

## REPUBLIC OF KOREA

### CESCR E/1996/22

64. The Committee considered the initial report of the Republic of Korea on articles 1 to 15 of the Covenant (E/1990/5/Add.19) at its 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> meetings on 2 and 3 May 1995 and, at its 27<sup>th</sup> meeting on 18 May 1995, adopted the following concluding observations.

#### A. Introduction

65. The Committee expresses its appreciation to the State party for its comprehensive report, prepared largely in conformity with the Committee's guidelines, and for the written replies to the list of questions made available to it before the session. The State party is also to be commended for sending a large high-level delegation to discuss the report and for its useful dialogue with the Committee. The Committee notes, however, that the report, though comprehensive in form, provided information which in many areas was excessively general in content. Accordingly, the offer of the Government to furnish further and precise written responses to questions posed is welcomed. The Committee appreciates the subsequent prompt submission of those replies on 5 May 1995 by the Government of the Republic of Korea.

#### B. Positive aspects

66. The Committee notes with satisfaction the significant and rapid economic growth during the past 30 years in the Republic of Korea and that the considerable material progress achieved should lay the foundation for the enhanced enjoyment of economic, social and cultural rights. The Committee further notes the first steps taken towards the development of a social security system appropriate to a country at the Republic of Korea's stage of development. Further positive developments in the Korean society are evidenced by the virtual eradication of illiteracy among all sectors of society other than older persons, the increase in the level of life expectancy and the efforts to increase the national housing pool.

67. The Committee takes note of the recent legislative attempts to address the problem of violence against women in the family and to recognize the rights of women to inheritance.

68. The Committee welcomes the establishment of human rights focal points in the major government ministries, including the provision of legal aid through the introduction of the Public Legal Officers System.

#### C. Factors and difficulties impeding the implementation of the Covenant

69. The Committee recognizes that the Republic of Korea is passing through a period of social and political transition. The developments in each of these areas have not been sufficiently balanced. The efforts and achievements in securing outstanding and rapid economic growth have not always been matched by an appropriate level of protection of economic, social and cultural rights. It is also

acknowledged that the country has only recently emerged from a sustained period of military rule to a system of democratic government and that it faces a heavy agenda of changes in the establishment of a civic society, particularly in the face of deeply entrenched social prejudices. Finally, problems deriving from the political partition of the Korean peninsula continue to impose a pervasive fortress mentality arising from perceived threats to national security.

#### D. Principal subjects of concern

70. The Committee is concerned as to the status of the Covenant in national law. Although representatives of the Republic of Korea have asserted that all domestic legislation is consistent with the provisions of the Covenant, the Committee remains concerned that no mechanisms exist permitting the verification of compatibility between domestic legislation and the provisions of the Covenant.

71. The Committee is of the view that restrictions concerning the right to form trade unions are not consistent with the obligations assumed by the Republic of Korea under article 8 of the Covenant. There is no apparent reason for the ban on the formation of trade unions by groups such as the teaching profession, particularly where the prohibition does not apply to other groups, including workers in the defence industry. Similarly, the regulations concerning the right to strike are excessively restrictive and would appear to leave to the authorities an almost absolute discretion in the determination of the legality of incidents of industrial action. While acknowledging the cultural traditions of the Republic of Korea, including the high esteem in which teachers are held, the Committee finds this to be a wholly unacceptable basis on which to defend the excessive limitation on the freedom of significant sectors of the Korean society to enjoy the basic right to belong to unions of their choice.

72. The Committee is also greatly disturbed by reports of dismissals for engaging in industrial action and of police attacks on trade unionists engaged in peaceful activities.

73. Despite the Government's stated policy and its range of special programmes, the Committee views the situation of women in Korean society as very unsatisfactory. In all areas of life women suffer from discriminatory practices due to many factors, including long-standing cultural prejudice. In the home, the subjugation of women is evidenced by the very high levels of domestic violence against them disclosed in the Government's report. Notice is also taken of such anachronistic rules as the legal inability of a woman in certain cases to vest her nationality in her child. In education, the disparities between the percentages of boys and girls in second- and third- level institutions are disturbing. In this regard, the Committee observes that the lack of access to and high cost of secondary and higher education contribute to the low rate of female participation.

74. Particular concern is expressed as to the wage differential between men and women and to other discriminatory practices in the workplace, including an apparently high rate of sexual discrimination in recruitment. The Committee expresses its concern with regard to the non-enforcement by the Government of its own policies and legislation in these matters.

75. The Committee is alarmed that there has been a relatively high incidence of accidents in the

workplace in the Republic of Korea and that there has been a failure to address the problem adequately. It is especially disturbing that various workplace regulations do not apply to enterprises with fewer than 10 employees. The failure of minimum-wage regulations to extend to staff of these enterprises is to be regretted and the Committee welcomes the Government's stated intention to review the situation. The conditions and treatment of non-nationals in the Korean workforce give cause for concern and the information made available to the Committee by the Government does not disclose an adequate range of legal measures to protect such workers.

76. The Committee is disturbed by a range of features of the Korean education system. Only primary education is provided free of charge. However, given the strength of the Korean economy it appears appropriate that free education should also extend to the secondary and higher sectors. The Committee also notes the acknowledgement made orally by the Government's representative that there is a severe problem of undersupply of places in higher education resulting in extremely competitive entry requirements. One consequence of this situation is that private institutions are likely to raise their charges and thus force the children of lower-income groups to stay out of the system.

77. The Committee is concerned by the housing situation in the Republic of Korea and considers that it has not been given adequate information on the subject, especially with regard to unsuitable housing, the number of homeless people and forcible evictions. It notes that, according to international non-governmental sources, 720,000 persons were evicted on the occasion of the Olympic Games in Seoul and that no information has been provided on their subsequent situation, while 16,000 persons are said to have been evicted since February 1992. Lastly, according to national non-governmental sources, 4,000 evictions took place in 1994. Despite the Committee's concerns, there has been no response to its questions or, more generally, to problems relating to the right to housing.

78. The Committee is of the view that the Government, in view of its economic resources, has inadequately addressed the economic, social and cultural rights of the most marginalized members of society. Among categories of person who are in need of greater attention and concern are the very poor, the homeless and especially victims of severe physical and mental handicap.

#### E. Suggestions and recommendations

79. The Committee draws attention to the obligation on the Republic of Korea to ensure the status of the Covenant in the field of economic, social and cultural rights as superior to all national law, whether precedent or subsequent. It recommends that all laws be examined in order to ensure conformity with the provisions of the Covenant. It also recommends that programmes of education be extended in order to increase awareness of the provisions of the Covenant throughout society and to ensure its application in the judicial process, as well as its observance by law enforcement agencies.

80. The Committee recommends that the Government immediately amend its laws and regulations concerning the freedom to form trade unions and the right to strike in order to bring them into compliance with the Covenant and with other applicable international standards. In particular, measures should be taken to ensure that teachers, civil servants and others have the right to form

trade unions and to take strike action.

81. The Committee, though acknowledging the value of existing governmental programmes, urges that priority be given to the promotion of the role of women in society. It is strongly recommended that, in order to deal with discrimination against women, it is necessary to allocate resources to carry out a range of initiatives in the fields, inter alia, of juvenile and adult education, enhanced job opportunities, law reform and the administration of justice. It is also recommended that programmes should be introduced with a view to redressing the imbalances in the status of women in the Korean society.

82. The Committee recommends that the Republic of Korea extend the regulations on safety in the workplace and on minimum wages to enterprises with fewer than 10 employees. All improvements in conditions of work should be applied equally to national and non-national workers, and existing discriminatory practices against those non-nationals currently employed should be eradicated.

83. The Committee recommends that appropriate measures should be taken in order more effectively to guarantee the right to housing and, in particular, to ensure that no evictions are carried out without offers of alternative housing, in accordance with the Committee's General Comment No. 4 (1991). It would also like further information on the application of article 11 of the Covenant in the Republic of Korea and, in particular, on the right to housing.

84. The Committee also recommends that immediate attention be given to problems in the field of education and, in particular, to enhancing the access of the most vulnerable and disadvantaged groups, especially women, to secondary and higher education, as well as to the need for an expanded higher education sector. The Committee recommends that greater attention be given to the provision of human rights education at all levels in the school system.

85. While it is acknowledged that the Republic of Korea has introduced elements of a social welfare system, it is urged to proceed swiftly with its expansion to meet the needs of those on the margins of society, including foreign workers. The protection of foreign workers needs, in its turn, particular attention, especially considering their social isolation and vulnerability. Particular attention is drawn to the very poor, the homeless and victims of severe mental or physical illness.

## **CESCR E/2002/22 (2001)**

211. The Committee considered the second periodic report of the Republic of Korea on the implementation of the Covenant (E/1990/6/Add.23) at its 12th to 14th meetings held on 30 April and 1 May 2001, and adopted at its 25th and 26th meetings, held on 9 May 2001, the following concluding observations.

### **A. Introduction**

212. The Committee expresses its appreciation to the State party for the comprehensive report and for the written replies to its list of questions (E/C.12/Q/REPOFKOR/2). The Committee notes with satisfaction the presence of a large expert delegation which presented the report and which approached the dialogue in a frank and constructive manner. The Committee notes, however, that the report failed to include information on several important areas and updated statistics, particularly on the critical situation following the financial crisis, although this was partly remedied in the written and oral information subsequently provided to the Committee.

213. The Committee regrets that most of its suggestions and recommendations contained in its concluding observations, adopted upon examination of the initial report, have not been implemented.<sup>9/</sup>

### **B. Positive aspects**

214. The Committee notes with satisfaction the significant and rapid economic recovery from the 1997-1998 financial crisis in the Republic of Korea, the present open climate towards human rights generally, and the advances recently realized in the enjoyment of some economic, social and cultural rights.

215. The Committee notes with satisfaction the adoption of a wide range of laws and programmes aimed at ensuring an adequate standard of living for all persons, including the Basic Livelihood Security Act of 1999, the Employment Insurance Act, the National Pension Scheme, the National Health Insurance Scheme and the Industrial Accident Compensation Insurance Act. It welcomes the extended application of the minimum wage to workers in all enterprises, whereas the minimum wage had previously been applicable only to workers in enterprises employing more than 10 persons.

216. The Committee takes note of the recent establishment of the Ministry of Gender Equality. It also notes with satisfaction the actions taken to grant women equality with regard to employment, marriage to foreigners, equality in the registration of children, and the possibility of passing on their

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<sup>9/</sup> Official Records of the Economic and Social Council, 1995, Supplement No. 2 (E/1996/22-E/C.12/1995/18), chap. V, paras. 79-85.

family name to their children. It further welcomes the Child Welfare Act and the programmes in place to significantly expand public and private childcare facilities, which are encouraging women's participation in remunerative activities.

217. The Committee welcomes the recent opening of an office of the United Nations High Commissioner for Refugees in Seoul, through which applications for asylum can be processed.

#### C. Factors and difficulties impeding the application of the Covenant

218. The Committee notes that the State party is experiencing a period of major socio-economic transition that affects its ability to comply with its obligations under the Covenant.

219. The Committee notes the continued negative effects on the enjoyment of economic, social and cultural rights of the pervasive "fortress mentality", which is enforced by the National Security Law. Moreover, the high level of defence expenditure is in contrast with the shrinking budget for key areas of economic, social and cultural rights.

220. The Committee notes that deeply rooted traditions and cultural prejudices marginalize certain categories of persons, such as migrant workers, and many women.

221. The Committee also notes that the "economy-first" approach adopted by the State party has resulted in a low priority being placed on the protection of economic, social and cultural rights. This has led to the marginalization of certain groups in society in such matters as housing, social welfare and health care.

#### D. Principal subjects of concern

222. The Committee is concerned that the State party did not take into account its Covenant obligations when negotiating with international financial institutions to overcome its financial crisis and restructure its economy. The overreliance on macroeconomic policies has had profound negative effects on the enjoyment of economic, social and cultural rights in that there have been large-scale employee dismissals and lay-offs, a significant deterioration in employment stability, growing income inequalities, an increasing number of broken families and marginalization of a large number of persons.

223. The Committee views with concern the fact that the rapid pace of economic development has not been matched by efforts to guarantee economic, social and cultural rights. The Committee is concerned that, in such a situation, some rights or the rights of some groups are being sacrificed for the sake of economic recovery and market competitiveness.

224. The Committee is concerned that the data-collection methods of the State party do not seem to be fully reliable. Examples include data on unemployment and underemployment, housing, poverty and migration. In some cases, there were very large gaps between the statistics provided by the Government of the Republic of Korea and those from other sources, including the agencies of the United Nations and non-governmental organizations, which has serious implications for the

effectiveness of government policies and programmes designed to address the needs of the most vulnerable and marginalized people.

225. The Committee regrets that no adequate effort has been made since the examination of the initial report to ensure that the rights provided for in the Covenant are fully enshrined in law. The Committee notes with concern that, according to the Constitution, the status of the Covenant is equal to that of domestic laws, which means that the protection of some rights may be overridden by subsequently enacted laws or special laws. It regrets the lack of clarity as to whether all Covenant rights can be invoked in domestic courts and further regrets the absence of any case law.

226. Notwithstanding the advances noted (see para.216 above), the Committee notes with deep concern the continued unequal status of women. Persisting problems include the traditional preference for sons, which is manifested in a high incidence of induced abortions of girl foetuses that threaten the reproductive rights of women; the patriarchal head-of-family system (hoju) as defined in law; the high incidence of domestic violence; the relatively low access by women to tertiary education; discrimination against women and sexual harassment in the workplace; and a large gap in the average salaries paid to women and to men.

227. The Committee regrets that the specific conditions of work to which the so-called “irregular workers” are subject have not been clarified during the dialogue. Information from independent sources indicate that “irregular” workers are distinguished from “regular” workers, although they often perform the same tasks, in that irregular workers receive lower wages, pension benefits, unemployment and health benefits and have less job security. It also notes that the proportion of irregular workers in the general labour force has grown to half, the great majority of them women.

228. The Committee is alarmed at the rising incidence of industrial accidents in recent years, which appears to be the result of a relaxation of the standards governing industrial safety and of the insufficient number of on-site inspectors.

229. The Committee notes that teachers can legally enjoy their right under article 8 of the Covenant to form and belong to trade unions. However, it is concerned that they are still prevented from participating in collective bargaining and in strikes, a right guaranteed in both the Covenant and in the national Constitution (art. 33). While cognizant of the elevated status that is traditionally bestowed on teachers in Korean society, the Committee considers it inappropriate for the Government of the Republic of Korea to assume the role of guardian of traditions that prevent the exercise of this fundamental right.

230. The Committee is also concerned that the laws governing industrial actions are not transparent and appear to give the authorities inordinate discretion in determining the legality of strikes. In this regard, it considers entirely unacceptable the approach taken to criminalize strike activities. In addition, the Committee is deeply disturbed by the excessive force used by the police against recent labour demonstrations that had been set off by massive lay-offs. The Committee considers the combined effect of these circumstances to be a clear negation of the rights provided for in article 8 of the Covenant.

231. The Committee is concerned about the rising incidence of sexual exploitation of children, child labour, and hardships caused by a breakdown of the family. In this regard, the legal protection accorded to children does not appear to have been adequately implemented.

232. The Committee notes with concern the shifting population distribution from rural to urban areas, with most government programmes to develop infrastructure, education, health care and other essential facilities being highly concentrated in the urban areas. Urban migration of younger people has left many older persons to care for family farms in the countryside. The Committee regrets that the situation of persons living in rural areas has not been sufficiently dealt with during the present dialogue.

233. While welcoming the adoption of programmes to supplement the incomes of those living under the poverty line, notably through the National Basic Livelihood Security Act, the Committee has doubts about the adequacy of the assistance given. The eligibility criteria are apparently so rigid as to exclude many of the poor, and the amount of financial assistance regularly awarded can reportedly be drastically reduced without notice and without reason. The National Pension Scheme, which is said to have nationwide coverage and be open to all persons, nevertheless fails to provide for an inordinate proportion of the workforce who are reaching pensionable age but have not been able to contribute to the system for a sufficient number of years.

234. The Committee notes with concern that despite the State party's attempts to promote employment of the disabled, the previous 2percent quota for workers with disabilities in enterprises employing over 300 employees has not been met, even within government agencies. The Committee is also concerned that enforcement mechanisms for this purpose do not seem to have been established.

235. The Committee regrets the lack of accurate information concerning the number of forced evictions and the specific conditions under which they can occur, in accordance with the Committee's General Comment No.7 on forced evictions. The Committee is also concerned that victims of private construction projects are not provided with compensation or temporary lodging, unlike private homeowners who are evicted as a result of public projects. Moreover, the Committee is concerned about the affordability of housing for lower income groups, especially the vulnerable and marginalized groups; about the use of "vinyl houses" for dwellings, which pose grave risks to their dwellers; and about the increasing number of the homeless.

236. The Committee is disturbed that the portion of the government budget allocated to health, which is under 1 per cent, is low and declining. It is concerned at the predominance of privately operated health-care facilities - estimated to exceed 90 per cent of all health-care facilities, a trend that accelerated in the wake of the financial crisis - and the consequent negative implications for access to health care by the most marginalized sectors of society.

237. The Committee notes with concern that the low quality of education in public schools is compelling families to supplement the education of their children with private instruction, thereby placing an undue financial burden on families, especially those in lower-income groups.



238. The Committee also notes with concern the predominance of private institutions in higher education, a fact detrimental to the lower income groups. It further notes that over two thirds of the students in higher education are males, which is contrary to the principle of gender equality.

239. The Committee notes that education is free and compulsory only at the primary school level, which is not commensurate with the State party's high level of economic development.

240. The Committee is concerned that the present criteria for granting refugee status appear to be far too stringent, with only one application having been approved to date.

241. The Committee notes with concern that human rights education has not yet been formally incorporated as a required subject for all members of those professions that are most directly involved in the promotion and protection of economic, social and cultural rights.

242. The Committee is concerned that the National Security Law is being used to curtail the activities of intellectuals and artists. Under this law, not only are their works being censored, confiscated or destroyed, but the intellectuals and artists themselves are being subjected to criminal prosecution.

#### E. Suggestions and recommendations

243. The Committee reiterates and affirms its suggestions and recommendations contained in its previous concluding observations on the State party's initial report<sup>9/</sup> and urges the State party to take concrete steps to implement them.

244. The Committee emphasizes that a human rights approach to government actions must begin with a proper understanding of the actual situation in respect of each right, accurate identification of the most vulnerable groups, and the formulation of appropriate laws, programmes and policies. It urges the national statistical agencies and relevant ministries to review the ways in which data relating to all rights are collected through the lens of the Covenant.

245. While noting the enactment of a new law that establishes a national human rights commission, the Committee emphasizes the importance of establishing the commission in full conformity with the Paris Principles,<sup>8/</sup> and in this context, draws attention to its General Comment No. 10 (1998) on the role of national human rights institutions in the protection of economic, social and cultural rights.

246. The Committee urges the State party to accord the Covenant a legal status that would enable it to be invoked directly within the domestic legal system. It recommends that such status be superior to all national laws, whether precedent, antecedent or special, and refers in this regard to

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<sup>9/</sup> Official Records of the Economic and Social Council, 1995, Supplement No. 2 (E/1996/22-E/C.12/1995/18), chap. V, paras. 79-85.

<sup>8/</sup> Principles relating to the status of national institutions for the promotion and protection of human rights (see General Assembly resolution 48/134 of 20 December 1993, annex).

its General Comment No. 9 (1998) on domestic application of the Covenant.

247. The Committee recommends that the State party allocate the necessary resources to enable the newly established Ministry for Gender Equality to function effectively and to apply a gender perspective in legislation and in society.

248. The Committee recommends that detailed information on the situation of “irregular” workers be included in the third periodic report. In the meantime, it strongly recommends that the State party reconsider the status of irregular workers and guarantee their rights under the Covenant.

249. The Committee reminds the State party that the provisions of article 8 of the Covenant guarantee for all persons the right to freely form and join trade unions, the right to engage in collective bargaining through trade unions for the promotion and protection of their economic and social interests, as well as the right to strike. The Committee urges the State party to desist from using criminal proceedings against striking trade unions. It also urges the State party to refrain from using any force beyond that absolutely necessary for the maintenance of public order. The Committee recommends that the right of teachers and other civil servants to form and join trade unions, to engage in collective bargaining and to strike should be guaranteed in law and in practice. Detailed information on this is requested in the third periodic report.

250. The Committee recommends that the State party take more effective measures to combat the sexual trade of children and child labour, as well as expand its programmes directed at the protection and rehabilitation of the victims of such practices.

251. The Committee recommends that the State party establish a focal point within the Government for dealing with complaints or appeals for assistance on housing matters. It recommends that protection be provided, such as compensation and temporary housing, to victims of forced evictions resulting from private development projects. The State party should also ensure that adequate housing is available to members of vulnerable or marginalized groups. Moreover, the State party should take immediate measures to assist all those who are homeless or living in exceptionally substandard conditions, such as “vinyl houses”.

252. The Committee recommends that the State party establish a plan to strengthen the public education system in conformity with article 13 of the Covenant and the Committee’s General Comment No.13 (1999) on the right to education (art. 13 of the Covenant), and in accordance with the State party’s high level of economic development. The plan should include the following elements: a reasonable timetable for specific actions for the introduction of free and compulsory secondary education; a re-examination of the functions and quality of the public education system relative to private education, with a view to strengthening the former and easing the burden on low-income groups imposed by the latter; a study of accessibility of schools at all levels, including tertiary education, and specific actions to be taken to ensure equal access by all sectors of society; and a reassessment of the curricula at all levels of instruction directed at promoting respect for human rights and fundamental freedoms. Information on this matter is requested in the third periodic report of the State party.

253. Insofar as traditional practices pose an obstacle to the fulfilment of some rights or perpetuate discrimination of any kind, including the preference for sons and the abortion of girl foetuses, the State party should carry out large-scale public campaigns to promote understanding among the general public about human rights.

254. The Committee recommends that the State party prepare, in accordance with the Vienna Declaration and Programme of Action,<sup>10/</sup> and in cooperation with the Office of the United Nations High Commissioner for Human Rights, a national human rights plan of action, taking into account the observations made by this and other treaty bodies. The Committee requests that information on such a national plan be provided in the State party's third periodic report.

255. The Committee urges the State party to provide detailed information in its third periodic report, to be submitted by 30 June 2006, on conditions in the rural sector and the situation regarding agriculture and food production.

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<sup>10/</sup> Adopted by the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993 (A/CONF.157/24 (Part I), chap. III).