

REPUBLIC OF KOREA

CCPR A/47/40 (1992)

470. The Committee considered the initial report of the Republic of Korea (CCPR/C/68/Add.1) at its 1150th, 1151st and 1154th meetings, held on 13, 14 and 15 July 1992 (CCPR/C/SR.1150, SR.1151 and SR.1154). (For the composition of the delegation, see annex VIII.)

471. The report was introduced by the representative of the State party who explained that, subsequent to the revision of the Constitution on 29 October 1987, institutional measures had been taken to embody genuinely democratic principles and to enhance the protection of human rights. The Constitution, based on the Declaration for Democracy of 29 June 1987, represented a turning-point in the struggle for democracy in the Republic of Korea and provided for the election of the President of the Republic by direct popular vote. It had strengthened the power of the National Assembly *vis à vis* the administration and improved the procedure for appointing judges. A Constitutional Court had been established to review the constitutionality of laws and rule on petitions by individuals seeking redress of human rights infringements. Improvements had also been made in the penal administration by the institution of legal aid programmes and the abolition of the death penalty for 15 types of crime. Furthermore, amendments to the Penal Code and the Code of Penal Procedure to reinforce the principle of nullum crimen sine lege were being finalized.

472. Accession to the Covenant had played an important role in the overall strengthening of human rights and fundamental freedoms in the Republic of Korea. International human rights instruments had been translated into and published in the Korean language, and measures had been taken to publicize the Covenant among law enforcement officials. Provisions of the Covenant had already been applied by the Constitutional Court and the Government was currently undertaking a review of its position regarding the reservations it had made in acceding to the Covenant. The admission of the Republic of Korea to membership of the United Nations in September 1991 had given additional momentum to the Government's efforts to promote human rights in accordance with the Charter of the United Nations. Furthermore, in becoming a full-fledged member of ILO in December 1991, the Republic of Korea had strongly endorsed international endeavours to ensure the protection of fundamental trade union rights and was currently considering acceding to various ILO Conventions.

473. The representative of the State party further emphasized that one of the most important factors affecting the implementation of the Covenant in the Republic of Korea was the tense situation resulting from the division of the Korean peninsula. It was not until 1991, following the end of the cold war, that the two sides had succeeded in engaging in a serious dialogue and begun to seek a way to reunify the nation peacefully. The Agreement on Reconciliation, Non-Aggression and Exchanges and Cooperation had subsequently been concluded in February 1992 and had led to a series of regular consultations that were expected to narrow the gap between the two countries in every field. Nevertheless, it was only natural that a country that had been nearly overthrown by invasion should feel unable to relax its guard against further aggression or subversion of its liberal democratic system. Accordingly, the National Security Law had been adopted and continued to operate to protect the security and the integrity of the system. In spite of the call in some quarters for its abolition, it was the national consensus that the National Security Law should be maintained

until the signature of a peace agreement between the two countries. In the meantime, however, the Government remained determined to eliminate any infringement of human rights resulting from the application of that law beyond restrictions permitted by the Constitution and the Covenant.

474. With reference to article 1 of the Covenant, members of the Committee sought clarification of the position of the Republic of Korea, given the movement towards reunification, regarding the right of peoples to self-determination as well as their entitlement to democracy and to choose their own economic, social, political and cultural system.

475. With regard to the constitutional and legal framework within which the Covenant was implemented members of the Committee wished to receive further information on the status of the Covenant in domestic law. Observing that the Covenant had the same force as any ordinary domestic law, members wondered how a conflict between provisions of the Covenant and subsequent domestic legislation would be resolved. It was asked whether provisions of the Covenant had ever been invoked before the courts and whether a national institution had been established to deal with matters relating to human rights. More generally, with regard to remedies available to individuals, it was asked what effect petitions filed by individuals would have, whether an appeal could be lodged against a decision handed down as a result of a petition, what was the procedure for bringing a case before the Supreme Court and whether there were administrative courts. Clarification was requested of the meaning of article 37 of the Constitution, according to which freedoms and the rights of citizens would not be neglected on the grounds that they were not enumerated in the Constitution. Informed was requested on the manner in which the Korean population would be informed of the dialogue entered into by Korean authorities with the Committee and how, in the future, the Government would implement any decisions made about it by the Committee in pursuance of the Optional Protocol.

476. Necessary additional information was requested on the National Security Law, in particular as far as restrictions or limitations to articles 15, 18 and 19 of the Covenant were concerned. There was concern that, under that law, it was possible to arrest anyone found in conversation with persons from the Democratic People's Republic of Korea, that political prisoners who had been released from prison after serving their sentences were still required to report to the police every three months and that under its provisions even peaceful demonstrations could be forbidden. Further information was also requested on the meaning of the term "espionage" and on the extent to which the Supreme Court was empowered to decide on the legality of the provisions of the National Security Law.

477. As to the prohibition of discrimination on various grounds, clarification was requested of the absence in article 11 of the Constitution of some grounds of discrimination enumerated in article 2, paragraph 1, of the Covenant, particularly race, religion and political opinion. Information was also sought on any remaining de facto discrimination against women in the Republic of Korea, in particular regarding property rights, and measures taken to eliminate them, as well as on the meaning of the term "reasonable cultural discrimination" used in the report. It was asked whether the procurement of women for prostitution was a criminal offence in the Republic of Korea. Clarification was further requested of provisions of domestic law prohibiting foreigners from holding public office.

478. With regard to article 4 of the Covenant, members of the Committee wished to receive

clarification of legal provisions relating to a public emergency, in particular those relating to the powers of the President under those circumstances, and their conformity with the Covenant. Further information was also requested about the constitutional or statutory basis for ensuring conformity with article 4, paragraph 2, of the Covenant.

479. In connection with article 6 of the Covenant, the recent limitation of the categories of crimes subject to the death penalty was welcomed. Clarification of the crimes still carrying the death penalty, particularly under the National Security Law, was requested and, in particular, it was inquired whether the death sentence could still be imposed for robbery. Noting that under national legislation, widely varying penalties, which could range from five years' imprisonment to death, could be applied for practically the same offences, it was pointed out that the Committee had always clearly stated that, under the provisions of the Covenant, the death penalty could be imposed only for the most odious and serious crimes. Information was requested on instructions given to members of the police in connection with the use of force during public demonstrations, the method used to carry out the death penalty and on the legal provisions concerning abortion. Clarification was also requested on the statement in the report that the rights of people suffering from certain categories of communicable diseases could be limited.

480. With reference to articles 7, 8, 9 and 10 of the Covenant, members of the Committee wished to know whether any statement or confession made as a result of torture could be invoked as evidence in court proceedings; whether there had been any complaints of torture of prisoners or detainees and, if so, whether there had been any convictions on such charges. Clarification was requested with regard to a number of individual cases, particularly about how many officials had been found guilty of such violations, the sentences they had received, and whether persons who might have been sentenced in the past on the grounds of confessions obtained under such circumstances would benefit from the positive developments occurring in the Republic of Korea. It was also asked how quickly after arrest a person's family was informed; what were the regulations governing solitary confinement; what was the role of the national security agency with regard to article 9 of the Covenant; and at what age criminal law was applicable. Clarification was also requested of the compatibility with the Covenant of the very long period of pretrial detention, in particular under the National Security Law.

481. Clarification was requested with regard to the legal provisions governing the remedy of habeas corpus, or any other similar remedy, and concerning provisions which stated that an inmate was permitted to see other persons only "when deemed necessary". It was also asked whether the provisions under which the treatment of prisoners was designed to reform and educate them to help to reintegrate them into society, by inculcating a sound national spirit in them, were in accordance with the provisions of the Covenant. As for article 8 of the Covenant, further details were requested about the provisions of the Criminal Code which provided for penal servitude "with a certain amount of labour".

482. Members of the Committee wished to receive further information on the implementation of article 14 of the Covenant and on the structure of the judiciary, including the legal and administrative provisions governing tenure, dismissal and disciplining of members of the judiciary. It was asked how the independence and impartiality of the judiciary was guaranteed; whether there was any free legal aid and advisory scheme and, if so, how it operated; and whether prosecutors

were subject to executive or to judicial authority. Also, members of the Committee wished to know the exact nature of the role of the prosecutor, the guarantees of his independence and the responsibilities entrusted to the human rights consultation centres established by him. Clarification was requested about the compatibility with the Covenant of the restrictions mentioned in the report on the right of the person deprived of his liberty to communicate with a lawyer; and on the meaning of the reservation made by the Government relating to appeals against military trials under extraordinary laws. Information was also requested on the implementation of article 15 of the Covenant and in particular the retroactive effect of a decision of unconstitutionality.

483. With reference to articles 12 and 13 of the Covenant, clarification was requested about the *de facto* and *de jure* restriction or limitations on freedom of movement as far as visits to the Democratic People's Republic of Korea were concerned; about the compatibility with the Covenant of certain provisions of the Social Surveillance Act, under which anyone suspected of offences under the National Security Law could be kept under surveillance for up to two years on a renewable basis; and about the Resident Registration Law. It was asked what "preventive restrictions" could be imposed on freedom of movement under article 12 of the Constitution; and what legal provisions governed the admission or expulsion of "boat people" in the country. Information was also requested on what stage had been reached in negotiations being held to solve the serious problem of the separation of families and to bring about their reunion.

484. In connection with articles 17, 18 and 19 of the Covenant, it was asked whether attempts had ever been made to force people to recant their beliefs; whether efforts to promote anti-communism were still made despite the changes that had taken place in the world; whether conscientious objection was permitted under the law; and whether there were any political prisoners. It was also asked whether the condition whereby such prisoners could, apparently, be released only if they renounced their opinions and beliefs, was compatible with the Covenant. Clarification was also requested of the meaning of a sentence in the report that the purposes of the Broadcasting Act were to help the formation of public opinion.

485. With regard to articles 21 and 22 of the Covenant, members of the Committee wished to receive information on the alleged dissolution of certain private university or school teachers' unions. It was asked why an authorization had to be obtained in advance in order to organize meetings or demonstrations, and in how many cases such an authorization was refused and for what reasons.

486. In connection with article 24 of the Covenant, additional information was requested on the exact definition of "juveniles" as well as on measures taken to prevent the employment of children at an age when they should be enrolled in compulsory education.

487. With reference to article 25 of the Covenant, members of the Committee wished to know why certain teachers and journalists were prohibited from becoming founders or members of a political party.

488. Regarding article 27 of the Covenant, members of the Committee wished to receive additional information on the situation and composition of religious and other minorities in the country.

489. In his reply, the representative of the State party recalled that relations between the Republic of Korea and the Democratic People's Republic of Korea were among the most important factors affecting the human rights situation in his country. The adoption of the Agreement on Reconciliation, Non-aggression and Exchanges and Cooperation, as well as the Joint Declaration on the Denuclearization of the Korean Peninsula, had raised hopes of a dialogue between the two sides. In May 1992, three bodies had been established to work on a basic agreement governing unification. The two sides' differences on the nuclear issue had, however, hindered progress in the negotiations. According to his Government, the reunification of the peninsula had to be based on the principles of self-determination, peace and democracy. The other side took a different approach to that issue, and therefore it was difficult to predict the outcome of the current dialogue. It was, however, to be hoped that an agreement would soon be reached on family reunion since, at present, separated family members were still not allowed to telephone or write to one another.

490. The Republic of Korea was still coping with a very real threat of destabilization and military provocation and, until the other side stopped using terrorism as an instrument of its foreign policy, his country was bound to retain the National Security Law. That law was strictly applied and interpreted in accordance with the Constitution and the Covenant and was only used to counter subversive acts that endangered national security and the democratic order. The substance of a decision of the Constitutional Court of April 1990 which had, *inter alia*, defined activities "endangering national security and survival" as well as the "basic liberal democratic order" had been incorporated into the National Security Law. It was, therefore, not possible to be convicted under that law simply for expressing communist ideas or for having a positive attitude towards the Democratic People's Republic of Korea, provided that those sentiments did not lead to the commission of explicit acts. The concept of espionage covered only information that might jeopardize national security, and it was not invoked unless there had clearly been an attempt to pass information with the knowledge that that information would endanger the Republic of Korea. People had been convicted under the National Security Law if they had attempted or advocated the overthrow of the Government by violent means and, in all cases, defendants had enjoyed the full constitutional safeguard that ensured a fair trial. The amendment to the National Security Law was, however, not retroactive and the old law still applied to acts that had taken place before the amendment.

491. Referring to questions relating to the status of the Covenant, the representative of the State party explained that under article 6 of the Constitution the Covenant had the same effect as domestic law. Guarantees contained in the Covenant could, however, not be overturned by subsequent domestic legislation, owing to the Republic of Korea's commitment to human rights and the increasing public awareness of the Covenant. Furthermore, since most of the rights enshrined in the Covenant were also embodied in the Constitution, any conflicting domestic legislation would be deemed unconstitutional. If an individual claimed that his rights under the Covenant had been infringed, the court would normally rule on the basis of domestic legislation; in the rare cases where that was not possible, the Covenant could be invoked directly before the courts. Furthermore, according to his Government, all the rights enshrined in the Covenant were covered by article 37 of the Constitution and, therefore, could not be neglected. Complaints lodged by a petitioner would be dealt with by the relevant administrative agency and, if the petitioner was not satisfied with the result, he was automatically entitled to lodge a complaint with the courts. Moreover, individuals were free to activate the procedures outlined in the Optional Protocol, and in case the Committee

adopted views concerning the Republic of Korea, the Government would make every effort to reflect them in its future legislation.

492. With regard to questions relating to equality and non-discrimination, the representative of the State party stated that the list laid down in article 11 of the Constitution was purely indicative, and other grounds of discrimination, such as political opinion, were not excluded. The term “reasonable cultural discrimination” was intended to cover differentiation based upon a person’s educational accomplishments. Although foreigners were not guaranteed the right to hold public office, the Government did employ foreigners on a contractual basis. Despite the advance in women’s status, most female workers were still in low-paid jobs and there were few women in senior academic posts. Furthermore, there were not enough State child-care facilities for low-income families and traditional discrimination against women still lingered on. The Government had endeavoured to eliminate traditional stereotypes, promote women’s participation in social and economic activities and increase welfare facilities. The Government was also considering an amendment to a provision of the Nationality Act which provided that women were obliged to take their husband’s nationality on marriage and to be naturalized if the husband was naturalized.

493. Regarding article 4 of the Covenant, the representative of the State party stated that, under article 37 of the Constitution and in conformity with article 4, paragraph 2, of the Covenant, it was not permissible to restrict the “essential aspect” of a freedom or right. Under article 76 of the Constitution, the President could issue an emergency order in times of insurgency, external threat, natural disaster or serious financial or economic crisis. If the National Assembly subsequently found that the emergency order was not justified it would be revoked forthwith.

494. With reference to article 6 of the Covenant, the representative of the State party stated that, in addition to the offences covered by the National Security Law, 15 crimes were subject to the death penalty. The death sentence could be imposed in cases of robbery committed with vile aggravating circumstances. The Government had already considerably reduced the number of capital offences and intended to progress further in that direction. The National Security Law dealt with only one generic crime - anti-State activities that endangered national security - and many offences referred to in the law, such as murder for the purposes of insurrection, were also covered by the Criminal Code. Under the Penal Administration Act the death penalty was carried out by hanging. Although abortion was penalized under the Criminal Code, the Maternal and Child Health Act permitted exceptions in cases of rape, incest and threat to the health of the mother. The reference in the report to abortions for eugenic reasons covered cases where the foetus was severely deformed.

495. Regarding article 7 of the Covenant, the representative of the State party emphasized that the courts would not accept a confession unless it could be proved beyond reasonable doubt that it had been made voluntarily. Referring to specific cases mentioned by some members of the Committee, he explained that the conviction of Mr. Kim Rae Park had been based on objective evidence and not on a confession extracted under torture, as had been alleged. His sentence had been reduced for good behaviour and he had been released on probation on 25 May 1991. Following an investigation into the unnatural death of Mr. Jong Chul Park in January 1987, 5 police officers had been convicted and sentenced to prison terms of between 3 and 10 years. Additionally, 6 other officers had been sentenced to prison for 2-10 years, 14 had received suspended sentences and 9 more cases were awaiting trial. Places of detention were inspected regularly by prosecutors and the Ministry of

Justice and any complaints of inhumane treatment were investigated by the prosecutor's office. Concerning long-term prisoners convicted of attempts to overthrow the Government by violence, the representative said that the Government could not afford to release them unless it was sure that their release would not jeopardize national security.

496. Responding to questions raised in connection with article 9, 10 and 11 of the Covenant, the representative of the State party said that detention pending trial could not exceed six months and the court had to render its judgement during that period or release the suspect. There were no exceptions to a suspect's right to communicate with counsel and the Constitutional Court had decided, in January 1992, that article 62 of the Penal Administration Act was unconstitutional because it prohibited a detainee from meeting his attorney without being accompanied by a prison officer. The purpose of the correctional system was the prevention of further crimes and the rehabilitation of prisoners. To accomplish the latter, inmates received correctional education aimed at cultivating sound civic values with a view to preventing the recurrence of crimes. Inmates incarcerated under the National Security Law also participated in correctional education programmes, including exchange of views about competing ideologies, the goal being that a prisoner's re-entry into society should not pose a problem to the country. Inmates whose beliefs, translated into action, might pose a threat to the country were not eligible for parole. The inculcation during prisoners' education of what was referred to in the Republic of Korea as a "sound national spirit" aimed at ensuring that convicted persons when re-entering society would be imbued with traditional cultural values unique to their country and thus be capable of adapting to a normal life.

497. Referring to questions relating to article 14 of the Covenant, the representative of the State party said that prosecutors were officials of the executive branch, coming under the authority of the Ministry of Justice, and were guaranteed independence by the Prosecution Organization Act. They could not be suspended, except by impeachment or conviction for certain crimes, and their salary levels were guaranteed. The National Security Planning Agency gathered domestic security information about communist and subversive activities and conducted investigations in a limited number of cases, including alleged violations of the National Security Law. Judges served for 10 years and could be reappointed for further terms; they could not be dismissed except by impeachment or conviction for certain crimes and their political activities were restricted. The Constitutional Court ruled on the constitutionality of laws, impeachment cases, the dissolution of political parties and conflicts of jurisdiction. The Military Court Act specified the procedures to be applied by military justice and guaranteed the fundamental rights of the defendant in the same way as the civil courts' Code of Criminal Procedure, the only exception being the right to appeal. Military justice could apply to civilians who committed such crimes as military espionage, supply of contamination food to soldiers, and unlawful activities in respect of prisoners-of-war and sentries under martial law. In the latter connection, the term "extraordinary law" mentioned in the report referred to martial law as declared in states of siege or on the outbreak of war.

498. With reference to article 12 and 13 of the Covenant, the representative of the State party explained that, since the hope of peaceful reunification had yet to be fulfilled, some restrictions were placed on travel to the Democratic People's Republic of Korea, in accordance with article 12, paragraph 3, of the Covenant, which provided for restrictions to the freedom of movement for reasons of national security. The Government was working with the Office of the United Nations

High Commissioner for Refugees to provide humanitarian assistance to boat people until they could be resettled in the country of their ultimate destination or a third country willing to accept them. So far, about 1,220 boat people had been resettled in third countries after arriving in the Republic of Korea and 155 were still residing in a temporary accommodation camp.

499. In response to questions relating to articles 17, 18 and 19 of the Covenant, the representative of the State party emphasized that the Republic of Korea did not practice censorship. The writings of Marx, Lenin and other communist works were, for instance, freely available in bookstores and university libraries. Propaganda that could destabilize the country was, however, restricted under the National Security Law and the publication, copying, transportation or dissemination of propaganda for the purpose of jeopardizing national security was forbidden. The Performance Act, the Movies Act and the Act concerning Records and Video Materials imposed, in accordance with article 19 of the Covenant, very limited restrictions on movies, records and tapes for the purpose of maintaining public order and morality.

500. With regard to articles 21, 22 and 25 of the Covenant, the representative of the State party stated that, on receiving notice of an assembly or demonstration, the police examined it to see whether the gathering would occur at a prohibited time and place and whether it would disrupt traffic. If the demonstration had the potential to create violence or posed a clear threat to public order and safety, a prohibition order was issued, nullification of which could be sought in the courts. A recently established Assembly and Demonstration Consideration Committee had issued objective standards for limiting prohibitions of assemblies, with a view to better protection of human rights. Teachers and journalists were prohibited from joining certain political parties so as to preserve their strict impartiality in party politics. Under article 8 of the Constitution, if the purpose or activities of a political party were contrary to the fundamental democratic order, the Government could bring an action for its dissolution before the Constitutional Court.

501. Regarding article 24 of the Covenant, the representative of the State party stated that the Government was making every effort to prevent the employment of children in bars or in the entertainment business.

502. In connection with article 27 of the Covenant, the representative of the State party emphasized that the Republic of Korea was a homogenous nation with a distinct population sharing a common language and culture. There were, however, approximately 51,000 residents of foreign origin, of whom 23,500 were Chinese. All of them enjoyed fundamental human rights in every field, pursuant to the Constitution and the Covenant.

Concluding observations by individual members

503. Members of the Committee thanked the representative of the State party for his cooperation in presenting the report and for having endeavoured to respond to the many questions asked by members. The report, which had been submitted within the specified period, contained detailed information on the laws and regulations relating to the implementation of the Covenant. However, it lacked information about the implementation of the Covenant in practice and about factors and difficulties impeding the application of the Covenant.

504. Members noted with satisfaction that the Republic of Korea had acceded to a number of international human rights instruments, including the Covenant and its Optional Protocol, and had joined ILO. Members were also pleased to note that consideration was being given to the possibility of withdrawing the Republic of Korea's reservations to the Covenant. Furthermore, progress had been made with regard to legal aid and towards narrowing the scope of operation of the National Security Law. Internal dissent was now possible and the Constitutional Court was playing a vigorous and independent role.

505. At the same time, it was noted that some of the concerns expressed by members of the Committee had not been fully allayed. The Constitution itself did not cover all the rights enshrined in the Covenant and the argument that, under article 37 of the Constitution, various rights and freedoms not enumerated in the Constitution were not to be neglected, was not deemed satisfactory. Deep concern was expressed over the continued operation of the National Security Law. Although the political situation in which the Republic of Korea found itself undoubtedly had implications for public order in the country, the importance of such a situation ought not be overemphasized. It was thus felt that ordinary laws and specifically applicable criminal laws should be sufficient to deal with offences against national security. It was noted with concern that some issues addressed by the National Security Law were defined in somewhat vague terms, which seemed to allow for broad interpretation and result in sanctions for acts that might not be truly dangerous for the State. Furthermore, a broad definition of State secrets in connection with the definition of espionage was potentially open to abuse.

506. Members also expressed concern in respect of the persisting areas of discrimination against women; the still high number of offences liable to the death penalty; the inclusion of robbery among the offences carrying the death penalty, which seemed clearly to contravene article 6 of the Covenant; the use of excessive force by the police; the excessively long periods of pretrial detention; the actual implementation of article 9, paragraph 3, of the Covenant; the extent of the investigatory powers of the National Security Planning Agency; the implementation of article 12, particularly as concerned visits to the Democratic People's Republic of Korea, problems relating to article 15 of the Covenant; the continued imprisonment of persons on grounds of their political opinion; and the request of an advance authorization for assemblies and demonstrations. It was also considered that the conditions under which prisoners were being re-educated did not constitute rehabilitation in the normal sense, but rather coercion and an infringement of the provisions of the Covenant relating to freedom of conscience.

507. The representative of the State party assured the members of the Committee that the comments that had been made would be transmitted to his Government and stressed the importance his country attached to the dialogue with the Committee. The outcome of the consideration of the report by the Committee had increased the Government's awareness of its responsibilities under the Covenant. Positive comments made by members would be an encouragement to renew efforts in favour of human rights while criticisms would act as an accelerator where further improvement was called for.

508. In concluding the consideration of the initial report of the Republic of Korea, the Chairman thanked the delegation for its clear and comprehensive replies to the questions asked by members of the Committee. He expressed the hope that all the Committee's comments would be transmitted to the competent bodies and taken into account during the formulation of new legislation and the

revision of existing laws.

Comments of the Committee

509. As indicated in paragraph 45 above, the Committee, at its 1123rd meeting, held on 24 March 1992, decided that henceforth, at the conclusion of the consideration of a State party's report, it would adopt comments reflecting the views of the Committee as a whole.

510. In accordance with that decision, at its 1173rd meeting, held on 29 July 1992, the committee adopted the following comments.

Introduction

511. The Committee expresses its appreciation for the State party's well-documented report, which had been submitted within the specified time-limit. The report contained detailed information on the laws and regulations relating to the implementation of the Covenant. However, the Committee notes that the report does not include sufficient information about the implementation of the Covenant in practice and about factors and difficulties that might impede the application of the Covenant. At the same time the Committee appreciates the clear and comprehensive oral replies and detailed clarifications given by the delegation.

1. Positive aspects

512. The Committee notes with satisfaction that in recent years the Republic of Korea has become a party to a number of international human rights instruments, including the Covenant and its Optional Protocol, and that it has made the declaration provided for in article 41 of the Covenant. It has also joined ILO. The Committee also notes with satisfaction that consideration is currently being given to the possibility of withdrawing the Republic of Korea's reservations to the Covenant. Additionally, progress has been made in regard to providing legal aid and towards narrowing the scope of operation of the National Security Law. Internal political dissent is now more accepted. The Constitutional Court, an independent organ, is playing a vigorous and important role.

2. Factors and difficulties impeding the application of the Covenant

513. The Committee notes that the relations between the Republic of Korea and the Democratic People's Republic of Korea still appear to be an important factor affecting the human rights situation in the Republic of Korea. The recent conclusion of the Agreement on Reconciliation, Non-aggression and Exchange and Cooperation appears to constitute a positive step. According to the authorities, the Republic of Korea is, however, still coping with a very real threat of destabilization and military provocation, and therefore the Government continues to hold the view that it is essential to retain the National Security Law in order to protect the security and integrity of its liberal democratic system.

3. Principal subjects of concern

514. The Committee expresses its concern over the fact that the Constitution does not incorporate

all the rights enshrined in the Covenant. Also, the non-discrimination provisions of article 11 of the Constitution would seem to be rather incomplete as compared with articles 2 and 26 of the Covenant. These concerns are not allayed by the argument that, pursuant to article 37 of the Constitution, various rights and freedoms not enumerated therein are not to be neglected.

515. The Committee's main concern relates to the continued operation of the National Security Law. Although the particular situation in which the Republic of Korea finds itself has implications for public order in the country, its influence ought not to be overestimated. The Committee believes that ordinary laws and specifically applicable criminal laws should be sufficient to deal with offences against national security. Furthermore, some issues addressed by the National Security Law are defined in somewhat vague terms, allowing for broad interpretation that may result in sanctioning acts that may not be truly dangerous for State security and responses to those acts unauthorized by the Covenant.

516. The Committee wishes to express its concern regarding the use of excessive force by the police; the extent of the investigatory powers of the National Security Planning Agency; and the implementation of article 12, particularly in so far as visits to the Democratic People's Republic of Korea are concerned. The Committee also considers that the conditions under which prisoners are being re-educated do not constitute rehabilitation in the normal sense of the term and that the amount of coercion utilized in that process could amount to an infringement of the provisions of the Covenant relating to freedom of conscience. The broad definition of State secrets in connection with the definition of espionage is also potentially open to abuse.

517. The Committee also expresses concern about the still high number of offences liable to the death penalty. In particular, the inclusion of robbery among the offences carrying the death penalty clearly contravenes article 6 of the Covenant. The very long period allowed for interrogation before charges are brought is incompatible with article 9, paragraph 3, of the Covenant. Other areas of concern relate to the continued imprisonment of persons on grounds of their political opinion; the persistence of discrimination against women in certain respects; problems relating to the principle of the lawfulness of the penalties covered by article 15 of the Covenant; and the requirement for advance authorization of assemblies and demonstrations.

4. Suggestions and recommendations

518. Taking into account the positive developments regarding respect for human rights that have taken place in the State party over recent years, the Committee recommends that the State party intensify its efforts to bring its legislation more in line with the provisions of the Covenant. To that end, a serious attempt ought to be made to phase out the National Security Law, which the Committee perceives as a major obstacle to the full realization of the rights enshrined in the Covenant and, in the meanwhile, not to derogate from certain basic rights. Furthermore, measures should be taken to reduce the cases in which the death penalty is applied; to harmonize to a greater extent the Penal Code with the provisions of article 15 of the Covenant; and to reduce further the restrictions on exercising the right to peaceful assembly (art. 21). Finally, the Committee suggests that the Government actively consider withdrawing its sweeping reservation in respect of article 14 and take additional steps with a view to enhancing public awareness of the Covenant and the Optional Protocol in the State party.

CCPR A/55/40 (2000)

124. The Committee considered the second periodic report of the Republic of Korea (CCPR/C/114/Add.1) at its 1791st and 1792nd meetings (see CCPR/C/SR.1791 and 1792), held on 22 October 1999, and adopted the following concluding observations at its 1802nd meeting, held on 29 October 1999.

1. Introduction

125. The Committee welcomes the second periodic report submitted by the Republic of Korea within the specified time limit. The Committee regrets, however, that despite its comment that the initial report of the State party did not include sufficient information about implementation of the Covenant in practice, the second periodic report suffered from the same deficiency. The Committee further regrets the lack of responses to a number of questions posed by its members during the examination of the report. As a result, the Committee was prevented from fully monitoring compliance by the State party with all provisions of the Covenant.

2. Factors and difficulties affecting the implementation of the Covenant

126. The Committee appreciates the security concerns of the State party that result from the fact that no final agreement has been reached between the two Koreas. The Committee stresses, however, that citing security concerns does not of itself justify restrictions on Covenant rights, and that even when a State party is faced with genuine security problems restrictions on rights must meet the requirements of the Covenant.

3. Positive factors

127. The Committee commends dissemination of the report among the non-governmental organizations that contributed significantly to the Committee's examination of the report. The Committee takes note of an increasing openness of society, as is evident from the abolition of the Performance Monitoring Committee, which had been responsible for censorship of the performing arts.

128. The Committee notes the enactment of a number of laws aimed at strengthening protection of Covenant rights, especially the rights to equality protected under article 2, paragraph 1, and articles 3 and 26 of the Covenant. These laws include the Basic Women's Development Act, amendments introduced in the Employment Equality Act, the Handicapped Employment Act, the Gender Discrimination Prevention and Relief Act and the Prevention of Domestic Violence and Victim Protection Act.

129. The Committee notes measures undertaken to enhance awareness of the Covenant and of human rights in general that include obligatory human rights training for judges, lawyers and prosecutors. It also welcomes the translation into the Korean language and the distribution of the major international human rights instruments.

4. Principal areas of concern and recommendations

130. The status under domestic law of the rights provided for in the Covenant remains unclear, particularly since the Korean Constitution does not enumerate all of these rights and the extent and criteria under which they may be limited. The Committee is concerned that article 6 of the Constitution, according to which international treaties ratified by the State party have the same effect as domestic laws, has been interpreted as implying that legislation enacted after accession to the Covenant has status superior to that of Covenant rights.

131. The Committee reiterates its grave concern expressed after consideration of the initial report regarding the continued existence and application of the National Security Law. According to the State party, the National Security Law is used to deal with legal problems that arise from the division of Korea. However, the Committee is concerned that it is also used to establish special rules of detention, interrogation and substantive liability that are incompatible with various articles of the Covenant, including articles 9, 18 and 19.

132. The Committee reiterates the recommendation made after consideration of the State party's initial report that the State party phase out the National Security Law.

133. The Committee considers that the scope of activities that may be regarded as encouraging "anti-State organizations" under article 7 of the National Security Law is unreasonably wide. From the cases that have come before the Committee in individual communications under the Optional Protocol and other information provided on prosecutions brought under article 7, it is clear that the restrictions placed on freedom of expression do not meet the requirements of article 19, paragraph 3, of the Covenant, as they cannot be regarded as necessary to protect national security. The Covenant does not permit restrictions on the expression of ideas merely because they coincide with those held by an enemy entity or may be considered to create sympathy for that entity. The Committee also emphasizes that internal directives regarding prosecution policy do not provide adequate guarantees against the use of article 7 in a manner that is incompatible with the Covenant.

134. The State party must urgently amend article 7 so as to make it compatible with the Covenant.

135. The Committee is deeply concerned about the laws and practices that encourage and reinforce discriminatory attitudes towards women. In particular, the family headship system both reflects and reinforces a patriarchal society in which women have a subordinate role. The practice of identifying the sex of fetuses, the disproportionate percentage of boys among second- and third-born children and the high rate of maternal mortality that apparently arises from the number of unsafe abortions are deeply disturbing. The Committee stresses that prevailing social attitudes cannot justify failure by the State party to comply with its obligations under articles 3 and 26 of the Covenant to ensure equal protection of the law and the equal right of men and women to the enjoyment of all the rights set forth in the Covenant.

136. While welcoming the new legislation enacted by the State party for the prevention and punishment of domestic violence, the Committee remains concerned at the high level of such violence and the remaining inadequacies in law and practice.

137. Specifically, the Committee is concerned that the offence of rape requires evidence of resistance by the woman, that marriage to the victim of rape provides a defence to the accused, and that it appears that marital rape is not a criminal offence.

138. The new legislation on prevention and punishment of domestic violence should be strengthened by eliminating existing legal rules that weaken the protection of women against such violence.

139. The Committee is concerned over the extent of discrimination against women in employment, over the lack of adequate protection for the high number of women employed in small enterprises and over the disparity between the earnings of men and women.

140. In order to ensure compliance with articles 3 and 26 of the Covenant, the State party must promote effective implementation of the Gender Discrimination Prevention and Relief Act enacted in January 1999, and adopt positive measures to guarantee equality of opportunity and conditions of employment for women.

141. The law of criminal procedure, under which the detention of a suspect is subject to judicial review only if the detainee lodges an appeal, is incompatible with article 9, paragraph 3, of the Covenant, which provides that every person detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. The excessive length of permissible pre-trial detention (30 days in ordinary cases and 50 days in cases involving the National Security Law), and the lack of defined grounds for such detention also raise questions of compliance by the State party with article 9.

142. The State party must amend its law so as to ensure respect for all the rights of detained persons provided for under article 9 of the Covenant.

143. The Committee takes note of the procedures for monthly monitoring of conditions in detention centres by prosecutors, but it is concerned that these and other mechanisms are not adequate to prevent instances of torture and cruel, inhuman and degrading treatment of detainees. The small percentage of cases in which complaints of torture or cruel, inhuman and degrading treatment lead to action against officials calls into question the credibility of the existing procedures of investigation. The Committee is also concerned that non-compliance by the State party with the requirements of article 9 of the Covenant, and the seemingly widespread reliance of the prosecuting authorities and the courts on confessions by accused persons and accomplices, facilitate acts of torture and cruel, degrading and inhuman treatment by interrogating officials.

144. Establishment of an independent body to investigate allegations of torture and amendments of the criminal procedure mentioned in paragraph 142 above should not be delayed.

145. While the Committee welcomes the abolition of the "ideology conversion oath", it regrets that it has been replaced by a "law-abidance oath". From the information provided to the Committee it remains unclear which prisoners are required to sign the oath and what the consequences and legal effects of the oath are. The Committee is concerned that the oath requirement is applied on a discriminatory basis, particularly to persons convicted under the National Security Law, and that in

effect it requires persons to make an oath to abide by a law that is incompatible with the Covenant.

146. The "law-abidance oath" imposed on some prisoners as a condition for their release should be abolished.

147. The Committee regrets that, in view of the paucity of the information provided in the report and in the responses of the delegation during consideration of the report it is unable adequately to assess the extent of judicial independence. It is particularly concerned about the system of reappointment of judges which raises serious questions about judicial independence.

148. The State party must provide full details on the system and actual practice of judicial appointments.

149. The extensive use of wiretapping raises serious questions of compliance by the State party with article 17 of the Covenant. The Committee is also concerned that there are no adequate remedies by way of correction of inaccurate information in databases or for their misuse or abuse.

150. The prohibition of all assemblies on major roads in the capital would appear to be overbroad. While some restrictions on assemblies on main roads in the interests of public order are permissible, article 21 of the Covenant requires that all such restrictions be in conformity with the law and be necessary in a democratic society. The absolute restrictions on the right to hold assemblies on main roads imposed by the State party do not meet these standards.

151. The Committee notes the changes in law that allow teachers to form trade unions and public servants to form workplace associations. Nevertheless, the Committee is concerned that the remaining restrictions on the right to freedom of association of teachers and other public servants do not meet the requirements of article 22, paragraph 2, of the Covenant.

152. The State party should continue with its programme of legislation regarding the right of association of public servants with the object of ensuring that all persons in Korea shall enjoy their rights under article 22 of the Covenant.

153. The Committee welcomes the withdrawal by the State party of its reservations on articles 23, paragraph 4, and 14 paragraph 7. It strongly recommends that the State party review the remaining reservations on articles 14, paragraph 5, and 22 with a view to their eventual withdrawal.

154. In relation to the Committee's Views on Communications submitted under the Optional Protocol, the Committee finds it inappropriate that the State party should require the author of a communication on which the Committee has expressed its views to seek a remedy through the domestic courts, by way of further appeal or a claim for compensation.

155. Rather than referring such cases back to the domestic courts, which have already pronounced on the matter, the State party should immediately proceed to give effect to the Views expressed by the Committee.

156. The Committee calls on the State party to continue its efforts to provide human rights

education to its public officials. It recommends that the State party consider making such education obligatory, not only for public officials but for members of all human rights-related professions, including social workers and medical personnel.

157. The Committee requests that the State party submit its third periodic report by 31 October 2003. That report should be prepared in accordance with the revised guidelines adopted by the Committee and should give particular attention to the issues raised in these concluding observations. The Committee requests that these concluding observations and the next periodic report be widely disseminated in the Republic of Korea.