the Covenant, can overrule the Covenant in some cases?

(3) Considering the government's position that special incorporation process is not necessary for the realization of the Covenant rights in domestic arena : ① Does this position mean that all of the Covenant rights are considered as self-executing provisions and are capable of immediate application in the Korean judicial system? ② If not, how has the government tried to incorporate the rights into national law since it ratified the Covenant in 1990?

(4) Are there any plans to offer international human rights law course at educational institutions? How has the government educated legal enforcement officers on international human rights law and is there any specific plan to do so? Are there any plans to offer international human rights law as a mandatory subject at the Judicial Research and Training Institute?

Chapter 4.

Right to Work and Working Condition (Article 6 and 7)

1. The reduction of working hours

The legal working hours in Korea is 44 hours per week. At the time of the economic crisis, the actual working hours reduced due to the structural adjustment and reduction of the factory operating. However, as the economic situations get better in 1999, the average annual working hours was 208,1 per month, which was increased by 4.5% compared to the previous year. According to ILO labor statistic yearbook, Korean working hours is 50.0, which is ranked seventh highest among ILO member states and the longest among OECD member states. At present, Federation of Korean Trade Unions (FKTU) and Korean Confederation of Trade Unions (KCTU) strongly demand that Korea should introduce 40 hours per week and 5 days of working system.

► **Recommended Questions**

(1) Is the government planning to introduce 40 hours and 5 days of working system?

2. Mass unemployment due to indiscrete restructuring

Korean government is proceeding mass layoffs oriented structural adjustment ever since IMF economic crisis so that many workers all over the country have lost their jobs. IMF has demanded such a harsh structural adjustment and Korean government has accepted such proposal without questions shifting the responsibilities on the workers. Whereas Korean government has been reluctant to reform *Chaebol* and the government-managed financial system which are much to blame in bringing about the economic crisis, the government selectively chose the structural adjustment of cost reduction by way of mass layoffs. As a result, many workers were unemployed and furthermore some became homeless or committed suicide.

► **Recommended Questions**

(1) How does the government evaluate and accept the demand of IMF, which is mass layoffs oriented structural adjustment?

(2) After IMF economic crisis, how many workers were laid off? What is the number of people who became homeless and committed suicide?

3. Income gap

Wage gap between large companies and small & medium enterprises, office workers and manufacturing workers are deepening. Increase in the system of annual salary and incentive

salary has resulted in the discrimination among different groups of workers. In 1999, the increase rate of wage at workplaces with 500 employees was 14.4%, the highest and workplaces with 10 to 29 employees had the lowest increase rate, which was 9.6%. The average wage of workplaces with 500 employees was 1.38 times higher than that of workplaces with 10 to 29 in 1997, 1.41 in 1998 and 1.47 in 1999. The average monthly income of the office workers were 1.52 times higher vis-à-vis the manufacturing workers in 1995, 1.57 in 1996, 1.56 in 1997, 1.63 in 1998 and 1.70 in 1999, which indicates that the gap gets more deepening.

► **Recommended Questions**

- (1) Does the government prepare any countermeasures against the deepening income gap?

Chapter 5.

Temporary labor (Article 6, 7, 8)

1. The necessity in the amendment of labor related acts

In order to protect temporary labor's rights of labor, trade unions and social organizations are preparing a legislative request to submit it to the National Assembly. The essential points of legislative request is to restrict temporary employment, extend the range of the workers who can be protected under the Labor Standards Act and to extend the range of protection guaranteed by labor related acts. In addition, some argues to demolish the "Act relating to Protection, etc., for Dispatched Workers" in order to prevent dual exploitation caused by separation between subordinated relations and employment relations. They also argue that the Job Security Act should be enhanced, which will bring about the clear principles in direct employment and permanent employment.

Such movements show that trade unions and social organizations have agreed that current labor related acts have to be changed to ensure labor rights of temporary workers by strengthening regulations on temporary employment.

► **Recommended Questions**

- (1) Does the government have any intentions to amend labor-related acts in order to ensure labor rights of temporary workers? If it does, what is the direction and schedules of the amendment?
- (2) Is the government willing to abolish "Act relating to Protection, etc., for Dispatched Workers" so as to enforce the principle between direct employment and permanent

employment?

2. The government's passive response to the expansion of temporary labor

The employment structure of Korea has become more vulnerable as a consequence of the neo-liberal restructuring after the IMF economic crisis. According to the National Statistical Office research, 52.6% of the total 13,000,000 workers are temporary workers. Moreover, the number will increase when temporarily employed workers by independent business person are included. Despite the fact that the increase of temporary labor is becoming a problem for all the workers, no specific recognition has been made in the government report. On the contrary, the report emphasized the fact that lots of efforts were made to bring about different forms in employment, giving an example of "Act relating to Protection, etc., for Dispatched Workers" which took effect since the first of July in 1998. This act certainly shows the fact that the government is actually contributing to the expansion of temporary workers legally and institutionally.

In 1995, ILO Expert Committee stated on the report submitted by the UK government that through the active labor market policy the UK did achieve some positive results such as decreased unemployment rate. However, such achievements were negatively evaluated since it came as part of labor flexibility that caused employment insecurity and the expansion of temporary labor deteriorates labor conditions. According to the ILO Expert Committee, not only should the government pursue full employment but also should guarantee to utilize the skills and abilities of the workers at employment and to promote employment with open ended contracts.

As a matter of fact, after the increase in the number of temporary workers has been seriously considered among the OECD member countries, the increase was either controlled or mitigated. Also, the OECD countries with smaller number of temporary workers than Korea are continuously making a survey on temporary employment in order to identify the number of temporary workers. But the Korean government has not taken any actions despite the number of temporary workers is exceeding half the number of permanent workers.

► **Recommended Questions**

- (1) Concerning the social and political problems caused by the expansion of temporary labor, how is it reflected in the government's labor policy?
- (2) Is the government willing to make a regular survey on temporary labor?

3. Neglected responsibility of the government in acquiring employment security

According to the government report, the government has introduced the support schemes for employment security under the Employment Insurance and has strengthened the public job

placement services as a response to the unemployment problems after the economic crisis. However, these policies have not been proved efficient. Employment through the public employment security organizations is less than 10% and according to a research on temporary labor by KCTU, the employment of temporary workers through the public employment agency is less than 3%.

Under such circumstances, great numbers of workers have been laid off after the IMF economic crisis with no appropriate efforts made by the enterprises to stabilize employment. As the "Act relating to Protection, etc., for Dispatched Workers" shows, private job placement service that had once been prohibited by the Job Security Act due to the concerns about the brokers' exploitation, is now beginning to be deregulated. This implies that the government neglects the responsibilities in acquiring employment security.

► **Recommended Questions**

- (1) What plans does the government have to promote the support schemes for employment security under the Employment Insurance Act and the public job placement service?
- (2) What plans does the government have in order to prevent the exploitation of brokers in the private employment agency?

4. Neglected responsibility of the government to guarantee labor rights of temporary workers.

Temporary workers face bad working conditions such as low wage, delayed payments, discrimination and unfair layoffs. They are not even protected by the Labor related Acts, nor can they organize a trade union to protect themselves. In addition, the government's labor inspections on unfair labor practice of employers are not effective. According to the statistics on enterprises by the National Statistical Office, the number of work places for 850 labor inspectors is more than 1,000,000 with more than 8,000,000 workers. This overburdening makes it impossible to prevent discrimination or unfair labor practice on temporary workers by labor inspections of the government.

► **Recommended Questions**

- (1) What plans does the government have in order to strengthen the functions of labor inspections so as to apply all kinds of labor related acts (Labor Standards Act, Trade Union and Labor Relations Adjustment Act, etc) on temporary workers?

Chapter 6.

Industrial Safety and Health (Article 7)

1. Negligence of Government

ICESCR includes that government should provide safe and healthy environments at workplace. In addition, first and forth clauses of Industrial Safety and Health Act in Korea assure government's responsibility for the prevention of industrial accident. However, Korean government has not been faithful in performing such responsibilities. Especially after financial crisis, the government has neglected the life and health of workers for the economic sake. This brought about the collapse of managerial system of safety and health at workplaces, not to mention the increase of industrial accident.

2. Increasing number of Industrial accident rate and death rate

Korean government reported to UN that industrial accident and occupational disease had been gradually decreasing. However, accident rate is rapidly increasing since 1998. The number of injuries in 1999 was 55,405 (accident rate of 0.74%) which showed the increase of 3,891 injuries compared to 51,514 (0.68%) in 1998. The number of death has increased from 2,212 (death rate of 2.92%) in 1998 to 2,291 (3.08%) in 1999. The situation got worsened in 2000 with the number of injuries increasing from 10,914 in 1999 to 14,113 in 2000. Moreover, the number of death increased from 505 in 1999 to 577 in 2000.

► **Recommended Questions**

- (1) Although the government in the past has pursued policies such as 'Three Year Programme for the Advancement of Industrial Safety and Health', industrial accident does not seem to be diminishing. Then which effective measures is the government about to take in preventing industrial accident?

3. Deregulation of the Law and System concerned with Safety and Health

At the time of financial crisis, many Industrial Safety and Health related Acts were deregulated or abolished under the economic and labor policies based on the Neo-liberalism. According to the Special Measure relating to Deregulation of Industrial Activity and Administrative Regulation Standards Act, out of 96 regulations, 27 of them were abolished and 38 of them were deregulated. Among them includes many essential regulations in the prevention of industrial accident, which are the obligatory employment in appointing safety inspectors at workplace and the inspections over hazardous machines.

<Table> Change of the number of Safety and Health inspectors.

	Before weakened act ('96.12)	After weakened act ('98.12)	Change
Safety inspector	26,057 persons	16,520 persons	-9,537 persons (-36.6%)
Health inspector	11,296 persons	9,208 persons	-2,088 persons (-18.5%)

(Source : Ministry of Labor)

In addition, Industrial Safety and Health administrative organizations were integrated so that the number of the administration decreased from 37 to 23. Deregulation of Industrial Safety and Health acts has weakened Industrial Safety and Health management and in turn brought about the weakening of the collective agreements related to Safety and Health, which had been achieved by struggles of labors.

► **Recommended Questions**

(1) It is certain that the deregulation in the Obligatory Employment of Safety and Health Supervisor and in the Obligatory Submission of Safety Report resulted in the increase of industrial accident. Does the government have any intention of restoring such measures?

4. Restriction on the medical treatment for injured workers

On May 1995, the Korean Labor Welfare Corporation (KLWC) was commissioned to administer the industrial accident insurance covering medical treatment, rehabilitation and compensation. There have been many complaints concerning service qualities and inequity of decisions related to Industrial Accident Compensation Insurance. After economic crisis, KLWC took a measure, so called 'pain sharing to overcome IMF economic crisis', which planned to reduce insurance bill of 53.2 billion won by restricting medical treatment for injured workers. KLWC made an excuse that insurance bill is not well collected due to the economic crisis, as a result, injured workers could not receive proper treatment. In addition, six major tertiary hospitals including Seoul National University Hospital rejected to join industrial accident medical institutions and SEVERANCE Hospital, Yonsei University College of Medicine withdrew. As a result, the injured workers are rejected. The number of complaints reported to Monitor center in Korean Confederation of Trade Union was recorded 159 in 1998.

► **Recommended Questions**

(1) Does the government intend to intensify the treatment and rehabilitation in public medical services as a solution to the current system?
 (2) Does the government intend to make tertiary hospitals obligatory in the appointment of industrial accident medical institutions?

5. Lack of measures for small-size workplaces

Workplaces with fewer than 5 workers used to be excluded from application of Industrial Accident Compensation Insurance Act and Industrial Safety and Health Act. Compared to bigger workplaces, the rate of industrial accident and occupational disease of it was so high that it was about 5.2 times higher in accident rate and 3 times higher in death rate.

From July 2000, small-size workplaces have been included to the coverage of Industrial Accident Compensation Act and to the part of Industrial Safety and Health Act but manpower or specific plans supporting such measures have been insufficient. In fact, there are only 230 Industrial Safety and Health inspectors, while 690,000 workplaces are added to previous 200,000. This means that each labor inspector is in charge of 4,000 workplaces and 36,000 workers. Under this situation, it is almost impossible to inspect whether or not Industrial Safety and Health Act has been properly observed.

► **Recommended Questions**

(1) Presently the government contributes fewer than 1% of the total expenditure of Industrial Accident Compensation Insurance. Does the government have any plan to increase subsidy from National Treasury since the industrial insurance covers small-size enterprises?
 (2) Does the government have any plan to increase labor inspectors in charge of Industrial Safety and Health in Ministry of Labor more than 100%?

Chapter 7.

The Three Labor Rights (Article 8)

1. Deprivation of three labor rights of public officials and professors

In Korea, public officials and professors except those engaged in manual work are totally deprived of the three major rights. In case of public officials, workplace associations are recognized. However, this is not the same as trade union since unfair labor practices and labor disputes are not legally protected. In this respect, public officials' workplace association is far from ensuring the three major rights. On the other hand, teachers of primary were recognized of their rights to organize. However, professors in the universities are prohibited from the three labor rights.

► **Recommended Questions**

- (1) When and how the government is about to legislate the three labor rights of public officials and professors?

2. Incomplete recognition of three major rights of teachers

Korean government made it legal for teachers to unionize, which resulted in the legalization of Korean Teachers' and Educational Laborers' Union (Chunkyojo) However, teachers are not fully guaranteed of three labor rights. First, teachers cannot decide the form of trade union and school level trade union is prohibited. Second, they are only allowed to organize local government-level trade union. Collective bargaining can be proceeded at local government level and the range of collective agreements is very limited. In addition, collective actions of teacher's trade union are totally prohibited by the law.

► **Recommended questions**

- (1) What schedule and way does the government plan to fully guarantee three major rights of labor of teacher's trade union?

3. Suppression of strikes on a charge of business interference under the criminal law

When the trade unions strike demanding the amendments of labor related acts or opposing to restructuring policy, the government arrests the executive members of trade union on a charge of business interference in criminal law. The government claims that the strike was not carried out by majority vote and that the process of meditation, which is regulated by the law, was absent. Even when the strike is carried out without any violence, the government's punishment of the executive members on a charge of business interference is an act of invading the right to strike.

During the strike, workplaces have to be occupied considering the enterprise level strikes in Korea. This occupation of workplaces is not the case of destroying the facilities or excluding the right to manage the facilities by owners. However, the government suppresses such strikes with the mobilization of police and uses means of violation in the course of suppression. When the trade union of Hotel Lotte demanded the abolition of the clause of one side mediation in collective agreement, the government suppressed the strike by deploying riot police and many workers were injured.

In the case of Korea Mint Corporation, the Prosecution and Ministry of Labor have intentionally induced the strike as a way to suppress the opposition to the restructuring, which led to the

criminal prosecution of the executive members in trade union. These examples show that the Korean government has intentionally suppressed the trade union and interfered with the relation between the employer and the employee.

► **Recommended Question**

- (1) Does the government intend to submit the charges and list of the executive members arrested during the strikes since 1997 and to consider the amnesties and withdrawal of the prosecution?
(2) Does the government intend to reinvestigate the cases that were suspected of the inducement of strikes by the bureaucrats as a way of suppressing the trade union?
(3) Does the government intend to put a stop to criminal prosecution on a charge of business interference in the strikes of trade union?
(4) In the course of a police crack-down on the strikes of trade union of Hotel Lotte, how many unionists were injured and is the government willing to pay compensations for the injured?

4. Difficulties of Tripartite Commission of Labor, Management and Government

Tripartite Commission has been established by Kim Dae-Jung government as social consensus organization for reforms. Nevertheless, it is proved to be unable to carry out the agreements so that it does no function as a consensus organization and labor communities have lost the faith on it. Tripartite Commission has agreed to recognize the membership of the unemployed in the non-enterprise level trade union. In addition, it agreed that paying wages to the unionists depends on an independent bargaining between labor and management by amending Labor related Act which regulates paying wages to the unionists as an unfair labor practice. Nevertheless, this has not yet been settled. In conclusion, many labor related questions such as the shortening of working hours, unemployment resulted from restructuring, wage payment, extermination of the unfair labor practices and protection of temporary labor are not resolved by Tripartite Commission.

► **Recommended Questions**

- (1) How does the government evaluate Tripartite Commission of Labor, Management and Government and how would the government try to make labor trust the Tripartite Commission?
(2) How is the government planning to carry out the agreements, which were made by the Tripartite Commission?

Chapter 8.

Rights of Migrant Workers (Article 6, 7, 8, 10, 13)

1. Overview of migrant workers and trainees in Korea

Korea has adopted Industrial Technical Trainee System (Trainee Employment System) as a solution to serious manpower problems in 3D (dirty, dangerous and difficult) industries. Industrial technical trainee is a trainee who comes to Korea, not through the governmental organization, but through an interest group. Trainees can be given one year status of worker if they pass a qualification test organized by Korea Federation of Small and Medium Business (KFSB) after having been trained for two years. There are also trainees under local corporations coming through overseas investment enterprise owned by Korean corporation but the number is less than that of industrial technical trainees.

However, the majority of those who work for 3D industries are undocumented workers. They are the migrants who come as a trainee and later run away from training factories or overstay their periods of sojourn after entering into Korea with tourist visa etc.

TOTAL	UNDOCUMENTED WORKERS	DOCUMENTED WORKERS		
		PROFESSIONALS	TRAINEES	
			TRAINEES UNDER JOINT ENTERPRISE	KFSB INDUSTRIAL TRAINEES
243,363	153,879	14,697	20,032	54,755

Source : Ministry of Justice, March 2000

There are over 240,000 migrant workers, whose rights are not fully protected. Especially, undocumented foreign workers suffer from all kinds of disadvantages and human rights violations due to their unstable legal status.

► Recommended Questions

- (1) Korea has been exporting workers as well as importing foreign workers and most of undocumented workers in Japan are Korean. Nevertheless, migrant workers in Korea are not well protected by Korean law and institutions. In order to protect the migrant workers in Korea and the Korean migrants as well, it is absolutely necessary to ratify "International Convention on the Protection of the Rights all Migrant Workers and Member of their Families". What is the position of the government on this? Are there any plans to legislate domestic laws to protect the rights of migrant workers, which is based on the International Convention above?
- (2) What measures will the government adopt for the estimated 153,000 of undocumented

migrant workers?

2. Working Conditions of Migrant Workers in Korea

Although industrial technical trainees have actually provided labor, they are not properly protected by the labor standards act nor can they be guaranteed three major rights of labor due to their status of 'trainees'. While their working hours is twelve hours a day, the average wage is from 600,000 to 700,000 won. It is much lower than that of Korean workers.¹

Trainee employment system permits a trainee to get employed as a worker for a year if he/she passes a qualification examination after having been trained for two years. This system started from April 2000 but the status of trainees is not better than that under the Industrial Technical Trainee System. Many of their rights are still restricted. (Source : Statement of Kumi Catholic Workers Center and major Korean daily newspaper reports, July 2000)

The government neglects the supervision of working conditions of trainees under the joint enterprises. Even though the Korean Government announced the guidelines to protect them, they are still forced to sign a contract on salaries below the minimum wage.

Undocumented foreign workers also suffer from low wages and long working hours, which is approximately 12 hours a day and 60 to 70 hours a week². Even if they are victimized by violence or overdue payment, they cannot seek helps of the relevant governmental authority.

The Korean government announced that they already established 'Grievance Handling Centers for Foreign Workers' and they have addressed the difficulties of migrant workers. In fact, the government doesn't take the positive measures to protect and supervise them. In local Labor Office, which is supposed to protect workers' rights, there is few labor inspector in charge of migrant workers. Even more, there are very few inspectors capable of communicating with migrant workers. The Korean government should fully apply Labor Standards Act and the three major rights of workers to migrant workers and establish the unit in Labor Offices which will take the substantial charge of protection of migrant workers.

► Recommended Questions

- (1) The present foreign manpower policy of the Korean government does not fully guarantee labor rights to trainee and fosters illegal employment. Is the government willing to introduce Employment Permission System enabling the migrant workers to seek the work lawfully?
- (2) Have the government investigated whether the labor contract is renewed after the

¹ Nominal wage of workplaces with 5 or more workers is 1,149,000 won and real wage is 1,308,000won. (Source : Ministry of Labor, May 2000)

² Average working hour of workplaces with 5 or more workers is 44.7 hours per week and their average wage is approximately 900,000. (Source : Ministry of Labor, May 2000)

enforcement of Trainee Employment System? Please, indicate the change of the situation of the trainees under the Trainee Employment System.

(3) Does the government intend to ensure the equal protection of three basic labor rights to migrant workers as it provides to Korean workers? Does the government intend to provide the full application of labor standards act to all the migrant workers?

3. The protection of the migrant worker's family and the right to education of their children

It has been more than 10 years since migrant workers have started to flow in to Korea. The number of migrant workers who got married to Koreans or married couples among the migrant workers in Korea has increased. Recently, the cases of family immigration to Korea are increasing. Employment, education and residency should be guaranteed in order to sustain their lives. However, migrant workers, especially male workers among them, cannot easily get a visa (F2) of employment after marrying Korean woman whereas a visa can be easily achieved for females after getting married to Korean man. Therefore, married male migrant worker's labor defines to be illegal even after marriage so that his family can not live with stability.

Moreover, in order to renew their visa, they should repeat going overseas and getting back to Korea every year. In addition to this, their re-entry even after marriage is restricted because of illegal staying beforehand and their families have no choice but to live separately. Some are afraid if this might happen to them so that they would rather not register their marriages at all. In addition, children of the undocumented migrant workers cannot go to school. The government did not carry out the basic surveys on it nor took any actions to ensure their right to education.

► Recommended Questions

- (1) Please explain the reasons why the government do not issue F2 visa to migrant workers who are married to Koreans.
- (2) Please indicate the concrete data about the families who were refused to re-enter despite their marriage or who did not register their marriage because of re-entry restrictions. In addition, does the Korean government have any plans to apply a flexible policy to those cases?
- (3) Please provide the information about migrant workers' children who don't access to education. What measures are needed to enable migrant workers' children to access to education without any discrimination?

4. Right to Health of Migrant Workers

While the number of migrant workers in Korea continues to increase, their working conditions

have not improved at all. Migrant workers are not covered by the National Health Insurance, which prevents them from seeking medical services and aggravates their illnesses. Their health conditions are also often aggravated because of language problems, and in many cases, they are not allowed leave from the workplace to seek medical care.

- (1) Are there any plans to protect the health of migrant workers who number more than 200 thousand?

Chapter 9. Right to Social Security (Article 9)

1. The Exclusion of the Vulnerable people from Social Security

In spite of rapid expansion of the Social Insurance System in recent years, the disadvantaged people such as self-employed people and workers in small businesses and the temporary and part-time workers have been excluded from the social insurance system. The reason is that the expansion of social insurance in Korea has given the priority to the full-time workers in getting benefits.

Although the government expanded its National Pension coverage in April 1999, it is estimated that 5,160 thousand, 31% out of 16,270 thousand were excluded from the National Pension Scheme. Moreover, if this figure includes people who joined but not paid their insurance bill, then about half of the population is excluded from the system. If it continues, National Pension will bring about the unequal distribution of income in Korea.

Employment Insurance and Industrial Accident Compensation Insurance also exclude a number of workers. Since 3,100 thousand workers, 35% out of 9,240 thousand of all workers are excluded from Employment Insurance - most of them are workers in small businesses or temporary and part-time workers-, such workers cannot be given any benefit of income in time of unemployment. According to the government statistics of 1998, less than ten percent of the unemployed received unemployment benefits.

In case of Industrial Accident Compensation Insurance, the ratio of temporary workers covered by the Insurance is larger than that of the other social insurance. Nevertheless, workers of small businesses are more likely to become poor due to industrial accidents. At the end of 1999, it was

estimated that Industrial Accident Compensation Act covered 36.7% of total workers, which means that 63.3% of total workers were still excluded from the protection of it.

The government recently expanded Employment Insurance and Industrial Accident Insurance to include workplaces with less than five workers. However, due to poor administrative management, its outcome has not been so effective. If social insurance scheme in Korea, as it has been, continues to exclude temporary workers and workplaces with small number of workers, it is going to play a role of promote inequality among the society.

► **Recommended Questions**

- (1) What measures and plan does the government contemplate to cover workers and self-employed in small enterprises and temporary workers under the Social Insurance system?
- (2) In order to give the benefit of social insurance to the disadvantaged people, it is necessary that four social insurances should be integrated under single administrative system and that the government should subsidize the contribution of the low-income people. Does the government have any plan about this?

2. Inadequate level of benefits

Four social insurances in Korea have not been able to play the role of a risk distribution due to the low level of benefits. The Medical Insurance could not also function as a risk-distribution since the average rate of self-charge has been over fifty percent of total medical costs, which makes the low-income people greatly disadvantaged in the use of medical care.

In case of the Industrial Accident Compensation Insurance, cash benefits to the injured workers is quite well provided whereas in kind benefits to restore labor force such as rehabilitation counseling and job-training programs for the injured are not adequate.

In the Employment Insurance system, there are few employment service agencies and public vocational training institutes, which can help the unemployed finding jobs. In addition, the numbers of professionals engaged in job-training programs are not sufficient.

► **Recommended Questions**

- (1) In the systems of Employment Insurance and Industrial Accident Compensation Insurance, does the Korean government have its measures and plan to reinforce in kind benefit by way of increase of public vocational training institutes and intensification of the rehabilitation programs?

3. Insufficient Social Security Budget in Korea

In spite of government's subsequent efforts to enhance social security systems in Korea, social security budget, which determines the level and quality of social security, is not sufficient. Under the OECD standards, spending on social security of the Korean government was 5% of gross domestic product (GDP) in 1995. Compared to Sweden(33.1% of GDP), France(30.1%), United States(15.7%), and Japan(13.8%), social security budget of the Korean government amounts approximately a third or a sixth of the level of most developed countries in the same year. Within OECD-member states, Korea ranked the lowest with Mexico in 1995.

The Korean government has raised the insurance bill of the insured in order to secure the budget, rather than increasing the liability of the government or pursuing the tax reforms. Even under the 'productive welfare' of *Kim Dae-Jung* government, social security budget has not been sufficiently extended.

► **Recommended Questions**

- (1) Does the government consider the present social budget adequate? What would be the adequate amount of social security budget?
- (2) What concrete efforts has the government made in order to increase the social security budget? Please, if any, indicate the time-fixed plan to increase the social security budget.

4. Minimum Living Standards Security for lower income bracket

Since IMF economic crisis, lower income brackets have been growing. According to the statistics of Korean government, Gini coefficient has grown from 0.283 in 1997, 0.316 in 1998 and to 0.320 in 1999. The Report on Korean poverty sponsored by UNDP indicated that one-fourth of the total population lives below minimum living standards.

The National Minimum Living Standards Security Act (NMLSSA) was legislated in August 1999 to ensure that basic needs including housing, education, and health care, are met for all people living below minimum living standards. However, in the course of implementation, the government was criticized for making it very difficult for the poor to become its recipients. Moreover, requirements for qualifications of recipients were intensified and the government did not allocate the budget needed to guarantee minimum living standards for its recipients within the government budget of the year 2000 and 2001. In the case of health care security system, the government policy which states that the poor are required to take charge of their healthcare costs to a certain degree have missed its goal to guarantee the basic healthcare.

► **Recommended Questions**

- (1) There are great possibilities that many people living below minimum living standards could not be recipients of the new welfare program, NMLSSA due to restrictive requirements of the qualifications. Does the Korean government have any plan to make the qualifications of NMLSSA less strict?

(2) For NMLSSA to become an actual income security program for lower income brackets, the governmental budget for this Act has to be significantly increased. Does the Korean government has its will and plans to increase the budget?

5. Building a Nationwide Infrastructure of the Social Security System

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

Moreover, there is no nationwide infrastructure, which would be the basis for providing services for healthcare, employment, and social welfare. Administrative organizations that are involved in providing services for public health, unemployment, and public assistance are operated separately and unsystematically..

► Recommended Questions

- (1) How does the government evaluate the infrastructure and manpower related to the healthcare, welfare and unemployment? What is the government's plan to intensify the nationwide infrastructure?
- (3) At the level of local government, are there any efforts to establish a single administrative system that provides health care, social welfare and unemployment programs as a whole?

Chapter 10.

Protection of Women (Article 10)

1. Women's Political Participation

In order to reflect a gender equal viewpoint into national policy-making, representation of women in politics, policy-making process and public office is essential. However, as of year 2000, the number of women lawmakers at the National Assembly is 16 out of 273, which is 5.9%. This lags far behind of world average ratio of women lawmakers, 12.3%, European countries' 35.9% and other Asian countries' 13.9%. Among the 3rd session of local government

representatives, the ratio of female provincial council members is 5.9% and that of county council members is 1.6%. As such, it is obvious that the patriarchal and discriminative political culture is blocking women from participating in politics.

In addition, as of the end of 1998, female public servants in executive, legislative and judiciary bodies account for 29.7% of total, among which women over rank 5 are only 3.2%. As of the end of 1999, there is only one female minister, and the ratio of women officials of class 2, 3 and 4 is 0.7%, 1.8%, and 2.0% respectively.

Moreover, the Korean government decided to expand representation of women members at each government body in an effort to reflect the rights and interests of women into national policy, and to facilitate participation of women in all sectors of society. However, the result is unsatisfactory. As of 1998, the ratio of female officials at the central administrative organizations and municipal governments is only 8.2%. The figure is even lower than 9.2 % of 1996.

In order to effectively achieve women's social and economic advancement and gender equality, the Korean government set up the Presidential Commission on Women's Affairs (PCWA) in 1998 to supervise and coordinate women's affairs.

However, PCWA has not been successful in its mission due to lack of executive power, insufficient staff and budget, which resulted in perfunctory policy coordination, organizational incapability, weak link with the municipal governments and feeble relief measures against sexual discrimination.

In August 2000, a bill has been presented to the National Assembly to raise the status of PCWA from a task force to a ministry. According to the bill, women related operations at the Ministry of Health and Welfare and Ministry of Labor are to be transferred to the new ministry and the staff is to be no more than 90. Likewise the scope and scale of duties are too narrow for the new ministry to function properly. Since the liaison with municipal governments is weak, there is no quasi-judicial power bestowed, gender equality policies are likely to lack executive power.

(*Since the bill is now being reviewed in the National Assembly, the new ministry is likely to be in operation next year at the session of reviewing the government report. Thus, the content of this report is subject to change.)

► Recommended Questions

- (1) In order to increase women's participation in policy-making, does the government have affirmative plans such as a quota system and preferential treatment for women?
- (2) In order to strengthen the Ministry of Women's Affairs, is there any plan to integrate women-related operations of other ministries and agencies and to set up a liaison office at the municipal government?

2. Sexual Violence

The 'Act on the Punishment of Sexual Crimes and Protection of Victims thereof ('93)' defines sexual violence as 'crimes related to rape and assault' following the criminal law. Therefore it might not include the broader scope of sexual violence. In particular, if a victim wants to press rape charges against an offender, she has to prove that she resisted with all her might at the time of the assault. This interpretation of rape itself infringes upon the rights of women. If women's rights are to be protected, sexual crime should be defined as 'crime of infringing upon sexual self determination'.

In addition, the victim is required to issue complaint to the prosecutor herself in order for the offender to be punished. However, if the victim does not want to go to trial, the prosecutor can not take any action. Considering that the patriarchal society does not look kindly to the victims, the law requiring the victim's direct complaint for prosecution should be repealed.

With the enactment of the 'Prevention of Domestic Violence & Victim Protection Act (1997)' and 'Special Act for the Punishment of Domestic Violence (1997)', social recognition of domestic violence as crime and the need to prevent it have spread. However, the efficacy of legal execution is still too meager to properly protect victims of domestic violence and their children. Although the two Acts mentioned above have been ratified through the hard work and continued efforts of women's organizations, the government's commitment to enforce the laws remains very weak.

► Recommended Questions

(1) The 'Act on the Punishment of Sexual Crimes and Protection of Victims thereof' should abolish the requirement of direct complaint from the victim, and incorporate provisions regarding sexual harassment and protection of the victim. As for the 'Prevention of Domestic Violence & Victim Protection Act' and 'Special Act for Punishment of Domestic Violence', provisions on probation and clinical treatment of offender should be reinforced. Is the government willing to revise the laws as outlined above?

(2) Is the government willing to expand support for counseling centers and shelters, to provide monetary support on education and daily expenses for victims with children, and to pay for education and treatment expenses for the child victims of sexual violence?

3. Working Conditions of Female Workers

In comparison with August 1997, job destruction after the economic crisis (November 1997) for female workers reached 725 thousand (8.3%), while the male workers figured 719 thousand (5.7%). As the numbers show, the impact of the economic crisis was harsher on women than men. Most of the unemployed women were categorized as non-economically active population,

subsequently adding to hidden unemployment. Therefore women's real unemployment rate is estimated to be much higher than the numbers indicate.

In particular, new types of sexual discrimination have appeared in the process of employment adjustment, the most typical being <women layoff first>. For example, the National Agricultural Cooperative Federation laid off 691 out of 704 married women workers in the process of restructuring. As such, sexually discriminative layoff of women has become prevalent after the economic crisis.

In addition, 70% of all women workers are employed at businesses with 4 employees and below. However, the Labor Standard Act and Equal Employment Act do not apply to those businesses. Accordingly, many women workers remain unprotected.

As of December 1998, "irregular" workers such as part-timers and short-term employees account for 49.1% of waged workers and 62.2% of total women workers are "irregulars". Concern over the spread of irregular employment has existed even before the economic crisis. In the process of restructuring after the crisis, mass layoffs and dispatched worker systems have been legalized, fueling the spread of irregular labor.

In February 1999, the article 'Prevention of Sexual Harassment at Work' was newly added to the 'Equal Employment Act' and 'Sexual Discrimination Prevention and Relief Act' was implemented. Since then, complaints of sexual harassment are steadily rising. According to a survey done on 328 women union workers at Lotte Hotel regarding sexual harassment, 70% of the respondents had experienced sexual harassment, showing that sexual harassment at work is still a serious problem. Despite the gravity of the problem, current legislation is insufficient in effectively preventing sexual harassment at work. In addition, verbal violence and assaults are other threats to women's labor rights. Therefore, legal measures should be taken to punish and prevent these problems.

As women's employment pattern has become diverse with the emergence of new forms of labor such as home workers and non-wage golf caddies, more legal conflicts on the interpretation of 'worker' are occurring. As for golf caddies, although 'early retirement system (40 years old)' is still in practice, with the interpretation on 'worker' being varied and controversial, no clear legal protection is available.

The Equal Employment Act allows unpaid childcare leave of up to 1 year for women workers and their spouses with infants of less than 12 months old. However, companies receive very small childcare subsidy (150,000 won per person monthly, and 120,000 won in large companies). The implementation rate of child care leave itself is very low due to lack of awareness of the employers (companies implementing child care leave: 2.3%, companies with 49 employees and below: 0.4%). In most cases, wage compensation during leave is not available (companies providing unpaid leave: 69.8%, companies paying only living expenses:

4.4%). In addition, women workers refrain from using childcare leave for fear of disadvantages in promotion.

► Recommended Questions

(1) Does the government have plans to expand the scope of the Labor Standard Act and Equal Employment Act to companies with 4 employees and below? Is the government prepared to provide medical insurance and national pension to irregular employees and encourage companies to comply with the above-mentioned laws?

(2) Is there any legal measure for the protection of workers in blind spots, such as home workers and golf caddies?

(3) Regarding equal employment does the government plan to revise the current provisions to include protection and compensation to the victim of sexual discrimination, besides merely prohibiting discriminatory actions by the employer? In addition, is the government willing to revise laws against sexual harassment at work so that "offender" will include third party related to work?

(4) Is the government willing to extend childcare leave to 3 years, during which the child is known to form its self-identity? Furthermore, is the government willing to guarantee paid childcare leave (70% of wage) of one year including maternity leave? Will the period of leave be incorporated into the worker's length of service?

4. House Holder System

In the Korean society where patriarchal ideology still prevails, there exists the 'householder system' that discriminates between man and woman, husband and wife, first son and second son. Under the householder system, changes in life such as births or marriages are recorded in the registry called "*Hojeok* (family register)". The change entries in the registry are recorded as 'householder's mother, householder's wife and householder's child', taking householder as the basis of familial relationship. The system is sexually discriminative in that the children's surnames must follow only the father's family name. Due to this androcentric system, a woman who did not produce a son is often mistreated in her family. Even if she gets divorced or remarried and then lives with the children, she can not register her children to her "*Hojeok*". Legally her children are just cohabitants.

Although the ban on marriage between those with the same surname of the same clan was found unconstitutional in June 1997, it is still intact as of August 2000. Since the problematic householder system has not been and is not likely to be improved, women's organizations and civil groups are calling for the abolishment of the householder system.

► Recommended Questions

(1) Is the government willing to remove the compulsory requirement in civil law regarding

succession of family name, and change the household registry system centered around the 'householder'?

Chapter 11.

Protection of Children (Article 10)

1. Protection against labor exploitation

In March 1997, the government modified the Labor Standard Law to strengthen the regulation on child labor, and raised the minimum age for employment from 13 to 15. It also ratified Article 138 (on the minimum age for employment) of the International Labor Organization's Convention on 28 January 1999. As a result, children's labor under the age of 13 is entirely prohibited and children between 13 and 15 are required to get work-permit from labor-related authorities in order to work.

However, in spite of improved regulations already referred to, child labor exploitation is not properly monitored and supervised. Consequently many children are left outside the protection of law. The work-permit system is not widely known to children, and the yearly application for work-permit number only a few. Moreover, after the economic crisis in Korea, the local labor authorities which had supervised crack downs on illegal employment of children only once or twice a year, stopped doing this. In short, vulnerable children are working outside the protection of the law and of the government, under the name of overcoming the economic crisis.

In fact, in the current situation where most convenient stores, fast food stores and gas stations are staffed by children, without any independent division in the government that supervises children's labor, many working children suffer from low and delayed wages, and hazardous working environments.

The more serious problem is the employment of children in merrymaking businesses, which can greatly damage their physical and mental development. According to the office of "Let Our Children Go to School Safely" campaign of the Supreme Public Prosecutors Office, during the six months' crackdowns that started in January 1999, teenagers comprised 46% of those who were exposed to harmful businesses (2,854 of 5,616), and 30% of them were girls under 16.

► Recommended Questions

- (1) Are workplaces employing children (especially workplaces with less than 5 employees where most working children are employed) regularly monitored and supervised?
- (2) A separate division supervising children's labor can not be found anywhere in the government agencies. Does the Korean government have any plans to devise an integrated mechanism to provide children with safe and sound jobs, regularly supervise employers, and provide a hotline for the exploited children?

2. Protection against child abuse

Child abuse is rapidly increasing as unemployment and family break-downs increase after the economic crisis. The number of child abuse reported to the 16 Child Abuse Counseling Centers nationwide is increasing more than twice yearly (71 cases in 1996, 159 in 1997, 367 in 1998). Assuming from the data by the Korea Institute For Health and Social Affairs (a governmental institute), it is estimated that child abuse is prevailing in about 338,000 households.

The more serious problem is that most abused children are left in their homes without any measures taken such as social protection or mental remedies. To resolve this problem, the government modified the Child Welfare Law in July 2000, set up a hot line to report child abuse, and made it compulsory for doctors, teachers, counselors and social welfare experts to report child abuse. It also designed to set up special child welfare institutions to protect children, take emergency actions such as quarantine or medical cure without delay.

However, it should be pointed out that the modified law puts its focus more on the post management rather than on the prevention of child abuse. Nothing is more important than preventive measures which can eliminate the causes of child abuse before it happens.

► Recommended Question

- (1) Are there any efforts to understand the causes of child abuse, and are measures being taken to resolve them? For example, if unemployment of parents was the cause of abuse, there should be provided jobs to help them raise their children normally.

3. Special measures for children who need protection

The ultimate purpose of the protection of children who parted from their parents is to let them have permanent families (real or adoptive) instead of temporary and unfixed child welfare facilities. And it is most desirable for those children to be protected in trustee families which can help them grow up in a comfortable environment before they can find permanent families.

However the Korean government's effort to offer an a homely environment to children who need protection is insufficient. For example, the government supports trustee families with

65,000 won (approx. US \$55) per child every month, which is far too insufficient to care for a child.

In addition, there is no support for group homes, which are considered as alternative facilities instead of large-scale protection facilities. Group homes were not included in the 'common-life residence programme' under the Child Welfare Law which has been in force since July 2000. Thus, without the governmental support, private group homes are left to the unauthorized sector under poor conditions.

► Recommended Questions

- (1) Does the Korean government have any plans to acknowledge group homes in the private sector as small-sized welfare facilities and offer financial support by modifying the Child Welfare Law or by enacting the Enforcement Decree?
- (2) Does the Korean government have any plans to increase financial support for trustee families?

4. Children as the head of a family

The number of families headed by children owing to dead or runaway parents has been increasing every year, reaching 7,924 households in 1999. As the number includes only the households which receive support from the government, the actual number must be even larger.

The government supported 252,870 won (approx. US \$210) for each person living in a family headed by children in 2000. It means that a family of two people would get 505,740 won per month. It is far less than 570,122 won, the minimum cost of living for a two-person household in big cities, estimated by the Korea Institute For Health and Social Affairs. Moreover, as the government subsidy is regulated by the year's budget, some families cannot get any support at all.

Another problem of the government support programme for families headed by children is that the measures such as subsidy and the establishment of sisterhood are too narrowly focused on economic problems. Parental concern and mental encouragement are just as necessary as money. It means that the government has to take measures to encourage some kind of trusteeship or patronage system for families headed by children.

► Recommended Question

- (1) Does the government have any plans to increase financial support to these homes, proportionate to the living expenses and child care expenses of an average family?

5. Child protection facilities

The biggest problem of child protection facilities is that they are not properly monitored and supervised by the government. The EPHATHA school for the deaf and mute case of November 1996 clearly reveals the problem of such facilities, where serious human rights violations were disclosed by the students' demonstrations. There were forced labor, wage exploitation, threats against basic survival, sexual harassment, disappearance and death. But, in spite of the 3-year long demonstrations of deaf students, enough effort is not being made to uncover the truth and punish those responsible. Child abuse and human rights violations in protection facilities become more serious problems as they are often concealed.

► Recommended Questions

- (1) Give us a full explanation about the human rights violations in the EPHATHA school for the deaf and mute, and clarify what measures were taken (i.e. punishment of those in charge, compensation for damages, and physical and mental remedies for students).
- (2) The authority to supervise over protection facilities is concentrated on the head of the municipal government. Thereupon lies the possibility of abuse of power. In fact, in case of the EPHATHA school for the deaf and mute, the head of the municipal government has not settled the problem for 3 years, and has been suspected of conspiring with the foundation of this school. In order to prevent such problems from occurring again, does the Korean government have any intention to transfer the supervising authority of protection facilities to the local community and NGOs?.

Chapter 12.

Rights of the Disabled (Article 6, 7, 9, 10, 13)

1. The Government's Budget for the Disabled

The government's budget for the disabled amongst the total social welfare budget for the year 2000 is 147,631 million won, which is only 0.2% out of the government's overall budget of 93 trillion won. Although it is showing an annual increase, it still falls far short to cover the disabled population, which the WHO estimates to be one tenth of the nation's population. Although this year's budget reflects a 30% increase compared to that of last year, it merely aims to impress the public. It sharply contrasts with the budget of other OECD countries. For

example, the subsidy for disabled children, which should have been included in the budget as per the revised Welfare for the Disabled Act, was in fact not included in the budget for the year 2000. In addition, as of 1998 only 47% of public facilities provide accommodation for the disabled, causing great inconvenience in their daily lives. Yet, no budget has been allocated for their installation.

► Recommended Questions

- (1) What factors influence the government's budgeting for the disabled?
- (2) To what extent can professionals from related fields participate in the budgeting process?
- (3) Are the economic growth rate and commodity prices increase reflected in the budget?

2. Employment of the Disabled

The Ministry of Labor reports that it is allocating 38 billion won to build job training centers, occupational schools, and in various measures to promote employment of the disabled. They are building large-scale job training centers and occupational schools exclusively for the disabled, isolated from the mainstream society. By taking the *Ilisan* Vocational Training Institute for The Disabled as a model, they are planning to build four such large-scale job training institutions nationwide. Currently at the *Ilisan* Vocational Training Institute for The Disabled, only those with mild disabilities are being trained - ironically they would have no trouble in receiving training in any other training institute. The Ministry of Labor is pursuing this plan just on the fact that regular job training centers generally do not have accommodations for the disabled, and on the assumption that other trainees will not be able to understand them. After receiving education for more than 16 years since elementary school, they still cannot get jobs, and have to receive even more training. It is therefore due time to change the Ministry's policy directions, which neglects the disabled persons' right to self-realization through labor. The assertion (made by a graduate of the *Ilisan* Vocational Training Institute for The Disabled) that over 70% of the disabled people who have been trained in such isolated job training centers soon leave their jobs should not be overlooked any longer. The budget for job training should be used to enable the disabled to actually work.

Until now, employment policy for the disabled has focused on those with mild disabilities. However, it is the severely disabled who need the most specific and practical help in finding jobs, but so far such support from the governmental level has not yet been provided. The 9 working facilities and 137 sheltered workplaces as of January 1998 have been providing occupational rehabilitation for the severely disabled who find it difficult to get jobs. However, as it is difficult to sell the products manufactured in such facilities, a new provision was added to the Welfare for the Disabled Act - 'purchase quota of goods produced by the disabled' - as a means to find outlets for the products. However, only six items are subject to the quota - envelope, office paper, recycled tissue, toothbrush, cotton gloves, and garbage pack - and there are only seven retail shops (in Seoul and other six major cities) that sell these products.

► Recommended Questions

- (1) What is the percentage of the disabled people leaving their jobs after being trained in the *Ilisan* Vocational Training Institute for the Disabled? Are there any plans for follow up after their employment or are such activities already being carried out?
- (2) We strongly request that the government enable the disabled people to receive job training in regular job training centers rather than in large scale, isolated ones, and that a plan be made to help the disabled find jobs rather than receiving more training or education.
- (3) The current distribution method of products made in sheltered workplaces is too modest. At the same time, among the sheltered facilities nationwide, over 50% are those that can pay less than 5,000 won per month to the disabled workers. Does the government have plans to expand the items to be covered by the purchase quota? Are there any plans to protect the minimum wage of the disabled?

3. The Right to Education of Disabled Children

Since 1994, compulsory education for disabled children in elementary and middle schools has been in force. However as of October 1999, only 42.3% of disabled children are receiving education. Even the figure 42.3% is not an accurate one but an estimate, leading us to believe that the actual ratio of disabled children not benefiting from compulsory education will be much higher. Worse still, Article 14 of the Primary and Secondary School Law, which precedes the Special Education Law, provides that compulsory education can be exempted or postponed in case of inevitable circumstances such as illness, which apparently hampers the rights to education of disabled children.

In addition, identifying disability in the early stage enables appropriate treatment and education so as to help the development of disabled children, to minimize the disability, as well as to prevent secondary disabilities. In this regard, pre-school education for disabled children means 'life' itself. At the same time, starting education early for such children can bring down education costs which the government would otherwise have to pay for, by reducing the needs for special education and related services when the child reaches the age for schooling. However, the Korean society does not realize the importance of providing support in this crucial period. Education in this period depends heavily upon and provided mostly through private pre-school educational institutions (including speech impediment treatment centers). Currently there are 196 kindergarten classes of specialized schools, 7 specialized kindergartens, and separate classes of 57 kindergartens affiliated with regular elementary schools. Therefore, in spite of Article 6 of the Special Education Promotion Law, which provides for free pre-school education, parents have to pay several hundred thousand won per month.

► Recommended Questions

- (1) What is the Ministry of Education doing to provide education for the 50% of disabled

children who have been excluded from compulsory education, and where are these children now? We hereby request concrete figures by region and by the disability type.

- (2) What is the Ministry of Education's plan to expand opportunities for the disabled children to get education?

4. Facilities for the Disabled

The 'Easy Access Act for the Disabled, Elderly, and Pregnant Women' was established in 1997 and has been in effect since April 1998. In 1999, the research on places requiring facilities for the disabled has been completed. Research results showed that about 48% of them were equipped with such facilities. Based on such results, national and local governments have set up a five-year plan aimed increasing the number of these facilities step by step until the year 2005. The fact that they are concerned about 'improving social environment' is welcomed as such basic infrastructure will encourage social participation of the disabled by giving them access to education and jobs. However various problems exist such as target facilities being too old, difficulties in securing necessary budget, and lack of specialty of the officials. These problems lead to poor design and hasty installation. There are too many problems to be solved such as the lack of concern from the staff and management level, difficulties in budget procurement, lack of public understanding on such facilities, frequent replacement of staffs which makes a systematic and comprehensive solution building difficult, lack of public transportation related regulations that mandate the provision of such facilities, etc. Among them, the most difficult task is the installation of such facilities in general buildings. Because buildings that are required to provide these facilities are limited to large buildings and public institutions and offices, such regulations do not cover places frequented in daily life, such as grocery stores, pharmacies, restaurants, clothes shops, barber shops, etc. Without any changes in the basic understanding about 'the disabled' or their disabilities, it is difficult to approach such issues. It is therefore necessary to carry out active promotional activities and to thoroughly reeducate architects or teach 'universal design' to architectural engineering students, so that the very people who are involved can fully understand and reflect them at work.

However, there is no department within the Ministry of Construction and Transportation that deals with the issue of accessibility for the less mobile. Thus, this issue has not been addressed effectively even though the Ministry of Health and Welfare is trying to implement the 'Easy Access Act for the Disabled, Elderly, and Pregnant Women'. Although the problem itself concerns the disabled population, it is nonetheless imperative that every ministry of the government systematically cooperate and be actively involved, as the issue relates to providing basic infrastructure for the less mobile within our society. Selfishness and competition among ministries are also obstacles to the early installation of such facilities for the disabled population.

► Recommended Questions

(1) In order to build such facilities in the private sector, more active promotional activities as well as support is required. However, we understand that there are many difficulties in funding these projects. In addition, as continuity is crucial for these facilities, a comprehensive plan accompanied by prompt action is necessary. What is the government's plan to stimulate the private sector to provide such facilities?

(2) When considering facilities for the disabled, it always runs into the problem of economic efficiency. The logic is that the government cannot afford to input large sums providing facilities which only a few people will use. However, the truth is that few people frequent these places because many are not well equipped with facilities for the disabled. How does the government react to such arguments?

(3) Just as important as the installation of facilities is the supply of high quality prosthetic and orthotics equipment. In case of motor-run wheelchairs, they are very expensive because they are imported without any government subsidies. In order to improve the individual's quality of life, it will be important to supply automated motor-run wheelchairs rather than manual ones so that they can move and have free access without being dependent on others. What is the government's view in this regard?

5. Welfare Provision for Women with Disabilities

It is no exaggeration to state that there is no welfare provision for women with disabilities in this country at present. The Ministry of Health and Welfare announced that it will start programs from 1999 such as running counseling centers, employment agencies, shelters, and providing home assistance to help disabled women with pregnancy, child birth etc. However, there is no liable data from any credible institution on the status of women with disabilities. According to the research carried out in 1996 by the Research Institute of Differently Abled People Rights In Korea, there are many women with disabilities who are being neglected, confined, and sexually and physically abused. In a survey on 180 disabled women (including both married and non-married women), more than 70% of the women have been subject to domestic violence. Among these women, 74% were physically abused by family members. As illustrated above, the level of sexual abuse and violence of disabled females is threatening their well being, thus becoming a social problem. However, it is regretful that there isn't any kind of support such as sex education, education on the prevention of sexual abuse, legal measures, etc. provided to them. In addition, the unemployment rate of disabled women was 27.7% in 1999. Even for those who had jobs, most were employed in jobs that required only simple labour or skills. Budget and policy from the government to improve the overall welfare of disabled women is almost non-existent.

► Recommended Questions

(1) We request the Ministry of Health and Welfare to state their overall policy scheme for women with disabilities.

Chapter 13.

Right to Housing (Article 11)

1. Forced eviction and measures for tenants

The government takes measures for tenants who face forced eviction due to public development projects or re-development projects. These measures are regulated in "Special Act concerning Acquisition and Compensation of Public Land" and "local governments' ordinances relating to housing redevelopment", however, these are not appropriate for people who are forced to be evicted.

First of all, they are applied only to limited people who have to be evicted because of public development projects or redevelopment projects. There is no legal protection for tenants forced to be evicted because of private developments. Even for the former, the measures may not be applied if they have moved to related areas less than 3 months before development projects were decided. This clearly violates the principle of General Comment 4, which provides that tenure security of everyone who are forced to be evicted should be legally protected.

In the case of re-development projects, public rental housing or expenses for leaving are provided for tenants who are forced to quit. In the case of public development projects, expenses for leaving are basically provided, and some people get a chance to live in the public rental housing. However, both cases cannot be considered to take 'every relevant measures(Article 2.1)' to protect the rights of the evicted. The para. 216 of the government report refers to the measures such as temporary accommodations or housing loans for those whose houses are demolished due to re-development projects. The problem is that the Ministry of Construction and Transportation, the competent authority, interpret this measure as applicable only for the house-owners and not for the tenants. It doesn't take into consideration that temporary accommodations and housing loans are urgent not only for the house-owners but also for the tenants.

► Recommended Questions

(1) Does the government intend to modify the regulations that limit legal protection to the tenants evicted due to re-development projects and public development projects? Can legal protections be considered for those who are to be evicted due to private developments?

(2) Does the government intend to expand the extent of applications of measures defined in the Urban Redevelopment Law such as temporary accommodations and housing loans to every house-owner and tenant forced to quit?

2. Distribution of Public Rental Housing based on Housing Need

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

The supply of rental housing is one of the governmental measures to resolve the housing problems of the poor. Permanent rental housing had begun to be constructed since 1988 to stabilize the residence of the poor, but the construction of them have stopped in 1993. Instead, public rental housing is constructed with budget of the central and local governments. The amount of construction has decreased compared to that of permanent rental housing. As far as public rental housing is concerned, the government only supports the construction of housing and it doesn't take a proper measure when it comes to distributing to those who have bigger housing need at affordable rent. The policy of public rental housing should be focused on the distribution reflecting each family's housing need and the rent should be decided considering affordability.

► Recommended Questions

- (1) What steps is the government taking to resolve the problem of affordability?
- (2) Is there any intention to reorganize the distribution and management system of public rental housing to realize the principle of supplying adequate housing reflecting each family's housing need and affordability?

3. Survey on Housing Poverty and the Application of the Housing Minimum Standard

Since the minimum standard of housing has not been set, it is impossible for us to know how many people are in the state of housing poverty. Until now, the government has focused on the construction of housing and didn't pay much attention to the housing problem of the poor. It would be very important in the housing policy to set the housing minimum standard and understand the situations of individuals and families living in the state of housing poverty. In 2000, it is assumed that Korea would have more than 5,000 homeless people and about 20% of families would be in the state of housing poverty.

In this regard, it was really encouraging for Seoul city among all the local governments to have introduced the housing minimum standard for the first time. According to this standard, about

20% of Seoul city dwellers are living in humble housing conditions under the housing minimum standard. The central government is also to set the housing minimum standard in 2000. Once it is set by the central government, local governments should be encouraged to set proper standards reflecting actual conditions of each local government.

The survey on the situation of housing poverty should follow the fixing of the housing minimum standard. And countermeasures have to be prepared to resolve the problem of individuals and families living in the various conditions of housing poverty, such as homelessness, overcrowding, poor facility, occupancy instability. Steps to guarantee the housing minimum standard should be adopted in the policy linkage of the central and the local government.

► Recommended Questions

- (1) It is thought that the fixing of the housing minimum standard and the survey based on it should be legalized. The local government should be also encouraged to adopt them considering their local characteristics and to reflect them to the housing policy of their own. What are the central government's measures for this?
- (2) What measures can be taken to provide alternative policies for the various forms of housing poverty such as homelessness, overcrowding, poor facility and occupancy instability?

Chapter 14. Right to Health (Article 12)

1. Article 36(3) of the Constitution of the Republic of Korea provides that "Health of all citizens shall be protected by the State". The Korean government enacted the "Framework Act on Health Care" in 1999, which specified, "No citizen shall be deprived of the right to health of oneself and one's family regardless of sex, age, religion, social position or economic status". The ICESCR provides that "The State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" (Art. 12). The health care system in Korea, however, fails to realize the spirit of either domestic law (including the Constitution), or the Covenant.

2. Economic barriers to utilizing health services

Twelve years after the introduction of Health Insurance in workplaces with more than five hundred employees in 1977, all Korean citizens are now covered by the National Health Insurance. With NHI, however, patients and their families are still heavily burdened by medical costs when receiving medical care. The real out-of-pocket money amounts to 70% for outpatient costs and to 47% for inpatient costs. For this reason, the National Health Insurance system is sometimes referred to as merely a "discount system" in health care, because it cannot relieve households of the economic burden.

The NHI does not provide sufficient benefit package, and this is another economic barrier to receiving health care. The NHI covers no preventive medicine service except for prenatal care, nor does it cover allowance for the sick. Also, it doesn't cover ultrasonography service which widely used for diagnosis, nor oriental medicine, very popular among Korean people.

Medical Aid for the low-income group has the same problems. Since health care services covered by Medical Aid are same as NHI, low-income patients also have to pay for the services not covered by Medical Aid. This acts as a huge obstacle to the low-income group from obtaining medical care. The fact that only 2-4% of the whole population is covered by Medical Aid shows that Medical Aid is not playing its intended role. The problem becomes even more serious when we consider the fact that many people have become low-income groups (the "new poor") since the economic crisis of 1997.

Table 1. Trend in the proportion of people under Medical Aid among the whole population

Year	1995	1996	1997	1998
Population covered By Medical Aid (%)	4.4	3.9	3.7	2.8

► Recommended Questions

- (1) Does the Korean Government have plans to reduce the real out-of-pocket money to the level of twenty percent? Are there any plans to include preventive services and allowance for the sick into the basic package of NHI?
- (2) Has the government considered repealing the rule that forces the low-income group to pay for medical costs not covered by Medical Aid?
- (3) Does the Korean government have any intention to substantially increase the number of people protected by Medical Aid to a realistic level?

3. The government's neglect of its responsibility for the citizens' health

The health care budget in Korea is incredibly small. As the Ministry of Health and Welfare spends most of its budget on social security, only a small portion of the budget remains for the health care sector. The health care budget has increased according to the government's Report, which is not true in terms of the percentage among the total government budget. The health care sector used 0.35% of total government budget in 1995, but it has decreased from 0.36% in 1996 to 0.34% in 1997, 0.30% in 1998 and 0.28% in 1999. As of 1999, only 4.64% of the total government budget is assigned to the Ministry of Health and Welfare.

The Korean health care system is disproportionately dependent on the private sector. In 1998, 90.7% of health care facilities were private, and only 9.3% were public. Private beds were 84.5%, and 15.5% were public. The dependence on the private sector has worsened due to the restructuring of public health care facilities after the economic crisis. The present condition contradicts the Korean government's answer to the questions asked by the CESC in 1994, and it seems that the government report intentionally avoided commenting on these questions. In short, due to the large proportion of the private sector, health care services tend to consider profits more than people's health.

For example, according to the National Health Insurance Corporation, the average caesarian section rate in Korea is 43%. This figure is far greater than 10% recommended by the World Health Organization and more than double than that of the United States, which is itself above average at 20%. This derives from the fact that caesarian section is more profitable than vaginal delivery. This has resulted from the profit oriented health care system and the government's irresponsible health care policy.

► Recommended Questions

- (1) Does the Korean government have any plans to improve the accessibility to health care by expanding the public sector to 50%?
- (2) To do this, does the government have any intention to increase the health care budget?
If so, how much does the government plan to increase it within five years?

4. Insufficient health care policy for the minority

The Korean government has not piled statistical data on the health of minorities such as the elderly, the poor, foreign workers, and the prisoners. Specifically, there is no data on the health status and medical service utilization according to income level, which is proof of the government's unsystematic health policy for the disadvantaged group. This explains why the government report could not present detailed statistics and grounds on the health status of the minority group.

First, if we look at the Medical Aid for the poor, the high economic costs to the individual, insufficient insurance benefits, and reluctance of the hospitals to take them in are causes leading to a crippled health insurance policy. Especially, regarding the mentally ill who are mainly from the low-income group, no budget has been allocated to mental health programmes until now, though it is 5 years since the Mental Health Act was enacted and the Mental Health programmes were said to have been actively implemented.

The number of older persons over the age of 65 grew from 2.9% in 1960 to 7.1% in 2000 and is expected to exceed 14% by 2020. In spite of this rapid change in population structure, health policy for the elderly is insufficient. The government has no information on the elderly persons who are living alone. Government budget for health care of the elderly is incredibly small. The total budget for the elders' welfare including health care is only 0.15%, far below those of Japan (17%), the United States (25%), and China (3%). There is only the outpatient service provided through the network of public health centers. However, the public health centers are targeted mainly to acute illnesses, thus not being able to satisfy the health needs of the elders, who suffer mainly from chronic illnesses. All of these conditions clearly contradict the view of the Committee, which recognizes the "right of every elderly persons to the enjoyment of a satisfactory standard of physical and mental health" (General Comment 6. para. 34).

The health of prisoners is not protected sufficiently. The Criminal Administration Act, which provides only "the chief officer of prison can do this or that", does not assure their right to health care, and even these provisions remain abstract than specifying in concrete terms what should be done. Statute provisions such as physical examination at entrance and periodic health examination are not provided to prisoners. It is difficult for them to obtain treatment in outside hospitals even if necessary. According to a survey, only 5.2% of the respondents said it was easy or not difficult for them to get treatment in outside hospitals, while 50.5% said it was difficult or impossible to do so. As can be expected, prisoners are not covered by the National Health Insurance.

► Recommended Questions

- (1) Does the government plan to gather basic statistical data on the health status and medical care utilization according to the income level?
- (2) Does the Government have any plans to allocate government budget for the poor, especially the poor with mental health problems?
- (3) Does the government have the intention to substantially increase the budget for the elderly to satisfy their health care needs?
- (4) Does the government have any intention to specify the prisoners' right to health care in the Criminal Administration Act?

Chapter 15. Right to Environment (Article 12)

1. Environmental rights of the future generation

National development in the 21st century has to be founded upon environmental justice among social groups. The people have the right to equal distribution of the benefits and responsibilities of the environment. The Korean government should guarantee all the people, whether man or woman, rich or poor, old or young, urban or rural, the equal right to enjoy a pleasant environment. If inevitably, environmental injury occurs, by the principle of equity the polluter or the state should rightfully compensate. The Korean government and the civil society should assume responsibility towards the socially and physically vulnerable, and concentrate their efforts to assure their living and environmental rights. Furthermore, equity within and among generations should be considered.

The present generation should learn to use its natural endowments in a sustainable manner, and technological advancement whose environmental consequences are unpredictable should be pursued with caution. Producing and disposing matters unsafe in this present generation is a violation against the future generation's fundamental right to choose.

Currently, Korea is pursuing large-scale National Development Projects (NDP) such as the *Saemangeum* Reclamation and Kyung-In Canal projects, causing serious ecological effects. In addition, unhindered genetic manipulation is raising alarm of potential disruption of the law of nature.

► Recommended Question

- (1) Is the government willing to recognize the environmental rights of the future generation and employ appropriate legislation? Does the government have plans to introduce a group lawsuit or compensation system for the environmentally vulnerable, such as the future generation, women and local citizens?

2. The necessity of North-South environmental cooperation

The division of the Korean Peninsula during the past five decades has brought fatal damages to the environment. Due to mutual antagonism between North and South Korea, effective cooperation in managing the environment has been difficult. Despite differences in the nature of the problems, both North and South Korea face serious situations. Although the South's environmental awareness has increased significantly, there still remain production and

consumption related problems, caused by the inability to process the rapidly increasing industrial and domestic wastes. On the other hand, the North has its own problems due to the inherent inefficiency of the regime, retarded industrial structure and technology, and lack of funds for environmental investment. Moreover, if North Korea continues its out-looking economic policy such as North-South economic cooperation with a view to solving the current economic crisis, the environmental problems will be aggravated due to the lack of adequate environmental technologies available in the North.

Thus in order to solve the problem of ecological isolation due to the long-term division and protect shared resources such as air, rivers and seas, cooperative efforts between North and South Korea are imperative.

► *Recommended Questions*

- (1) Today, in the era of North-South understanding, investment in the North by South Korean firms is increasing. Here, we cannot exclude the possibility of 'pollution industry' of South Korea relocating to the North. These 'pollution industries', which were imported to South Korea in the period of rapid industrialization of the 60's, has already caused serious damage. Is the South Korean government preparing any guidelines for an eco-friendly investment to the North?
- (2) To reduce the restoration costs after reunification, the necessity of North-South environmental cooperation has emerged. What are the specific programs and plans for North-South environmental cooperation? Furthermore, is the government preparing any institutional framework for North-South environmental exchange between NGOs and academic experts?

3. National Development Projects and Environmental Problems

Currently, economic development projects are implemented under the name of 'National Development Projects'. Most NDPs (i.e. the *Saemangeum* Reclamation Project, Kyung-In Canal Construction Project and large dam construction projects) are expected to aggravate environmental problems by increasing resource waste and decreasing land productivity. The *Saemangeum* project is expected to cause the most serious environmental damage. The project is to reclaim 20,000 hectares of estuary located in the western coast, one of the five largest in the world. The *Mankyung* and *Dongjin* River estuaries are known to be the main stopover for rare shorebirds such as the snipe and plover in the spring and fall. In 1997, the Ministry of Environment conducted a 'Nation-wide Simultaneous Census on Migratory Birds' and found 371,129 birds in the *Mankyung* River estuary and 270,924 in the *Dongjin* River estuary. If the tidal-flats are destroyed, many rare birds will lose their habitat and face the threat of extinction. The *Saemangeum* project has overall problems – it will damage the environment, it is not economically viable and it will cause water pollution. Furthermore, reaping short-term benefits through the destruction of the environment is not only against intergenerational equity but also economically unviable. Despite these problems, the Korean government persists on continuing

the *Saemangeum* project and further plans to reclaim more than half of the western coast to straighten the coastline.

Currently the reclaimed land is for farm and industrial use. The *Saemangeum* project is the biggest reclamation project in the world and it is reminding the Korean people of the *Shiwhaho* Lake reclamation disaster, where the lake was filled with waters polluted with city sewage, livestock waste and industrial waste. It is predicted that *Mankyung* and *Dongjin* River will follow the same course but the project is still in progress.

If the project is completed, 28,000 hectares of farmland will be created. However, the irony is that 30,000 hectares of inland farmland are disappearing due to various development plans. Farmland destroyed by industrialization and urbanization are far greater than that created by reclamation projects, which itself creates new environmental problems.

► *Recommended Questions*

- (1) The *Saemangeum* estuary is a valuable common heritage of both the present and future generations that has to be preserved. Is the Korean government willing to cancel the project?
- (2) Regarding large scale projects that will deeply influence the local environment, local citizens should be able to participate in the decision making process – through means such as voting, impeachment and subpoena of representatives of the municipal government. Is the Korean government willing to reform the current legislation to accommodate such calls? Are there plans to do research on the country's ecological and social capacity to sustain large-scale development projects?

4. The Building Of Nuclear Power Plants

For most environmental organizations and local people the biggest threat is the building of nuclear power plants. Currently the government is planning to build a total of 23 nuclear plants by the year 2006 and 50 by 2030. If this goes as planned Korea will rank fourth in the world on the overall number of plants, and first on population ratio. This requires a humongous budget. For example, building the plants until 2006 requires 45 trillion won. The Korean government is allying with the business and science sectors to create a nuclear regime, creating a political and social environment to strengthen their ideological scheme by emphasizing the need for nuclear plants to solve economic, energy and even environmental problems. However, this is contrary to the general trend in other countries where they are closing down nuclear power plants due to economic and safety reasons. Furthermore, the supply-based policy is problematic in that it does not put efforts into energy demand management or development of alternative sources of energy.

The Korean government persists on the conventional energy system. It still relies on the fossil fuels and nuclear energy system established in the rapid industrialization era, and adheres to

supplying only these energies. As a result, South Korea experienced the fastest energy consumption increase in the world, which in turn aggravated the environmental problems.

► *Recommended Questions*

- (1) Are there plans to re-evaluate the existing energy system heavily reliant on oil, coal and nuclear energy? In addition, is the government planning to analyze the relationship between energy and environment, undergo an overall reform of the supply-based policies to facilitate energy conservation, increase energy efficiency and develop recycled energy?
- (3) Is the government willing to make an overall review of the nuclear plant construction plans?

Chapter 16.

Right to Education : Elementary & Middle School (Article 13,14)

1. Negligence of public education

Article 13 and 14 of ICESCR insist that free education should be expanded to secure the right to education. However, the Korean government set the 'beneficiary-centered education' as its policy guideline and is expanding the principle of beneficiary-payment. Considering such circumstances, the Korean government is imposing the financial burden on the learners and consequently neglecting its responsibility on education under the name of 'administering the educational policy according to the demand of the learners'. This is definitely against the recommendation to the States Party by the Committee on Economic, Social and Cultural Rights that each country expands progressively free education and take its responsibility for public education.

► *Recommended Questions*

- (1) Is not the 'beneficiary-centered' education policy against the recommendation to the States Party by the Committee on Economic, Social and Cultural Rights that each country expand progressively free education and take its responsibility for public education? Or what is the relation between Korean education policy and the recommendations by the Committee?
- (2) Provide the statistical data reflecting the increase or decrease of the beneficiaries of the free secondary school education. What detailed plan of action does the government have in order to introduce free secondary education?

2. Inadequate Budget for Education

The investment of the government on education has not increased since 1995. The circumstances of education in Korea are inferior to those of other countries. According to the OECD Statistics issued in 1996, the ratio of teachers to students was higher than that of any other countries. It exceeded twice of the ratio of Greece and Austria. The Korean government claimed that she would increase the budget of education up to 6% of the GNP to improve such circumstances, which turned out to be the reduction of the budget from 4.1% in 1996 to 3.8% in 1999. Moreover, Public educational expenditures per student of fiscal year 1999 got cut back by more than 20% compared to those of 1998. Consequently, government's subsidiary support to each school was curtailed.

► *Recommended Question*

- (1) What is the reason for the curtailment of the government's subsidiary support to each school?

3. Status of Teachers

There has been a great improvement on the status of teachers due to the establishment of Korea Teachers' Union (KTU) in July 1999. But the right to collective action has not been ensured, which sets many limits on the actions as a trade unionist. Moreover after IMF bailout, the Ministry of Education shortened the age of retirement and this led many teachers to leave their school against their will and to lose their trust on the security of their jobs.

Teachers' wages fall far behind to that of an average company. The government depends on the competitions among teaching staffs for the education policy rather than striving to set up an effective policy to cultivate competent teachers. Concerning such policy, teacher's trade union is protesting to the governments whereas the Ministry of Education is avoiding the negotiation with KTU under the pretext that it cannot be negotiable between the government and KTU.

► *Recommended Questions*

- (1) what detailed plan does the government to ensure the teacher's right of collective action?
- (2) What is the rationale of shortening the age of teacher's retirement from 65 to 62?
- (3) What specific plans are the Korean Government preparing to stabilize the status of teachers and to improve the their social and economic status? In addition, how can the government acquire the budget to perform the plans?

4. Poor Conditions of School

Classrooms have a poor condition in Korea. Only 90m² of classroom space is assigned to 40-50 learners and basic facilities such as fitting room, school cafeteria, restroom are insufficient. Furthermore, excessive restrictions on students' hair and clothes violate the human rights of each student. There was a case that a student got punished from the school just because he posted on the Blue House's official homepage a criticism of the poor conditions of his school. All these factors show that the rights of students have been ignored.

► Recommended Questions

- (1) Provide the information on the size of facilities such as fitting room, school cafeteria and rest room per student in the schools of the cities.
What detailed plan does the government have in order to improve the current surroundings?
- (2) What plan of action does the government in order to provide the human rights education which will raise the human rights awareness among teachers and students and enhance the human rights situation in schools?

Chapter 17.

Right to Education : Higher Education (Article 13)

1. Inadequacy of the Resources and Quality

In Korea, there are great gaps in terms of educational resources in different universities, and thus in the quality of education provided therein. State-or public universities fare better than private colleges, colleges located in Seoul better than regionally located colleges, and large ones better than their smaller counterparts. This difference leads to the severe competition for entrance into prestigious colleges.

The number of professors in the colleges is far below the standard set by law. Even state-run four-year universities run slightly over 60% of the standard, and public industrial universities just pass 40%. Private colleges do not reach 60% of the standard. The rate of facilities (such as buildings) is also insufficient. (Report of the Ministry of Education to the National Assembly, 1999)

For private universities, the level of financial support by the fund or the board of trustees is the critical factor that influences the level of education provided by that university. In four-year private universities, the corporate account can be largely divided into operating income and capital income. While only 7.4% of the operating income comes from the support funds, 52.7% is fed by the tuition that students pay. Two-year colleges fare even worse.

The Korean government's policies for higher education should aim at narrowing the gaps mentioned above. These policies should include preferential treatment to the socially vulnerable, to ensure they have equal access to higher education.

► Recommended Questions

- (1) What is the average instructor/staff-to-student ratio of the universities in Korea, and how does this compare with the standard set in the College Foundation Regulation? How do the ratios differ across the different types of colleges, i.e., private versus state-run, regional versus central, four-year versus two-year?
- (2) What is the legal standard for the number of students per professor, and what is the actual figure? How do the numbers differ across the different types of universities?
- (3) What is the government plan to narrow the gap between different types of colleges?

2. Weakening Status of Professors

In order to fulfill the inherent role of the university, the social status of professors should be guaranteed. Professors and scholars have the duty to contribute in the advancement of society by unfettered search for truth and participation; academic freedom and autonomy in teaching are essential ingredients in this journey. In this regard, to guarantee professors a stable and favorable status is to protect them from political or financial pressure in their endeavors in search of truth.

The professors' status in Korea has weakened since the introduction of the Professor Reappointment System in 1975. The new appointment system, by which professors are regularly evaluated before reappointment, has often been abused to oppress professors who refused to conform to military dictatorship. The revision of private school law in 1990 reinforced the reappointment rule, which had been announced would be repealed. As a result, the social status of professors worsened to a point where they could not fight back against unjust dismissal. The Reappointment System has become the symbol of oppression of professors who call for democratization and justice both within the university and in the whole society.

The contract system, together with performance payment system, which will be enacted within a few years, is another threat to the already insecure status of Korean professors, especially those working in private colleges or two-year colleges. In this vein, professors feel that unions are an

inevitable counter measure. They feel that professor unions are the only practical means of protecting their right to live, as well as helping them protect freedom of education and research from political, financial pressures.

While the right to organize professors' unions is fully recognized and protected by law in almost every country in the world, especially in OECD countries, this is not the case in Korea. Although the right to organize a union is guaranteed to elementary and middle school teachers, professors cannot do the same. This situation has to be corrected, because unions can help professors not only to protect their basic rights; they can also help them to maintain academic freedom and autonomy from potential political or financial pressures.

► Recommended Questions

- (1) How many professors have been denied reappointment, since the Professor Reappointment System was introduced? How are they distributed across different types of colleges, and how many were unjustly dismissed?
- (2) What relief measures are available in case unjust dismissal has occurred? What kind of effort has the government made to save these professors?
- (3) How has the government pursued to abolish or reform the Reappointment System?
- (4) How are the contract system and the performance pay system better than the reappointment system? What is the preventive measure against possible abuse, and what are the relief measures in case the system is indeed misused or abused?
- (5) Such systems as contract and performance pay will inevitably undermine professors' role of social criticism and participation. How will the government deal with this problem and, and how does it plan to secure their status?
- (6) What is the government's view and policy on professors' unions?
- (7) How does the government plan to improve the status of professors in private universities?

Chapter 18. Right to Cultural Life(Article 15)

1. It is believed that freedom of expression and access to cultural resources in Korea is not secured at all. For example, the National Security Law arbitrarily interprets and distorts the works of the artists, and this results in the limit and obstacle to artists' creativity.

We highly appraise that the Korean government changed the pre-deliberation system, which had exercised as an actual pre-censorship, into the classifying system. However, it must be pointed out that if a work is 'reserved to be classified' under current system, it is not much

different from being pre-censored. Although the Korean government advocates the principle of 'only support and no interference' in cultural events, the excessive interference of authorities often distorts the original intention of such events.

2. The Limitation to Freedom of Cultural Expression

Artist *Shin Hak-chul's* work '*Rice-Planting*' was declared as an 'Anti-state painting' last year, but at the beginning of this year, UN Human Rights Committee has demanded the Korean government "to open a hearing on this case within 3 years, not to discard this painting and to give an answer to the Committee in 6 months". This year, cartoonist *Lee Hyun-Se* was also fined for releasing 'the Myth of the Paradise' to the young, which was classified as pornography. And, the movie called '*A Lie*' by *Jang Sun-Woo* was first reserved to be classified and could be released only after some important parts were modified.

What really matters in such cases is that artists' works were not understood as a whole in the full context. Judicial judgements are made based on totally different understanding from the genuine intention of artists and based on partly ignored context. Naturally, there can exist different views for the works of art, and each of them should be respected. If artists are to be punished for their works by judiciary authorities, it will impose severe restrictions on each artist's cultural development as prescribed in Article 1.

► Recommended Questions

- (1) We have suggested that social debate on works of art should precede the judicial judgement. What is the government's opinion about this?
- (2) Such judicial judgements are often based on the National Security Law, which conflicts with Korean Constitution and General International law in many parts. Can the government consider to modify or abolish it?
- (3) Does the government have any intention to abolish passive regulations such as 'classifying reservation' which exercise as an actual pre-censorship, and to take active measures such as introduction of the exclusive theater for unclassifiable films to accept various works of art?

3. The Limitation to the Cultural Sovereignty

Article 15(2) of ICESCR provides that "the steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture", and this means each nation's rights to cultural industry.

The screen quota system is one of these steps, whose purpose is to protect Korean film industry. It was adopted as 'cultural exception clause' in WTO system., and this concept of 'cultural

exception clause' has raised questions during the multilateral negotiation process of MAI among OECD member states. This shows current trend in the world that the reciprocity in economic trades should not be expanded to the field of cultural resources. However, during the negotiation process on bilateral trade treaties with the United States, the Korean government has treated the screen quota system as the object of negotiation including other trade sections. This means that the government regards the screen quota system only as a part of industry, not as a system that promotes protection of cultural diversity, which should be seen as the universal value. Thus such recognition of the government violates Article 15(2) and threatens "rights to participate in cultural activities" prescribed in Article 15(1) thereby reducing the actual scope of cultural choice. We conclude that spontaneous development of culture is directly related to the cultural sovereignty.

► *Recommended Question*

(1) Each department of the Korean government shows different understanding on the screen quota system. That is, the Ministry of Culture and Tourism advocates it to be remained whereas the Ministry of Foreign Affairs and Trade asserts it to be abolished. Such confusion makes us doubt whether the government has clear recognition on the importance of spontaneous development of culture and its relation with the cultural sovereignty.

What is the Korean government's opinion about the screen quota system as a measure to protect the cultural sovereignty?

4. The Intensification of cultural approach (In search of activating the user-centered management of public cultural institutions)

Libraries, art galleries and museums are public cultural institutions, which provide local citizens with cultural programs to gain real experiences and encourage them to participate in creative works. When their participation at public cultural institutions are activated, the promotion of cultural welfare is enhanced. This, in the long run, will bring the realization of community based on cultural democracy.

Korean government has put considerable investments on constructing many public cultural institutions. In fact, not only central government, but also many local governments have participated in building and managing libraries, art galleries and museums since the early 1990s. Considering these progresses, it can be judged that Korean government is willing to carry out Article 15(2) of the ICESCR which prescribes that "the State Parties to the present Covenant recognize the right of everyone to enjoy the benefits of scientific progress and its applications".

However, it is time for each country to enhance cultural competitiveness in true means of functional management, not in quantitative expansion of public cultural institutions. The functional management implies that managerial mind has converted from manager-centered to user-centered, and specialization of the management of public cultural institutions in qualitative

sense is to be intensified. Certainly this was not the case in Korea. Main problems that Korea has can be pointed out as follows,

- ① lack of specialists
- ② lack of the user-centered programmes
- ③ outworn equipments
- ④ poor financial support
- ⑤ Lack of networks with other cultural institutions
- ⑥ lack of consistent management policies

► *Recommended Questions*

(1) The Korean government is interested only in the quantitative expansion of public cultural institutions. It is desirable that such institutions are spread all over the country, however, to pursue functional normalization of public cultural institutions, it is necessary to promote qualitative expansion and policy on management. What is the position of the Korean on this?

(2) It is necessary to carry out precise research on existing institutions so that the research will help to give the object evaluation on the management of each institution. How would the government take measures to such evaluation?

List of Issues
(한글,영문/ 2000년 9월)

제 2차 정부보고서에 대한 질의사항(E/C.12/Q/RepofKor/2)

UN 경제적 사회적 문화적 권리 위원회
사전실무분과회의
2000년 9월 8일

I. 일반 사항

A. 인권보호를 위한 일반 법제

1. 보고서 심의제도의 후속절차 실행이라는 견지에서 위원회는 제 1차 정부보고서에 대한 최종견해(E/C.12/1995/3)에서 권고했던 사항들을 이행하기 위하여 한국정부가 취한 조치들을 검토할 것이다.

2. 제 2차 정부보고서에서 한국정부는 보다 나은 인권 보호 및 증진을 위해 국가인권위원회를 설치할 계획이라고 밝혔다. 상기의 국가인권위원회가 1991년 파리원칙에 부합하는지, 그 임무와 권한은 무엇이며, 인권 특히 경제적 사회적 문화적 권리의 보호와 증진에 어떠한 구체적인 효과를 가져올 수 있는지에 관한 자료를 제시하시오.

3. 지난 제 1차 정부보고서에 대한 최종견해에서 위원회는 한국정부에게 규약의 지위가 모든 국내법에 우선될 것을 보장하도록 촉구한 바 있다. 이 점에 관해 어떠한 변화 또는 진전이 있었는지 설명하시오.

B. 정보제공 및 홍보

4. 담당관청 및 사회전반에 규약이 포함하고 있는 권리들을 알리고 도모하기 위해 취해진 조치들을 설명하시오.

II. 규약의 일반 조항에 관한 사항 (제 1 ~ 5조)

제 2조 2항 차별금지

5. 제 1차 정부보고서에 대한 최종견해에서 위원회는 한국정부에게 외국인 노동자를 비롯한 사회적 취약 집단의 요구를 수용하도록 촉구한 바 있다. 외국인 노동자, 빈민, 무주택자 그리고 장애인을 보호하기 위해 취해진 조치들을 설명하시오.

6. 지난 5년간 난민의 지위를 신청한 망명자들의 숫자와 그들의 국적, 그리고 이들 중 난민지위를 인정받은 자의 숫자를 밝히시오. 또한, 이들이 경제적·사회적·문화적 권리를 어떠한 차별없이 향유할 수 있도록 보장하기 위해 취해진 조치들을 설명하시오.

제 3조 남녀평등

7. 고용기회, 임금, 상속, 가정 폭력, 교육기회 그리고 기타 전통적 편견 등의 면에서 이루어진 한국내 여

성지위의 진전상황을 설명하시오. 또한 여성에 대한 불평등을 시정하기 위해 한국정부가 어떠한 특별조치를 취했는지 설명하시오.

III. 규약의 개별조항에 관한 사항 (제 6 ~ 15조)

제 6조 노동권

8. 한국정부는 국제노동기구(ILO) 조약 제 2호(1919년 실업조약)와 제 29호(1930년 강제노동조약)를 비준할 용의가 있는가?

9. 실업문제 특히 여성, 이주노동자, 장애인과 같은 사회적 취약집단의 실업을 해소하기 위해 지난 2년간 취해진 조치들의 효과에 대해 설명하시오.

10. 대학졸업자의 취업률을 성별에 따라 제시하시오.

11. 이혼한 여성근로자에 대한 차별을 시정하기 위해 한국 정부는 어떠한 조치들을 취했는가?

제 7조 공정하고 유리한 노동조건

12. 지난 10년간 진행되어온 경제 및 산업 부문에 대한 한국정부의 구조조정은 여성의 고용기회 특히 여성근로자를 주로 고용하는 의류 및 제화 산업에 종사하는 여성들의 고용기회에 부정적인 영향을 미쳐왔다. 여성들은 민간직업알선소를 통해 각종 복지혜택이 거의 없는 저임금의 비정규직으로 일해야만 했다. 한국 정부는 이러한 상황을 어떻게 시정하였는가? 또는, 앞으로 어떻게 개선할 계획인가?

13. 노동시장의 남녀평등을 보장하기 위한 어떠한 입법 및 사업계획이 진행 또는 실행되었는가? 직장내 성희롱 문제를 근절하기 위해 어떠한 조치를 취하고 있는가?

14. 1998년 최저임금법의 적용대상에서 10인 미만의 사업장이 제외된 이유는 무엇인가? 이러한 적용배제가 정당한 임금을 받을 근로자의 권리에 어떠한 영향을 미치고 있는가?

15. 지난 3년간 한국에 거주했던 불법체류 외국인 노동자의 숫자는 얼마나 되는가? 한국정부는 이들의 체류와 근로를 합법화하는 어떠한 조치를 취했는가? 또는 그러한 조치를 계획하고 있는가?

16. 산재 및 직업병 발생건수에 관한 최근 5년간의 통계를 직업별, 성별, 연령별로 제시하시오.

제 8조 노동3권

17. 한국정부는 국제노동기구(ILO) 조약 제 87호(1948년 결사의 자유 및 단결권 보호조약)와 제 98호(1949년 단결권 및 단체교섭권 조약)를 비준할 용의가 있는가?

18. 공무원과 공립 및 사립학교 교사들의 노조결성, 단체교섭, 파업을 금지하는 법률에 대해 설명하시오.

19. 경제개혁조치 이후 발생한 파업 건수와 정부가 이러한 파업을 어떻게 조정하였는지에 관한 자료를 제시하시오.

20. 노동위원회의 지위와 기능, 접수건수 및 중재를 통한 해결건수 등에 관한 자료를 제시하시오.

제 9조 사회보장권

21. 급속한 경제성장을 고려해볼 때 한국의 사회보장제도를 보다 확장시킬 필요가 있다는 위원회 최종권해서의 권고를 이행하기 위해 취해진 조치들에 관한 자료를 제공하시오.

22. 부상, 질병, 장애 등으로 고통받고 있는 노동자들에게 산재보상을 제공하기 위해 취해진 조치들에 관해 설명하시오.

제 10조 가정, 여성, 아동의 보호

23. 보건복지부의 통계(1998년)에 따르면 경제위기와 관련된 가정불화로 인해 9,292명의 18세 미만 아동들이 부모에 의해 공공기관에 맡겨지거나 버려졌다. 이러한 아동들에 대한 착취를 방지하기 위해 어떠한 정부 조치가 취해졌는지 설명하시오.

24. 남편에 의한 강간을 비롯한 여성에 대한 기타 형태의 폭력을 근절하기 위해 정부가 취해오고 있는 법적 및 행정적 조치들을 제시하시오.

25. 한국정부는 가출청소년 문제를 해결하기 어떠한 조치를 취하고 있는가?

26. 최소고용연령은 몇 세인가? 아동에 대한 노동착취를 방지하기 위해 도입한 정부 조치는 무엇인가?

27. 한국정부는 아동의 매매·매춘·포르노에 관한 아동권리협약의 선택의정서를 비준할 계획이 있는가? 성적 착취로부터 아동을 보호하기 위해 취해진 정부 조치에는 어떤 것들이 있는가?

제 11조 인간다운 생활권

28. 정부측 보고서에 따르면, 한국의 급속한 경제성장에도 불구하고 40%의 인구가 빈곤선 이하의 생활을 하었다고 한다. 이 점에 관한 정부대책에 대해 설명하시오.

29. 제 1차 정부보고서에 대한 최종권해에서 위원회는 주거권 특히 주거대책 없는 철거의 금지를 효과적으로 보장하기 위해 적절한 조치를 취하도록 권고한 바 있다. 이는 위원회의 일반논평 4에도 언급되어 있다. 이러한 위원회의 권고가 이행되었는지의 여부를 밝히시오.

지난 5년간 재개발사업의 결과로 퇴거당한 사람들의 숫자와 그들에게 적절한 보상이 제공되었는지 관한 상세한 자료를 제시하시오.

30. 한국의 무주택 상황의 정도에 관해 자료를 제시하시오.

31. 제 2차 정부보고서 223항에 언급되어있는 주거보호를 목표로 한 사업들(역주: 국민주택기금지원, 공공개발기관에 의한 택지공급, 조세감면 등)의 활동내역에 대한 자료를 제시하시오. 그러한 사업의 지원기준은

무엇이며, 얼마나 많은 사람들이 그러한 사업의 혜택을 받고 있는가?

제 12조 건강권

32. 국민건강보호를 위해 지출된 지난 5년간 국고 내역에 관한 자료를 제시하시오.

33. 위험한 낙태와 높은 산모사망률을 초래하는 태아성감별을 근절하기 위해 한국 정부가 취하고 있는 조치들에 관해 자료를 제시하시오.

34. 난민 및 망명신청인들, 그 중에서도 특히 수용시설에 거주하는 자들에 대해 정부가 제공하는 의료지원의 정도를 설명하시오.

제 13조 교육권

35. 교육비지출이 총국가예산의 몇 퍼센트로 책정되었는지에 관해 지난 5년간의 자료를 제시하시오.

36. 초등교육은 무상으로 제공되고 있는 반면 중등교육을 포함한 이후교육과정의 수업료는 여전히 높다. 이는 남녀간 교육수준 불균형의 부분적 이유가 된다. 급속한 경제성장에도 불구하고 한국정부가 여전히 위와 같은 정책을 고수하고 있는 이유를 설명하시오.

37. 1993년 비엔나 인권회의에서 각국으로 하여금 인권교육을 제공토록 촉구했음에도 불구하고, 여전히 한국의 초등·중등·고등교육 과정에서 인권교육이 제공되지 못하고 있는 이유를 설명하시오.

제 15조 문화적·과학적 권리 및 지적재산권의 보호

38. 한국정부는 문화 및 교육활동에 대한 검열을 어느 정도까지 실시하고 있는가?

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COMMITTEE ON ECONOMIC, SOCIAL
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Pre-sessional Working Group
4-8 September 2000

**IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

List of issues to be taken up in connection with the consideration of the second periodic 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 (E/1990/6/Add.23)

1. GENERAL INFORMATION

A. General legal framework within which human rights are protected

1. In light of the Committee's decision to give effect to its follow-up procedure in the framework of the consideration of reports, the Committee would appreciate information on the specific measures the Korean Government has taken to implement the recommendations contained in the concluding observations of the Committee (E/C.12/1995/3) with respect to the State party's initial report.
2. In its second periodic report, the State party indicates that it is planning to establish a National Human Rights Commission to better protect and promote human rights. Please inform the Committee of whether the aforementioned Commission has been established in accordance with the 1991 Paris Principles, its mandate and powers, and the concrete effect it has had on the promotion and protection of human rights in general, and of economic, social and cultural rights in particular.
3. In its previous concluding observations, the Committee urged the State party to make sure that the status of the Covenant be superior to all national law. Please describe any changes or progress made in this respect.

B. Information and publicity

4. Please describe the action taken by the State party to inform and sensitize the Korean society and competent authorities of the rights embodied in the Covenant.

II. ISSUES RELATING TO THE GENERAL PROVISIONS OF THE COVENANT
(arts. 1 - 5)

Article 2.2: Non-discrimination

5. In its concluding observations regarding the Republic of Korea's initial report, the Committee urged the State party to meet the needs of the most vulnerable groups of society, including foreign workers. Please indicate what steps have been taken to protect foreign workers, the poor, the homeless, and the disabled.
6. Please indicate the number and nationality of asylum-seekers who applied for refugee status during the last five years, and the number of accepted applications. Please indicate the measures taken to ensure that they enjoy economic, social and cultural rights without discrimination.

Article 3: Equality between men and women

7. Kindly describe the evolution of the status of women in Korean society in terms of work opportunities, wage equality, inheritance, domestic violence, education opportunities and other aspects of traditional discrimination described in the State party's initial report. The Committee would also like to know what specific steps have been taken to redress the imbalances in the status of women in Korean society.

III. ISSUES RELATING TO SPECIFIC PROVISIONS OF THE COVENANT
(arts. 6 to 15)

Article 6: Right to work

8. Please indicate whether the State party intends to ratify ILO Conventions Nos. 2 and 29
9. Please describe the effect of measures taken by the State party during the last two years to combat unemployment, especially among the vulnerable groups, such as women, migrant workers and the disabled.
10. Please indicate the employment rate of college graduates disaggregated by gender.

11. What measures has the State party taken to combat discrimination against divorced women in the work place?

Article 7: The right to just and favorable conditions of work

12. Korea's restructuring of some aspects of its economy and industry during the last decade has negatively affected women employment opportunities, in particular in the garment and shoe industries, which primarily hired women. Women had to seek work from sub-contracting agencies at much lower pay, irregular hours and less or no fringe benefits. Please indicate how the State party has remedied or envisages to remedy this situation.
13. What laws and workplace programs protecting gender equality in the labor market are being enacted and enforced in the State Party? What steps is the State party taking to combat sexual harassment in the workplace?
14. Why are companies with less than ten workers exempt from the applying the 1998 minimum wage, and how does this affect the workers right to fair remuneration?
15. How many illegal foreign workers lived in Korea over the last three years? What steps are being taken or envisaged by the State party to legalize their stay and their work in Korea?
16. Please provide updated statistical information on the number of occupational accidents and diseases since the last report or for the past five years disaggregated by occupation, age and gender.

Article 8: Trade union rights

17. Please indicate whether the State party intends to ratify ILO Conventions Nos. 87 and 98.
18. Please explain the ban on public servants and public and private school teachers joining trade unions, bargaining collectively and striking.
19. Please provide information on the number of strikes that have taken place since the economic reforms and please indicate how these strikes have been handled by the State party.
20. Please provide information on the status and function of the Labor Relations Commission, the number of complaints received and the number of cases resolved by the arbitration of this Commission.

Article 9: Right to social security

21. Please inform the Committee on the measures taken to implement the Committee's recommendation in its previous concluding observations on the need to expand Korea's social security system in the light of Korea's rapid economic growth.
22. Please explain what measures have been taken to provide industrial accident compensation for workers suffering from injuries, diseases or disabilities.

Article 10: Protection of the family, mothers and children

23. Statistics compiled by the Health and Welfare Ministry of Korea showed that in 1998, 9,292 children under 18 were either placed into state care or deserted by parents grappling with family problems related to the economic crisis. Please explain what measures have been taken by the State party to prevent the exploitation of these children.
24. Please indicate what legal and administrative measures have been taken by the Government to combat marital rape and other forms of violence against women.
25. What measures is the Government taking to combat the problem of street children?
26. Please indicate the minimum working age for children and explain what Government measures have been adopted to protect children from exploitation.
27. Please indicate whether the State party envisages ratifying the Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and what measures it has taken to protect children from sexual exploitation.

Article 11: Right to an adequate standard of living

28. According to the State party's report, 40% of the population lived below the poverty line, despite Korea's rapid economic growth. Please explain the State party's policies on the matter.
29. In its previous concluding observations, the Committee recommended that the State party take appropriate measures to guarantee more effectively the right to housing and, in particular, to ensure that no evictions are carried out without offers of alternative housing in accordance with the Committee's general comment No. 4. Please indicate whether the Committee's recommendation has been implemented. Furthermore, please provide detailed information on the number of the people who had been evicted as a result of the redevelopment process over the last five years and whether they have been adequately compensated.
30. Please provide information on the extent of homelessness in the Republic of Korea.
31. Please provide information on the functioning of the Residential Protection Target Groups referred to in paragraph 223 of the State party's second periodic report. What are the criteria for eligibility and how many Koreans profit from the program?

Article 12: Right to health

32. Please indicate the evolution of State expenditure on public health care over the last five years.
33. Please provide information on the measures taken by the State party to eradicate the practice of identifying the sex of fetuses leading to unsafe abortions and to a high rate of maternal mortality.
34. Please explain the extent of medical assistance offered by the State party to refugees and asylum seekers, notably those housed in reception centers.

Article 13: Right to education

35. Please indicate what percentage of the State budget was earmarked for education during the past five years.
36. While primary education is free, secondary and tertiary education fees are high. This explains, in part, the disparities between the educational levels of women and men. Please explain the persistence of the above education policies despite Korea's rapid economic growth.
37. Please explain why no human rights education is made available at primary, secondary and higher levels of education despite the 1993 Vienna Conference on Human Rights call on states to provide such education.

Article 15. Right to take part in cultural life, to enjoy the benefits of scientific progress and the protection of intellectual property rights

38. To what extent does the Korean Government exercise censorship on cultural and educational activities?

List of Issues에 대한 견해
(한글,영문/ 2000년 12월)

제2차 정부보고서에 대한 질의사항(E/C.12/Q/RepofKor/2)에 대한 한국 사회단체들의 견해

발신 : 사회권규약 제2차 반박보고서 연대회의

수신 : UN 경제적 사회적 문화적 권리 위원회의 한국 보고서 담당관

참조 : UN 경제적 사회적 문화적 권리 위원회 사무국

일자 : 2000년 12월

1. 사회권규약 제2차 반박보고서 연대회의는 귀 위원회가 2000년 9월 8일에 발간한 제2차 한국정부보고서에 대한 질의사항을 주의 깊게 검토해보았습니다. 그리고 질의사항이 위원회의 한국 사회권 현실에 대한 깊은 관심에 근거하고 있음에 감사드립니다. 하지만 저희 사회단체들은 귀 위원회의 질의가 지나치게 일반적일 뿐 아니라 중요한 사회권 문제들을 놓치고 있다고 생각합니다. 따라서 본 회의가 보다 건설적일 수 있도록 질의서에 대한 한국 내 사회단체들의 견해를 위원회에 보내는 바입니다. 사회권 문제에 대한 저희의 관심과 견해가 본 회의 때는 더 잘 반영될 수 있기를 희망합니다.

I. 일반 사항

2. 경제 위기 이후, IMF의 요구에 기반해 정부가 시행하고 있는 개혁조치들은 한국의 사회권에 부정적인 영향을 미치고 있습니다. 노동유연성의 제고, 정리해고를 중심으로 한 구조조정 정책, 공공서비스를 제공하는 공기업의 민영화, 교육과 보건의료 영역에 대한 시장 논리의 강화 등이 바로 그 예들입니다. IMF의 요구는 한국 뿐 아니라 아시아와 중남미, 아프리카, 동구유럽 등 여러 지역에서 사회권에 부정적인 영향을 미치는 것으로 알려진 바 있습니다. 따라서 IMF가 한국의 사회권에 미친 영향을 하나의 쇼케이스로 삼아 진지하게 검토해주시기 바랍니다.

A. 인권보호를 위한 일반 법제

3. 위원회가 국가인권위원회의 설치에 대해 관심을 보여준 것(para 2)은 시의적절한 것입니다. 국가인권위원회를 어떻게 설치할 것인가는 한국 내 인권의 보호와 증진을 위해 매우 중요한 과제이기 때문입니다. 현재 민간단체들은 인권위원회를 보다 독립적이고 실효성있는 기구로 설치할 것을 요구하고 있습니다.

4. 규약의 지위가 모든 국내법에 우선하도록 보장할 것을 권고한 지난 제1차 정부보고서에 대한 최종 견해와 관련해(para 3), 사회권규약이 국내법원에서 어느 정도의 법적 효과를 가지고 있는지 예를 들어 국내법원에서 사회권규약을 직접 적용한 예가 있는지 등에 대해 관심을 가져주시기 바랍니다.

B. 정보제공 및 홍보

5. 담당관청 및 사회전반에 규약이 포함하고 있는 권리들을 알리고 도모하기 위해 취해진 조치와 관련해(para 4), 특히 법집행관들에 대한 교육, 학교에서의 교육 및 홍보가 이뤄지고 있는지를 주의깊게 검토해주시기 바랍니다.