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HUMAN RIGHTS COMMITTEE

Consideration of reports

of states parties to the International Covenant on Civil and Political Rights in accordance with article 40 of the Covenant

1997

Republic of Korea

THE REPUBLIC OF KOREA

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Introduction

1. In July 1991, the Republic of Korea submitted to the Secretary- General of the United Nations its initial report pursuant to Article 40, paragraph 1(a) of the International Covenant on ^{Part II, art 4} Civil and Political Rights (hereinafter referred to as "the Covenant"). The Human Rights Committee (hereinafter referred to as "the Committee") examined the report in July 1992. Taking into account the "Guidelines Regarding the Form and Content of Periodic Reports from States Parties" and the Committee's discussions on the initial report, the Republic of Korea submits this second periodic report describing measures it has taken, mainly legislative and institutional, to implement the Covenant in the five years following the initial report's submission. This report covers the period from July 1991 to July 1996.
2. One of the major changes the Republic of Korea has experienced since the submission of the initial report is the establishment of a new civilian Government in February 1993. The new Government, with the full support and encouragement of the people, has taken various initiatives for reform and change.

Legal and institutional policies to promote human rights have provided for, among others, stringent rules governing detention, increased right to counsel, expanded legal assistance for the underprivileged, and the extension of welfare entitlements for women and the handicapped. Continued efforts have been made in the past few years to build a more democratic society committed to justice and respect for human rights. They include: better promotion of democracy through the extensive application of the principle of local autonomy, substantial expansion of political rights through the enforcement of an integrated election act, and enhancement of

economic fairness through the introduction of the Real Name System in the financial and real estate sectors. However, there remains more to be done to promote human rights, and the Republic of Korea is striving continuously to improve the situation.

3. In aiming to provide accurate information on the situation in the Republic of Korea, the present report illustrates measures taken by the Government of the Republic of Korea (hereinafter referred to as "the Government") and elucidates the aspects to be strengthened in the protection of human rights.

General Comments

Constitutional protection of human rights in the Republic of Korea

4. The Republic of Korea is a democratic republic under a presidential system and is based on the principle of checks and balances. Sovereignty rests with the people. The National Assembly, the Administration, and the Court are vested with legislative, executive and judicial powers respectively. The National Assembly is composed of popularly elected representatives. As the sole legislative organ, it exercises its legislative power to protect the freedoms and rights of the people. To prevent the abuse of executive powers, the National Assembly has the authority to impeach the President and other senior officials, to recommend the dismissal of the Prime Minister and others, and to inspect and investigate state affairs. The Administration implements the laws enacted by the National Assembly and takes all possible administrative measures to protect the rights of the people. The Court provides relief when the rights of the people have been infringed, and it is the ultimate guardian of the fundamental rights. A court judge rules on

the basis of the Constitution and related laws, and according to his or her conscience. The status of a court judge is guaranteed by law.

5. The present Constitution of the Republic of Korea (hereinafter referred to as "the Constitution") provides for the Constitutional Court, which is the ruling body on constitutional petitions. Persons whose constitutional rights have been infringed through the exercise or non-exercise of public powers, may seek remedy from the Court. The Constitutional Court also has the authority to overturn unconstitutional laws, hence effectively discharging its role as the protector of fundamental rights.

The Constitutional Court is composed of nine judges, who are appointed by the President from a list of eligible court judges. In order to maintain the political neutrality of the Court, three of the nine judges are recommended by the National Assembly and three are nominated by the Chief Justice. In order to allow a judge of the Constitutional Court to rule according to the Constitution and his or her conscience, he or she is appointed for life, and may only be removed from office by impeachment or imprisonment.

Since the time of its establishment in September 1988 until June 1996, the Constitutional Court has ruled 67 laws unconstitutional. Of these, 43 have already been revised to reflect the Court's decisions; applications for the remaining 24 laws which, are under the revision procedure, have been suspended by the relevant agencies. In addition, the Court revoked 34 non-indictment dispositions of the public prosecutor. A number of administrative measures have also been declared unconstitutional. These decisions have furthered the protection of citizens' fundamental rights

The Covenant in relation to the domestic laws of the Republic of Korea

6. Article 6, paragraph 1 of the Constitution provides that "treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea." As the Covenant was ratified and promulgated by the Government in consent with the National Assembly, it has the authority of domestic law without requiring additional legislation. Accordingly, the Administration and the Court are obliged to observe the Covenant when exercising their powers. Most rights guaranteed by the Covenant are guaranteed by the Constitution. Article 37, paragraph 1, of the Constitution provides that "freedoms and rights of citizens shall not be neglected on the grounds that they are not enumerated in the Constitution." Therefore, the Covenant is to be respected, even if not directly stipulated in the Constitution. In the event that a law enacted prior to the Covenant's ratification conflicts with its provisions, 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.
7. If a person files a suit citing encroachment of rights guaranteed by the Covenant, the Court is to rule primarily on the basis of domestic law corresponding to the Covenant. In the absence of relevant domestic law, the provisions of the Covenant are to be invoked directly by the Court. In a decision on a constitutional petition of whether the demand for a notice of apology aimed at regaining one's reputation infringes on an individual's freedom of conscience, the Constitutional Court invoked directly the Covenant: "Article 18, paragraph 2 of the International Covenant on Civil and Political Rights provides that no one shall be subject to coercion which would impair his/her freedom to have a belief of his/her choice." (Decision

8. At the time of the Covenant's ratification, the Republic of Korea expressed reservations to Article 14, paragraphs 5 and 7, Article 22 and Article 23, paragraph 4; but reservations to Article 23, paragraph 4 were withdrawn on 15 March 1991 and reservations to Article 14, paragraph 7 were retracted on 21 January 1993.

Advocacy of the Covenant

9. Since its accession to the Covenant and submission of the initial report, the Government has exerted great efforts to inform its citizens of the contents of the Covenant. The Covenant has been widely publicized through "Law and Living", a booklet intended to familiarize all citizens with law in everyday life. This booklet includes the main contents of the Covenant and the obligations of the contracting parties are reproduced therein. Annual circulation since 1992 is 100,000 copies.

The original text and Korean translation of 14 major international human rights treaties were reproduced and distributed in February 1994 under the title, "Collected Materials on International Human Rights Treaties." This publication was followed in December 1995 by the publication and distribution of the volume, "International Human Rights Covenants and Individual Petition," which explains the requirements and procedures for individual petition to the Human Rights Committee for persons whose Covenant rights have been infringed. In addition, officials of all ranks engaged in human rights-related work, including those of the public prosecutor's office, the police and the correction agency are continuously educated so as to realize the ideals embodied in the Covenant.

“International Human Rights Law” will become part of the 1997 curriculum at the Judicial Research and Training Institute, where public prosecutor and judiciary candidates, who have passed the bar examination, are trained for a period of two years before being conferred with their lawyers’ license and being appointed as public prosecutors or judges. Lectures will be offered on the main features of the Covenant as well as on remedies for individuals whose Covenant rights were infringed.

Moreover, the Ministry of Justice is launching a programme to bring law closer to everyday life: an outline of the Covenant is given at lectures and symposia, and the ideals of the Covenant are publicized when legal aid services are provided to residents of small- and medium-sized cities, and to those from farming and fishing communities.

The Government organizes a Human Rights symposium every year around the 10th of December, the anniversary of the Universal Declaration of Human Rights. Discussions were held on “Disclosure of information and protection of human rights in modern societies” in 1991, “Environmental problems and human rights” in 1992, “Industrial accidents and human rights of the handicapped” in 1993, “Victims of crimes and human rights” in 1994, and “Women and human rights” in 1995. These symposia played a great role in inspiring respect for the principle of human rights protection.

Individual Articles of the Covenant

Article 1

10. The right of self-determination, as set forth in Article 1 of the Covenant, was supported by the international society as a universal right applicable to all peoples regardless of race, religion, region, etc. In accordance with the

Charter of the United Nations and Article 1 of the Covenant, the Republic of Korea has, as stated in the initial report, consistently recognized the right of self-determination. The preamble and Article 5, paragraph 1, of the Constitution declare that the Republic of Korea will contribute to world peace. These paragraphs also emphasize that the use of force shall not be tolerated to guarantee the right of self-determination in the international community. The Government considers it the basis of its foreign policy to cooperate with various international and diplomatic efforts to help all peoples fully realize their right to self-determination.

The Republic of Korea respects not only the right of self-determination at the national level, but also the right of persons forming a state to determine freely their own political status and to pursue economic, social and cultural development. Nationals of the Republic of Korea hold the right to express their thoughts freely and determine their political status through voluntary, fair, universal and confidential voting.

11. The Government is also active at the international level. To expedite the solution of the Palestinian question in relation to the right of self-determination, a subject of much concern to the international community, the Government pledged in April 1994 a contribution of US\$12,000,000. Consequently, the Government announced a plan to provide US\$10,000,000 in the form of a soft loan of the Korean EDCF(Economic Development Cooperation Fund) and US\$2,000,000 in grants-in-aid. Furthermore, at the Paris ministerial conference on Palestinian aid in January 1996, the Government announced it would dedicate an additional grant of US\$3,000,000. In addition, the Government also contributed US\$100,000 to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

In addition, the Government is also pleased to have played a part in the success of the worldwide effort to end the apartheid policy of South Africa, thus exercising a positive influence on the promotion of self-determination at the international level.

Article 2

12. Article 11, paragraph 1 of the Constitution provides that “all citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status.” In other words, the principle that every person is entitled to non-discrimination regarding protection and guarantee of his/her rights. Specific types of discrimination for reasons of sex, religion or social status are mentioned as examples only, and discrimination due to other factors such as race, colour, language, political affiliation, etc., are to be avoided. Prohibition of discrimination due to political opinion is also guaranteed by Article 19 (freedom of conscience), Article 21 (freedom of speech, press, assembly and association), and Article 8 (freedom of establishment of political parties) of the Constitution.

13. In addition to the above-mentioned Article 11, other specific clauses in the Constitution provide for the realization of the principle of equality. Article 32, paragraph 4, of the Constitution prohibits discrimination against women in the workforce, stating that “working women shall not be subjected to unfair discrimination in terms of employment, wages and working conditions.” Article 36, paragraph 1 provides that “marriage and family life shall be entered into and sustained on the basis of gender equality...” In addition, Article 41, paragraph 1 and Article 67, paragraph 1, set forth equal rights in regard to ballots and elections, and Article 31, paragraph 1, states that “all citizens shall have an equal right to receive an education corresponding to their abilities.” The concept of ability in Article 31,

paragraph 1, is understood to mean the capabilities attached exclusively to a person and not to other removable conditions such as wealth or family background. Therefore, university admission based on open competitive examinations is allowed, whereas the use of other criteria such as wealth or family background is not.

14. In principle, basic human rights guaranteed in the Constitution apply equally to aliens. With the exceptions of voting rights and electoral eligibility, which clearly proceed on the assumption that a person is a national of the Republic of Korea, the Covenant rights of foreign nationals residing or sojourning temporarily within the territory and subject to the jurisdiction of the Republic of Korea, are treated and protected equally as nationals of the Republic of Korea.
15. Equal rights guaranteed in the Constitution are protected in the political, economic, social and cultural spheres, specifically through the Labour Standards Act, the Basic Vocational Training Act, the Civil Code, the Handicapped Welfare Act, etc. As already mentioned in the previous report, various remedies are available in cases involving infringement of the above rights.

Enactment of the Basic Employment Policy Act and guarantee of equal rights

16. On 27 December 1993, the Republic of Korea enacted the Basic Employment Policy Act, aimed at allowing every citizen to make full use of his or her talent and ability without fear of discrimination. Article 19 of the above Act states that "the employer shall not discriminate on the basis of gender, belief, social status, region of origin, or educational affiliation, etc., in recruitment and employment". Furthermore, arrangements have been made to address employment inequality through specific provisions

for women, senior citizens and the handicapped. With regard to employment of women, Article 17 provides that "the State shall endeavor to increase employment opportunities for women by expanding welfare facilities and enhancing and developing vocational ability, which ensure equal opportunity and treatment in employment and facilitate occupational adjustment to the work." As for employment of senior citizens and the handicapped, Article 16 states that "the State shall take the following necessary measures to promote employment of senior citizens, the handicapped and other persons having difficulties in finding jobs, particularly under common conditions of the labour market: developing suitable occupational categories for their employment, expanding opportunities for development of professional skills and providing information on employment."

17. Meanwhile, the Government enacted the Senior Citizens Employment Promotion Act on 31 December 1991 in order to enhance employment opportunities for the elderly and has been involved in providing information to senior citizens on job opportunities, vocational education, and employment counseling.
18. Moreover, to promote employment of the handicapped, the Handicapped Employment Promotion Act was made law on 31 January 1990. This Act prohibits all kinds of workplace discrimination involving the handicapped by providing that "the employer shall not discriminate against workers in personnel decisions such as hiring, promotion, transfers, educational training on the grounds that the worker is handicapped" (Article 4, paragraph 2). To guarantee equality through employment for the handicapped, it is provided that a minimum of 2 out of every 100 openings for open-competition employment in national and local governments be filled by the handicapped (Article 34); and businesses with more than 300 employees are required to employ more than two handicapped workers for every 100 members of their full-time work force (Article 35).

Promotion of education of the handicapped through full revision of the Special Education Promotion Act

19. In January 1994, the Special Education Promotion Act was fully revised to increase the number of adequate possibilities in special education, which is tailored to individual abilities and the degree of disability. The Act also seeks qualitative enhancement of special education through the introduction of advanced methods.

This Act charges national and local governments with the responsibilities of developing special education, namely through the creation of a master plan, the training of special education instructors, and the establishment and management of special education institutions (Article 3, paragraph 1). A Central Special Education Inspection Committee and Regional Special Education Inspection Committees have also been set up to review major special education-related issues (Article 4, paragraph 1).

In addition, elementary and junior high school education are compulsory and free of charge for those eligible for special education. Kindergarten and senior high school education are to be provided free of charge with educational expenses to be borne or subsidized by national and local governments (Article 5).

Legal aid for the underprivileged

20. The Government is carrying out legal aid programmes in order to protect the rights of citizens who are unable to pursue legal means for personal damages due to unfamiliarity with the law or lack of financial resources necessary to cover the cost of legal proceedings. These services include

free legal consultations, assistance for litigation costs and free procuration. The Korea Legal Aid Corporation (hereinafter referred to as "KLAC"), established on 1 September 1987, is operating with financial assistance from the national budget. KLAC, working from its Seoul headquarters and 50 representative and branch offices nationwide, provides legal aid for civil action to farmers, fishermen, and workers with an average monthly income below one million Won (approx. US\$1,200).

Legal aid services for civil action have shown the following results: legal consultation was given to 342,049 persons in 1993; 344,363 in 1994; and 365,142 in 1995. Litigation assistance was provided to 34,625 persons in 1993; 37,729 in 1994; and 47,658 in 1995. From 1 June 1996 onward, legal aid, which had been limited to civil offenses, has been extended to criminal offense cases for farmers, fishermen, workers in financial need, small business owners, etc., given that certain conditions are met.

The Constitutional Court's guarantee of equal rights

21. Through the following important decisions, the Constitutional Court has ruled laws and administrative actions unconstitutional and in violation of the principle of equality:

- a) Provision relating to rallies of political parties in the "National Assembly Member Election Act" (Decision 92 HEONMA 37 of 12 March 1992).

Article 55-3 of the National Assembly Member Election Act, which provides that a political party can hold speech rallies as a means of election campaigning for its candidates, is unconstitutional on the grounds that it gives rise to discrimination against independent candidates, thus violating the principle of equality.

- b) Provision on candidacy limitation in the “Election for Public Office and Election Malpractice Prevention Act” (Decision 95 HEONMA 172 of 12 June 1995).

Article 53, paragraph 1, subparagraph 4 of the Election for Public Office and Election Malpractice Prevention Act on candidacy limitation, prescribes that the general staff, including directors, or executive staff of government-invested institutions leave office 90 days before election day. Namely, the Law does not distinguish high-level officers from mid-level staff who are not in a position to exercise influence over decisions of these institutions. The Court ruled this an infringement on the right to public office, and therefore an violation of the constitutional principle of equality and proportionality.

- c) Provision on billiard room “off-limits” signs in the “Enforcement Regulations for the Establishment and Use of Sports Facilities Act” (Decision 92 HEONMA 80 of 13 May 1993).

The Establishment and Use of Sports Facilities Act and its Enforcement Decree which require only billiard rooms to post signs reading “off-limits to persons under 18,” inflict unreasonable limitations on the scope of business of billiard rooms as compared to other sports facilities. This kind of arbitrary discrimination encroaches upon the right to equal protection. Hence, it was declared unconstitutional.

- d) Disposition of the public prosecutor not to institute a public action (Decision 90 HEONMA 183 of 16 September 1991).

A public prosecutor may not drop a case without investigating important matters that would normally be investigated, because such an approach infringes on the basic rights guaranteed to the complainant, that is, the right of equality and the right to make a statement during

proceedings. Therefore, this privilege should be revoked as an improper exercise of prosecutorial powers.

Article 3

Enactment of the Basic Women's Development Act

22. On 30 December 1995, the Republic of Korea enacted the Basic Women's Development Act. The aim of the Act is to realize the constitutional ideals on gender equality through the enhancement of women's status in all spheres of life (i.e. political, economic, social and cultural) and to secure a firm foundation for relevant policies.

The above Act was legislated in the interest of society and out of citizen awareness, which was renewed with the Fourth World Conference on Women held at Beijing in September 1995. This law places responsibility on national and local governments, inter alia, for the extended participation of women in the policy-making process and politics (Article 15); expansion of access to public office (Article 16); employment equality (Article 17); intensified protection for maternity (Article 18); intensified initiatives for gender equality in education in homes, schools and society (Articles 19 to 21); increased welfare for women (Article 22); expansion of infant nursery facilities (Article 23); establishment of equal status in intra-family relations (Article 24); prevention of sexual violence and domestic violence (Article 25); appreciation of domestic labour value (Article 26); increased international cooperation among women's groups (Article 27); and reduction of sexual discrimination in the mass media (Article 28). In addition, this legislation provides for the formulation of a five-year basic plan for the systematic pursuit of a policy on women; the inauguration of the Gender Discrimination Improvement Committee to eliminate gender

discrimination and to promote gender equality; and the establishment of a Women's Development Fund to support women-related activities and facilities.

National Plan for the Promotion of women's status

23. In order to incorporate the policy on women into the national development plan, the Government established a separate section on women's issues in its seventh Five-Year Plan on Economic and Social Development (1992-1996). Concrete policy objectives are also being suggested for following sectors: education, employment, cultural and social activity, welfare and international cooperation.

The Five-Year New Economic Plan also includes women's status as one of the major economic issues. The Basic Plan on Working Women's Welfare (1994-1997), set up as a follow-up to the Five-Year New Economic Plan, promotes improvement in the status and welfare of women workers through comprehensive governmental efforts in the fields of employment, protection of maternity benefits and increased opportunities for finding jobs.

24. In addition, the following ten priorities for the increased social participation of women were selected in October 1995 and are being pursued based on the discussions at the Beijing World Conference on Women:
- a) Extensive increase in the number of nursery facilities through private sector participation.
 - b) Introduction of after school tutoring for children (elementary schools nationwide).
 - c) Comprehensive provision of meal services at school.
 - d) Setting of target percentages for participation of women in public office
 - e) Introduction of an incentive scheme for public enterprises to employ

women.

- f) Establishment of a society-wide, burden-sharing system to defray the cost of maternity care, including:
 - Assumption by the public sector of a share in wage compensation during maternity leave through social insurance, etc.
 - Expansion in the scope of work places granting subsidies for maternity leave.
- g) Expansion and improvement of the training system for female workers, including:
 - Improved vocational and technical education at the junior and senior high school levels.
 - Improved vocational education for women awaiting re-employment.
- h) Creation of an information network for women, including:
 - Establishment of an information center for women.
 - Establishment of an information-communication system among agencies related to women's issues.
- i) Enactment of the Basic Women's Development Act.
- j) Amelioration of gender discriminative attitudes through mass media.

Reinforcement of government agencies in charge of policy on women

25. In 1991, the Government greatly reinforced the functions of the Office of the Minister of State in charge of gender policy. To ensure the overall coordination for policy on women, divisions for concerted action have been instituted in 38 departments of the Government agencies. In the beginning of each year, the annual accomplishments and plans concerning policy on women are to be submitted to the Minister of State, and the drafting of laws or policies with significant influence on the status of women requires prior consultation with the Minister of State.

As a means to better understand the general public opinion regarding

gender policy and to ensure reflection thereof in policy-making, a feedback mechanism, the "Voice of Equality," operates as a receiver of suggestions. Furthermore, control over the Korea Women's Development Institute was transferred from the Ministry of Health and Welfare to the Office of the Minister of State, thereby reinforcing the link between research and gender policy formulation and implementation. In addition, a permanent Special Committee on Women has been established in the National Assembly to deal with legal questions concerning the promotion of women's interests and welfare.

Support for employment of women

26. To support the employment of women and stabilize job-related activities of married women, the Infant Nursery Act was enacted in January 1991. The expansion of nursery facilities, after school tutoring for children, comprehensive provision of meal services at school and other supportive operations are being systematically administered.
27. To expand nursery operations, child care facility requirements have been extended to establishments with over 300 woman workers. The former limit was 500 women workers. During the three years from 1995 to 1997, 1,300 billion Won (approx. US\$1.6 million) will have been invested to create 7,590 child care facilities thus raising the nursery accommodation rate to 95% for children of low-income families in need of government support. Business owners providing nursery facilities in the work place are granted a partial subsidy on the expenses for construction, equipment and operation of these facilities. Attempts are also being made to use religious institutions as nursery facilities.

The Employment Insurance Act of December 1993 provides employment insurance as a financial incentive for enterprises that offer

child-leave or arrange nursery facilities at the workplace. At present, the child-leave subsidy program is being applied to establishments with no less than 70 employees and will be extended to establishments with no less than 50 employees by 1998.

28. The Government fully supports devising and applying appropriate work styles for married women. Labour-related laws are being applied equally to domestic and part-time workers so as to ensure equitable working conditions. The "Guidelines Relating to Guarantee of Conditions for Part-time Workers" were formulated and have been applied since January 1992, as part of the Government's comprehensive measures regarding part-time workers. A special window for increased female employment opportunity for professional jobs is being operated in six local Labour Agencies nationwide.
29. Article 4, paragraph 3 of the Basic Vocational Training Act provides that "vocational training for women shall be viewed as a priority." The Government places great emphasis on vocational training for women. Since 1995, 28,538 women have been educated in vocational training institutes. Furthermore, a vocational training institute for women established in October 1991 (Anseong Women's Vocational Training Institute) was converted into a two-year technical college (Anseong Women's Technical College) in July 1994. As of May 1996, 450 women had been trained there in various fields such as fashion design, data processing, and electronic technology.
30. As a result of these policy efforts for equal employment rights and for increased social participation of women, the rate of women's participation in the economic sector reached 48.3% in 1995, a sharp rise from 39.3% in 1970 and 42.8% in 1980.

Revision of the Employment Equality Act

31. The Employment Equality Act, enacted in November 1987, was twice revised once in 1989 and again in 1995. The Act substantially guarantees greater equal employment. Following is an outline of 1995's revisions:
- a) In recruiting or employing female workers, no employer shall present or demand any physical conditions not essential to carrying out their duties (Article 6);
 - b) In determining criteria for work of the same value, the employer shall consider the opinion of employee representatives including women employees (Article 6-2);
 - c) The employer shall not discriminate against female employees in regard to financial remuneration, including family allowances or housing finances for employees (Article 6-3);
 - d) No employer shall discriminate against female employees in training, assignment or promotion compared with any male worker solely based on considerations related to marriage, pregnancy or childbirth (Article 7);
 - e) The spouse of a female worker may also apply for temporary leave of absence for post-natal care (Article 11);
 - f) The Employment Disputes Mediation Committee was converted to the Employment Equality Committee to reinforce its functions, i.e., not only for coping with disputes on gender discrimination, but also for holding consultations on the employment of women and employment equality (Article 16).
32. Since the Employment Equality Act entered into effect, sexual discrimination systems and practices regarding employment and working conditions have continuously improved. But deep-rooted gender discriminative attitudes and social customs do not change easily. In order to eliminate excessively conservative attitudes and customs and to promote

the spirit of employment equality, the Government has proclaimed October of each year as Employment Equality Month. The goal is to raise people's consciousness of employment equality through advocacy, seminars and campaigns. Meetings with owners of industrial corporations nationwide have also been held to heighten employer awareness of discriminative attitudes and policy.

33. The Employment Equality Act, as revised in 1995, has additionally prescribed penalties for acts that deny equal opportunity in recruiting and employing workers. Several companies, which published recruiting advertisements that limited applications to men only, have been sentenced by the Seoul District Court to a fine of 1 million Won (approx. US\$1200) due to violations of the above provision.

Measures for increased participation of women in public office

34. The present Government, inaugurated in February 1993, is making efforts to increase women's participation in the policy-making process. A Public Official Recruitment Quota System for women has been introduced to raise the ratio of successful women candidates; in open recruitment processes for public officials, women are recruited at increasing rates, moving toward the pre-determined goal of 20% by the year 2000.

In addition, the "Guideline on Women Public Official Personnel Management" has been formulated and implemented in order to eliminate discrimination against female public officials in training, assignments, promotion or any other personnel matters. Separate training programmes and overseas study programmes are also provided in order to develop the capabilities of women officials.

Protection of women from violence

35. For thorough prevention of violent sexual crimes and protection of female victims, the "Act Relating to Punishment of Sexual Violence Crimes and Protection of Victims" was instituted on 5 January 1994.

According to the Criminal Code, the crime of rape is prosecuted only upon submission of a complaint; but the above-mentioned Special Act provides for prosecution without complaint of the rape victim if the assailant was carrying a weapon, acting jointly with one or more assailants, or attempting to rape or perpetrate indecent acts upon the handicapped. In addition, obscene acts committed using modern means of communication, such as the telephone and computer, are punishable under a new penalty clause. The Special Act also prescribes various measures to protect women victims during trial procedures.

Furthermore, counseling centers and protection facilities for victims of sexual and domestic violence have been established to allow women to physically recover, to regain mental stability and to restore a sense of security to their lives.

36. Women also benefit from certain protections with regard to means of resistance against acts of sexual violence. The Seoul High Court rendered a decision that "the act of a woman, who had her clothes taken off and was in danger of being raped at night, and then stabbed her assailant to death by putting a knife in his right shoulder, may constitute excessive self-defense, but if committed by fear and shock under extraordinary circumstances, such an act should not be punished under Article 21, Paragraph 2 of the Criminal Code." (Seoul High Court Decision 95 NO 2673 of 14 September 1995). Another decision demonstrates the inclination towards protecting women victims from sexual violence. By widening the scope of consideration of circumstances, the court granted leniency to a woman who killed the man

who had sexually abused her. Leniency was granted because the woman had mentally suffered from habitual sexual violence.

37. With the activity of the Special Rapporteur on Violence against Women appointed by the United Nations Commission on Human Rights, international public opinion has reached a new level of awareness regarding the question of military sexual slavery. The Government is urging the Japanese Government to unveil the historical truth regarding military sexual slavery and find solutions acceptable to the victims and the relevant NGOs.

Protection of women's economic rights

38. Economic valuation of household work is of great importance in many aspects, but policy has not properly reflected the potential income value of household work. Domestic labour by housewives has been undervalued. For example, they have received less compensation for accidental injuries in comparison with salaried-workers. Yet, the situation has been improved through revision of the relevant laws.

The family law, as revised in 1990, has established a legal base for recognizing the value of household work. It confirms joint responsibility of married couples for living expenses and in divorce proceedings, and validates wives' claims to a share of the family assets based on the economic contribution of their household work. The inheritance law, revised in December 1994, recognizes housewives' contributions of household work as a factor in the growth of assets. This is done by increasing the deductions from the gift tax and inheritance tax for spouses, and the scope of exemptions for bequests or gifts from spouses. The value of household work is being applied in tax laws and insurance-related regulations. For example, insurance benefits for housewives were upgraded in 1995.

Welfare policy for women in need of protection

39. The Mother-Child Welfare Act was legislated in April 1989 to enhance the welfare of single-mother households, most of which are underprivileged. At the end of 1994, 85.6% of a total of 51,925 single-mother households received the following protection under the above Act: subsidies for educating and raising children, accommodations, support for moving into public permanent rental houses and loans for operating businesses. Homeless mother-child families are given priority for permanent, public rental homes. In case a single-mother household moves into a mother-child welfare facility, accommodations are guaranteed for three years, and a resettlement allowance is provided at the time of moving out.
40. To guide women involved in prostitution, the Prevention of Prostitution Act, revised in January 1995, stipulates the establishment of welfare institutions such as guidance and self-reliance facilities, national and local self-support facilities, and financial support for expenses in operating these facilities (Articles 12 and 19).

To prevent the increase of women in need of protection, particularly those involved in prostitution or who have run away from home, the Government is operating 128 Women's Welfare Consultation Centers nationwide. At these centers, 408 women welfare counsellors have been hired to counsel women in need of protection or advice on personal and family affairs. Based on the results of such consultations, vocational training and education is provided in 21 guidance institutions for sound social rehabilitation of women requiring protection.

Women's political rights

41. Article 24 of the Constitution states that "all citizens shall have the right to vote under the conditions as prescribed by law", and Article 25 of the Constitution stipulates that "all citizens shall have the right to hold public office under the conditions as prescribed by law." A woman's right to vote and to hold office are not limited, and relevant election laws do not restrict the above rights.

42. The percentage of women among the National Assembly members in the fifteenth term inaugurated on 30 May 1996, is higher than the 2% of the fourteenth term, but relatively low in comparison with the world average of 10%. As for the June 1995 election of local councils, 71 women (i.e. 1.6% of the total) were elected in the primary local councils at the Shi(city), Kun(county) and Ku(District) levels. In the greater local councils at the Special City, metropolitan city and provincial levels, 55 members were women, representing 5.7% of the total. These figures confirm the difficulties still facing women wishing to participate politically. However, a system of proportional representation to ensure women's representation in local councils was introduced in the revised Election for Public Office and Election Malpractice Prevention Act of April 1995. Since its enactment, women represent 42 of the 97 council members (43.3%) from the greater administrative areas of the Special City, metropolitan cities and provinces where election by proportional representation is used. Furthermore, 34.4% of women candidates were successful in council elections in the primary administrative areas of Shi, Kun and Ku. The participation rate of women is expected to increase in the future.

43. Reasons for low political participation rates of women include, among others, a patriarchal tradition disfavoring women's participation in society, a lack of social recognition of the capability of women politicians, passive awareness among women themselves, and insufficient support from the

political parties. In addition, the constituency system has been pointed out as another disadvantage to women. Therefore, the Basic Women's Development Act of December 1995 provides that "national and local governments shall exert themselves through various methods to support increased women's participation in politics." The Government is considering various measures in response to the above Act.

Endeavors for revision of the family law

44. The family law containing gender discriminatory elements was completely revised in January 1990 and put into effect in January 1991. In response to complaints from some women's rights supporters that gender discrimination still remains, the Government assembled academic and professional personnel in the form of the Special Committee for Revision of the Civil Code. The Committee met 34 times from June 1993 to May 1996 to review the family law.

45. The main purpose of these present efforts is to revise articles, with a view to abolishing the mandatory waiting period for remarriage (Article 811 of the Civil Code), converting the prohibition of marriage between persons sharing the same surname and family origin (Article 809 of the Civil Code) into a prohibition of marriage among immediate relatives, and abolishing the head of family system.

46. It was already stated in the initial report that the Constitution confers on the President the right to issue emergency orders, to take financial and economic emergency actions, and to proclaim martial law (Article 76,

paragraphs 1 and 2, Article 77, paragraph 1). Presidential emergency orders, financial and economic emergency actions lose effect in case approval is not obtained from the National Assembly. As for martial law, the President must comply if the National Assembly, by a concurrent vote of a majority of the total members, decides that it should be lifted (Article 76, paragraph 4 and Article 77, paragraph 5).

47. Article 37, paragraph 2 of the Constitution states that even when the freedom and the rights of citizens are restricted by law for reasons of national security, maintenance of law and order or public welfare, no essential aspect thereof shall be violated. This provision, as it is, applies to the case of fundamental rights in the face of emergency orders and proclaimed martial law. Therefore, freedom of belief, choice of religion, decisions of conscience, silence, research and creative work, etc., shall not be infringed upon for any reason, and any restriction of fundamental rights to a degree that would render such rights meaningless shall not be tolerated.

In addition, the Constitution permits only the necessary minimum actions in implementing financial and economic orders. As for martial law, special measures may be taken only with respect to the necessity for warrants, freedom of speech, the press, assembly and association, or the powers of the Executive and the Judiciary. Infringement of the fundamental rights elaborated in Article 4, paragraph 2 of the Covenant shall not be tolerated. As an additional note, martial law has never been proclaimed since the current Constitution entered into effect in 1987.

48. In the Republic of Korea, a presidential financial and economic emergency order was issued on 12 August 1993. The Financial and Economic Emergency Order Relating to the Use of Real Names in Financial Transaction and Guarantee of Secrecy was approved by the National Assembly on 19 August 1993. The above emergency order pursues the earliest possible stabilization of the financial, real-name system. Namely,

it prevents circulation of illegal funds using alias, with an objective to eliminate collusion between politics and business, unearned income, speculation, etc., as a way of achieving justice on distribution. It therefore required prompt enforcement.

Protection of unborn children

Article 5

49. The Republic of Korea in no way construes provisions of the Covenant in a manner that would violate the rights and freedoms recognized by the Covenant. Nor does it restrict rights and freedoms beyond the limits prescribed by the Covenant. This is guaranteed by the determination of the Republic of Korea to continue to develop as a free democracy. Human rights protection, a system of checks and balances of powers, and independence of the Judiciary are crucial aspects of this development.
50. In addition, as already pointed out in the initial report, fundamental human rights not provided under the Covenant but recognized by the Constitution and Law of the Republic of Korea, shall not be infringed or restricted for lack of reference thereto in the Covenant.

Protection of pregnant women and infants

Article 6

Paragraph 1

Right to life

51. It was observed in the initial report that the right to life is protected by Article 10 of the Constitution, which guarantees the human dignity of every citizen. The Supreme Court has viewed the right to life as a paramount, inalienable right. To protect individuals from violent crime and to prohibit

arbitrary deprivation of life by individuals, the Criminal Code prescribes specific penalties for committing homicide in Chapter XXIV (Articles 250 to 256).

Protection of unborn children

52. So as to protect both the lives of the unborn and those of children after birth, Chapter XXVII of the Criminal Code prescribes a penalty for crimes of abortion. However, Article 14 of the Mother-Child Health Act provides for exceptions on abortion. These exceptions are restricted to the following causes: pregnancy leading to severe injury or danger to the mother's health; dysgenic or genetic mental handicap; physical disease of the pregnant woman; pregnancy induced by rape, or other crimes; pregnancy caused by incest. During revision of the Criminal Code in 1995, views were expressed that its provisions establishing abortion as a crime should be abolished. But, due to the absolute predominance of the national sentiment that lives of unborn children must be protected under the right to life, the crime of abortion was retained in the revised Criminal Code.

Protection of pregnant women and infants

53. In order to protect the lives of pregnant women, to promote the delivery of healthy infants, and to ensure proper infant care, the Mother-Child Health Act was enacted in May 1986. Mother-Child Health services have been established and are operated by the national and local governments. Regular medical examinations and vaccinations have been provided to pregnant women and infants, resulting in declines in the infant mortality rate.

Restrictions on the use of firearms by police officers

54. The use of firearms is severely restricted in order to prevent the potential deprivation of lives by arbitrary use of weapons by police officers. Police officers may not harm persons by use of firearms except in the following cases enumerated in Article 11 of the Police Officer Duty Performance Act:
- a) A person believed, with sufficient reason, to have committed crimes punishable by death or by imprisonment from three years to a life-term, is resisting arrest, escaping or being helped to escape by a third party, and there is no alternative means available but the use of firearms to intercept or arrest;
 - b) A person is resisting, escaping or being helped to escape by a third party, thereby impeding execution of a warrant of detention or search and seizure, and there is no alternative means available but the use of firearms to intercept or to arrest;
 - c) A criminal or insurrectionaries carrying dangerous items such as weapons, refuses at least three times to comply with police orders to abandon or surrender and there is no alternative means available but the use of firearms to intercept or to arrest;
 - d) An armed agent is refusing to comply with orders from a police officer to surrender during counter-espionage operations;
 - e) In cases of self-defense or emergency evacuation prescribed by the Criminal Code.

Paragraph 2

Death penalty system and crimes subject to death penalty

55. Several provisions of the Criminal Code and other special acts prescribe capital punishment as the most serious penalty. But crimes subject to the

death penalty are restricted to flagrant crimes: crimes endangering the existence of the State, such as insurrection (Article 87 of the Criminal Code), inducement of foreign aggression (Article 92 of the Criminal Code), espionage (Article 98 of the Criminal Code); crimes depriving other persons of their lives, such as homicide (Article 250, paragraph 1 of the Criminal Code), killing of lineal ascendants (Article 250, paragraph 2 of the Criminal Code), robbery-and-murder (Article 338 of the Criminal Code); atrocious crimes destroying homes and families, such as special robbery-and-rape (Article 5 of the Act on Special Measure Concerning Punishment of Crimes of Sexual Violence and Protection of Victims). The death penalty is executed by hanging (Article 66 of the Criminal Code).

Robbery and simple robbery-and-rape are not subject to the death penalty. The application of the death penalty is restricted to cases in which robbery is committed in combination with other crimes with destructive effects upon lives and homes of individuals, for example, robbery-and-murder or special robbery (robbery committed by trespassing upon a construction at night, accompanied by more than one person, or by being armed with a deadly weapon) and rape.

56. In the revision process of the Criminal Code and special penal acts, a number of objections have been raised regarding the continued application of the death penalty. Considering the current circumstances, however, in which criminal syndicates are being organized to kidnap and murder innocent citizens and to regularly intrude into peaceful homes to rob, rape or commit other flagrant crimes, abolition of the death penalty seems premature. But in recognition of the cause and spirit of the Covenant and Constitution of the Republic of Korea regarding human dignity, a consensus has been reached to narrow the scope of crimes subject to capital punishment.

From this viewpoint, the Act Concerning Aggravated Punishment for

Specified Crimes and the Act Concerning Aggravated Punishment for Specified Economic Crimes were revised on 31 December 1990 to remove the death penalty from 15 clauses including crimes of bribery, evasion of customs duties, etc. The revised Criminal Code, promulgated on 29 December 1995, has seen the deletion of the death penalty from five clauses, inter alia, inundation to residential structures leading to death or injury, obstruction of public traffic causing death or injury, obstruction of the use of public drinking water causing death or injury, and death resulting from robbery.

57. The death penalty is the most severe punishment within an allowable range prescribed by law. Penal servitude for life and for a shorter definite term are stipulated together with the death penalty, so that the death penalty can be rendered only in cases of flagrant crimes, while life imprisonment or penal servitude for a shorter definite term is the more common sentence on most occasions.

58. The Supreme Court has expressed the opinion on the death penalty, that "from a humanitarian or religious viewpoint, institution of the death penalty leading to deprivation of invaluable lives should be avoided. On the other hand, to protect other invaluable lives assailed by crimes and to maintain public peace and order, the continued existence of the death penalty for the penal policy of the State cannot but be justly admitted. Therefore, Article 338 of the Criminal Code (robbery and murder) stipulating death as a legal penalty is not considered to be unconstitutional." (Decision 87 DO 1458 of 8 September 1987). The Supreme Court thereby assented to the retention of the death penalty and decisions to the same effect have been made in that context thereafter.

60. However, the Supreme Court has stated that "the death penalty is the drastic punishment causing permanent deprivation of a human life, and is the heaviest penalty applied only when continuation of that life cannot be

tolerated; various factors should first be considered in ruling for the death penalty. Namely, the motive, the form, the nature of the crime, the means and the degree of brutality of the criminal act, the gravity of its result, the number of victims, emotions/sentiments toward the injury, the criminal's age, prior convictions, the circumstances following commitment of the crime, the environment, education and the upbringing of the criminal should be taken into consideration. After reflecting on all these factors the death penalty can be sentenced under absolutely inevitable circumstances (Decision 92 DO 1086 of 14 August 1992). As for the Constitutional Court, two constitutional petitions have been filed arguing that prescription of the death penalty in Article 338 of the Criminal Code is unconstitutional. Both were rejected for violation of the filing procedure for constitutional petitions (Decision 89 HEONMA 36 of 25 November 1993, 90 HEONBA 13 of 29 December 1994).

59. As the information below indicates, the number of death sentences and executions increased in 1995. This was due to an increase in the prosecution of flagrant, organized crimes, e.g., the crime syndicate "Jijonpa" run by six individuals including KIM Kih-Hwan, responsible for a series of immoral crimes, (i.e., kidnap, murder, mutilation and incineration of victims).

* Persons sentenced to death and executed (1991-1996)

Year	1991	1992	1993	1994	1995	1996(Jan.-Jun.)
Final Sentence	29	16	10	5	19	2
Execution	9	9	0	15	19	0

60. In 1991, seven death sentence appeals were reviewed, and none thereafter. All appeals were rejected.

Sentencing of death penalty under due process of law

61. As stated in the initial report, the death penalty is sentenced through a fair trial by an independent court, under due process of law, that is to say, innocence of the accused is presumed, right to counsel is fully protected and the rights of appeal and to a retrial are strictly observed.

Paragraph 4

Right to request amnesty and commutation

62. It has already been observed in the initial report that a person sentenced to capital punishment may petition for amnesty or commutation under Article 26 of the Constitution (right of petition), or Articles 4, 6 and 7 of the Petition Act. The President may grant amnesty or commutation under Article 79 of the Constitution (amnesty, commutation and restoration of rights) or Articles 2, 3, 5 and 8 of the Amnesty Act.

Of all those sentenced to the death penalty, one was granted amnesty and the sentences of 35 others were commuted between 1951 and 1990. Cases of amnesty or commutation have not occurred since 1991, owing to the fact that criminals sentenced to death in that period all committed the most flagrant crimes. The sentencing of the death penalty on those individuals received the full support from the people in the Republic of Korea.

Paragraph 5

Prohibition on execution of minors and pregnant women

63. As mentioned in the initial report, the Juvenile Act was revised to increase the minimum age for the death sentence from 16 to 18, and Article 469 of the Penal Procedure Code prohibits execution of a pregnant woman.

Article 7

Prohibition of torture and other inhumane treatment

64. Torture and inhumane treatment are categorically prohibited in the present Constitution, Criminal Code, Penal Procedure Code and other relevant laws, as discussed in the initial report.
65. The principle of prohibition of torture and inhumane treatment is provided in Article 12, paragraph 2 of the Constitution: "no citizen shall be tortured or be compelled to testify against him or herself in a criminal case." Confirmation of this principle can be found in Articles 123, 124, and 125 of the Criminal Code, Article 4-2 of the Act Concerning Aggravated Punishment for Specified Crimes and Article 198-2 of the Penal Procedure Code.

67. The revised Penal Procedure Code of 29 December 1995 obligates the prosecutor to inspect, more than once every month, not only the detention facilities of police stations, but also confinement areas of every investigating bureau. If the prosecutor decides that any act of torture or inhumane treatment has taken place, he or she can order the instant release

of arrested or detained suspects, or transfer the case to the Prosecutor's office.

66. Furthermore, Article 12, paragraph 7 of the Constitution provides that "when a confession is deemed to have been made against a defendant's will due to torture, violence, intimidation, unduly prolonged detention, deceit, etc., ... such a confession shall not be admitted as evidence of guilt, nor shall a defendant be punished by reason of such a confession." Article 309 of the Penal Procedure Code stipulates, in addition to the disqualifying factors mentioned above, that a confession likely to have been extracted involuntarily may not be admitted as evidence. Therefore it is guaranteed in respect of laws of evidence that torture and other acts of intimidation will not be inflicted upon the suspect.

Supreme Court decisions denying the proof value of confessions through torture, etc., have prohibited the use of torture. The Court's decision of 28 September 1993 (Decision 93 DO 1843) reflects this principle as it recounts as follows: "being under detention without a warrant for one and a half days, questioned by an investigator who was junior by 15 years, with knees knelt bent and without sleep, would have caused deep humiliation and indignity and might have led to a loss of will to defend oneself. Accordingly, from the general circumstances of the confession, there exists sufficient reason to believe that the accused's confession was not voluntary and therefore can't be admissible as a valid evidence of conviction."

67. To prevent torture or inhumane treatment in the performance of official duties, attention has been paid not only to legal or institutional systems, but also to the attitudes of public officials engaged in the judicial procedure. Therefore, education for public officials on the prevention of torture and other abuses has been emphasized. Under the direction of the Supreme Public Prosecutor's Office, each public prosecutor's office and branch

office has contributed to educating 7,301 judicial police officials and the personnel of the Public Prosecutor's Office, (i.e. 12,076 persons) by offering them special human rights training during the year of 1995.

68. In particular, investigating agencies including the police, are increasing their efforts to prevent torture or inhumane treatment. Also, as stated in the initial report, all necessary efforts have been made to prevent torture and other infringements of human rights by the appointment of a public prosecutor in charge of human rights affairs. In addition, the chief of investigation of each police station is appointed as a human rights protection officer. He or she is responsible for educating investigative officers and inspecting detention cells in promotion of the human rights protection policy. This practice has been ongoing since January 1992. The Human Rights Infringement Report Center was established in the Superintendent's Office of the National Police Agency in May 1993. The Center receives complaints and deals with human rights infringements such as violent or cruel acts during investigation.

Remedy for persons who have suffered from torture or inhumane treatment

69. Any person who has suffered from torture or inhumane treatment while being detained by authorities may file a complaint with the judicial authorities. In case the relevant illegal act is related to the scope of duty of a public official, the complainant may demand compensation from the State. Furthermore, the initial report already noted that, if the public prosecutor takes a disposition of non-indictment, in disregard of cruel treatment during an investigation, the plaintiff may apply to the relevant court to rule on the prosecutor's decision and to reopen the case.
70. Some investigating agents were punished due to violent or cruel treatment against criminal suspects during performance of duty. The number of cases

reported in recent years is 2 for 1991, 1 for 1992, 7 for 1993, and 4 for 1994.

Accession to the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment and submission of the initial report

71. As a means of proclaiming its goal of eradicating torture and inhumane treatment and participating in the international effort to assure human rights, the Republic of Korea acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention took effect on 8 February 1995, following deposit of the instrument of accession with the Secretary-General of the United Nations on 9 January 1995. The initial report under the above Convention was submitted on 9 February 1996 and it described various laws and institutions of the Republic of Korea protecting persons from torture or inhumane treatment.

Prohibition of cruel punishments

72. Article 12, paragraph 1 of the Constitution provides that "no person shall be punished or placed under preventive restrictions or subject to involuntary labour except as provided by law and through lawful procedures." This kind of punishment is delineated in Article 41 of the Criminal Code, and the Penal Administration Act prescribes strict and firm procedures for the execution of such punishment. Punishments not provided for by law are completely precluded herewith.