



## Economic and Social Council

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### Committee on Economic, Social and Cultural Rights

#### Forty-third session

#### Summary record of the 42nd meeting

Held at the Palais Wilson, Geneva, on Tuesday, 10 November 2009, at 3 p.m.

*Chairperson:* Mr. Marchán Romero

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

### **Consideration of reports**

#### **(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant** *(continued)*

*Third periodic report of the Republic of Korea (E/C.12/KOR/3; E/C.12/KOR/Q/3 and Add.1; HRI/CORE/1/Add.125; E/C.12/1/Add.59)*

1. *At the invitation of the Chairperson, the delegation of the Republic of Korea took places at the Committee table.*
2. **The Chairperson** welcomed the delegation of the Republic of Korea and invited it to present the State party's third periodic report.
3. **Mr. Lee Sung-joo** (Republic of Korea), introducing the third periodic report of the Republic of Korea (E/C.12/KOR/3), said that the situation in his country clearly illustrated that it was the socially and economically marginalized who were the hardest hit by a global financial crisis. In times of economic crisis, the role of the Government in protecting the poor assumed even greater importance. Against that backdrop, economic growth and the equitable distribution of property were seen as complementary. Spending on social welfare was not seen as a cost, but rather as an investment in well-being and social integration. The social welfare budget was now the biggest budget item, amounting to 26 per cent of all government spending. The Government had taken various measures to protect the poor and underprivileged facing financial difficulties. It had, for example, eased the eligibility criteria for benefiting from the National Basic Livelihood Security System or emergency welfare. For those on low incomes, payments of national health insurance premiums had been reduced or temporarily suspended, and recipients of livelihood assistance now had access to medical benefits.
4. The dramatic increase in migrant workers and international marriages had been another significant change in his country in recent years. More than 1.1 million foreigners were currently living in the Republic of Korea, and a number of legislative and other measures had been taken to ensure their smooth integration and to foster cultural diversity in Korean society. One hundred centres had been set up throughout the country to provide comprehensive services for foreign families, including counselling, education and legal advice. The Government had also introduced a new educational curriculum to teach children cultural sensitivity, tolerance and respect for other cultures.
5. Another major change in society was related to low fertility and rapid population ageing. In 2008, the Government had adopted a pension system for older persons, in order to alleviate poverty among older persons and provide them with greater economic and social stability. In 2009, the Government planned to increase the percentage of persons over the age of 65 who benefited from the system from 60 per cent to 70 per cent. Finally, recognizing that women's economic participation and employment were essential in a society with a rapidly ageing population, the Government had taken measures to ensure that society assumed greater responsibility for children's education, for example by establishing a public childcare system and extending support for childcare costs.
6. He summarized the principal measures the Government had taken in response to the Committee's concluding observations following the consideration of the second periodic report of the Republic of Korea. A national action plan for the promotion and protection of human rights had been established in May 2007 to improve human rights-related laws, institutions and practices. A consultative body monitored the implementation of the plan and published a report every year. The Human Rights Bureau, set up in the Ministry of Justice in May 2006, was responsible for formulating and implementing national policies

on human rights, including the national action plan. Important measures had been taken to address the unequal status of women. The patriarchal head-of-family (*ho-ju*) system had been abolished in March 2005, and the relevant civil law had consequently been amended. The Government had taken measures to promote women's participation in the labour market and to help them strike a balance between their work and family life. A plan of action and a specific law had been adopted to that effect. Several support centres had been established to help women who had stopped working to take care of their children or families, especially to help them return to work. Legal measures against sex crimes and the sex trade had been strengthened, while protecting and rehabilitating victims.

7. The 2005 law on the establishment and operation of public officials' trade unions, which had been adopted with the Committee's recommendation in mind, allowed civil servants to form and join trade unions and to engage in collective bargaining. Their right to strike remained restricted, however, due to the public nature of their work and the need to ensure the continuity of the functions of the State. The employment period for non-regular workers had been limited to two years. Furthermore, if a fixed-term worker had been employed for two years or more, the employer was obliged to convert his or her contract into an open-ended one. The Government had also taken steps to improve the working conditions of non-regular workers. The steps included banning discrimination against them, allowing them to seek remedies for such discrimination, extending the application of social insurance, and providing them with vocational skills development programmes.

8. The Government had taken measures to assist the most vulnerable groups in society. The protection of children against child abuse and sexual exploitation — a subject about which the Committee had expressed concern in its previous concluding observations — was a priority for the Government. A new legal framework had been introduced to promote and protect the rights of persons with disabilities, and in December 2008 the Republic of Korea had ratified the Convention on the Rights of Persons with Disabilities. The employment permit system introduced in 2004 protected the legal status of migrant workers and recognized their right to have access to national health insurance. The right to education of the children of migrants was guaranteed, irrespective of their residence status, and the Government had introduced various programmes to secure high-quality education for such children.

#### *Articles 1 to 5 of the Covenant*

9. **Ms. Bras Gomes** congratulated the Government for the positive measures it had taken, such as the abolition of *ho-ju* and the adoption of action plans to address various issues. It was nevertheless disappointing to see that one of the concerns expressed by the Committee in 2001, that the rapid pace of economic development had not been matched by efforts to guarantee economic, social and cultural rights, continued to be relevant. While the economic and financial crisis had not made the task any easier, the pace of development up to 2008 should have given the State party the means to address the effects of the crisis on the poorest. She was therefore glad to hear the head of the delegation of the Republic of Korea express the view that, in times of crisis, it was the socially and economically most vulnerable people who suffered the most, and that the role of the State in protecting the poor became even more important.

10. While the Government had supplied information in its written replies to the list of issues on the measures taken in response to the Committee's concluding observations from the previous reporting period, it was not clear whether those measures had improved the living conditions of the population. Regarding the situation of non-regular workers, for example, various measures had been mentioned, but ultimately it was not known whether the number of such workers had decreased, whether their working conditions had improved, or to what extent the consequences of labour flexibility on the exercise of

economic, social and cultural rights had been remedied, particularly in the case of women, who made up the majority of non-regular workers. According to information before the Committee, the situation of non-regular workers was still a serious problem.

11. She asked for clarification on the following issues: the downsizing of the National Human Rights Commission and the effect that would have on its mandate as an independent institution for the promotion and protection of human rights; the current status of the anti-discrimination bill; the extraterritorial obligations incurred by the State party in leasing land in foreign countries for agricultural production; and the effects of redevelopment projects on the exercise of the rights to adequate housing, work, health and an adequate standard of living.

12. **Mr. Riedel** said that no court in the Republic of Korea had ever invoked the Covenant in its judgements. It seemed that economic, social and cultural rights did not carry the same weight there as civil and political rights and that they were not considered to be binding. In light of the State party's statement that the provisions of international instruments should be implemented like domestic laws, he would appreciate some clarification on that issue. He asked whether the programmes set up to raise awareness of such provisions, particularly in law schools, had reached a large audience and had any impact on the implementation of the rights set forth in the Covenant. He wished to know whether the State party planned to take any other measures to ensure that the Covenant was not ignored.

13. Observing that downsizing the National Human Rights Commission by 30 per cent could not be explained solely by the economic crisis, he asked what the other reasons were. The Commission carried out very interesting work, but he regretted that economic, social and cultural rights were neglected in its mandate. The fact that the chairperson of the Commission was directly appointed by the President of the Republic of Korea might jeopardize the institution's accreditation by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

14. **Mr. Dasgupta**, speaking on the subject of discrimination based on nationality, said that the Act on the Treatment of Foreigners did not include any provisions guaranteeing the economic, social and cultural rights of non-nationals. Furthermore, the law did not cover all non-nationals, but only certain categories among them. For example, it dealt with the rights of qualified migrant workers but not those of unqualified migrant workers, who made up the majority of the foreign workforce. He therefore did not believe that the law offered real guarantees against discrimination based on nationality. He regretted that the anti-discrimination bill set aside by the National Assembly since May 2009 did not contain any provisions on discrimination based on nationality. However, he observed that the Ministry of Justice was currently preparing another bill on that subject. He asked for further information in that regard and asked, in particular, whether the new bill would take account of all the grounds for discrimination listed in article 2 of the Covenant.

15. **Mr. Pillay** said that the fact that the Covenant had not been directly invoked by the national courts resulted in part from the State party's ambivalent attitude: most of the rights enshrined in the Covenant were also guaranteed by the Constitution of the Republic of Korea, and thus were deemed by the State party to have the status of constitutional rights. If that was correct, there would be some relevant case law, but there was none. In a Supreme Court case concerning the rights of unregistered migrant workers, article 8 of the Covenant had been invoked by the defence and the Government had effectively responded that the Covenant was merely a convention that aimed to promote the progressive realization of the relevant rights. He asked for clarification in that regard.

16. The Government had limited the resources of the National Human Rights Commission by greatly reducing its budget and appointing as its chairperson someone with

little experience or competence in the field of human rights. He was not sure if that could be taken as a sign of commitment to the realization of economic, social and cultural rights. According to information before the Committee, the Commission had not dealt with any cases relating to economic, social and cultural rights. Moreover, the Government appeared to have completely ignored the reports submitted by the Commission on the forced eviction of people from their homes.

17. **Mr. Schrijver** said that the Republic of Korea's legal system was open and very receptive to the norms contained in international instruments. It was not necessary to follow a special procedure for the obligations arising from ratified instruments to enter into force in domestic law. However, as the Covenant was not invoked by the courts, he wished to know what the Government's position was on the applicability of the rights contained in the Covenant. He also asked whether the State party planned to ratify the Optional Protocol to the Covenant, as that would contribute to the effective implementation of the Covenant.

18. The Committee did not have much information on the State party's policy on official development assistance. He therefore asked about the amount and the nature of such assistance. He also asked if any of it was intended to help the beneficiary countries to implement economic, social and cultural rights.

19. **Mr. Tirado Mejía** asked whether the National Human Rights Commission operated in accordance with the Paris Principles and what its relationship was with civil society and the Government. According to information before the Committee, discrimination existed in various forms in Korean society, particularly with regard to children born out of wedlock, children with disabilities and children of migrants. He asked whether that information was true and what policy the Government planned to implement to combat that type of discrimination. Noting that the right to asylum was guaranteed under the 1951 Convention relating to the Status of Refugees, he pointed out that only 60 per cent of requests for asylum had been granted in the past 15 years. He requested further information on that subject and also on the national legislation that made naturalization such a difficult process.

20. While he welcomed the abolition of the *ho-ju* system, discrimination against women still existed in various sectors, particularly in employment, as it seemed that 64 per cent of women received a lower salary than men doing the same job. He asked whether measures had been taken to rectify that situation. As for the representation of women in public bodies, particularly in parliament, it had been said that efforts had been made in that area, but he wished to know whether the State party planned to adopt legislation to combat discrimination effectively.

21. **Mr. Zhan Daode** expressed his satisfaction that the Government had played an important role in providing assistance to the vulnerable groups in society and asked whether the measures recently taken to combat the economic crisis had significantly affected economic, social and cultural rights. The Covenant had been implemented in a practical way, thanks in particular to the progress made in response to the Committee's previous concluding observations. He welcomed the inclusion of detailed data and statistics in the report, but noted that they only covered the period up to 2005. He asked whether the State party could also provide statistics for 2006 and 2007.

22. **Ms. Bonoan-Dandan** said that the very rapid economic growth experienced by the State party had been characterized by liberal policies and a decrease in social spending, which had resulted in a significant deterioration in economic, social and cultural rights. Some public goods such as health care, education, water or electricity had been privatized, and were giving cause for concern because, having withdrawn from those areas, the State risked being unable to protect the economic and social rights of the population. She asked how the State party planned to ensure it could honour its obligations under the Covenant in that new context.

23. She was also concerned about the current situation, and particularly the independence, of the National Human Rights Commission. The recent events already mentioned by other Committee members would certainly tarnish the Republic of Korea's image in that respect, especially if the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights saw fit to downgrade the Commission's accreditation.

24. She wished to know what the authorities had done to follow up on the recommendations made by the National Human Rights Commission in 2006 to the effect that refugees should be allowed to receive social and medical benefits and to be covered by a retirement scheme.

25. Noting that the staff cuts in the Ministry of Family and Gender Equality had undermined gender equality policies, she asked about the current situation in that area. Despite the significant progress made, she was concerned about the persistence of gender stereotypes and the subordination of women to men. Having been alerted to the fact that the abortion rate was high in the Republic of Korea — even though the law was fairly strict in that regard, the Catholic church had a strong presence in the country and the population had access to contraception — she had been shocked to discover that the decision on whether to use contraception was always made by the man, even though the woman was most affected by the consequences.

26. Regarding the status of foreign wives of Korean nationals, she regretted that the requirements for obtaining a residence permit helped make those women completely dependent on their husbands and thus more vulnerable to domestic violence. She asked how the authorities proposed to improve the situation of those women, particularly when they wished to leave their husband.

27. **Mr. Kedzia**, referring to paragraph 15 of the State party's replies to the list of issues, asked if there had been cases where the Covenant had been invoked before the courts, particularly with regard to rights such as the right to education that were also guaranteed by the Constitution. He also asked if the Covenant had higher status than an ordinary law in the event of a conflict between their provisions. Did the delegation think that the lack of clarity on the status of the Covenant in relation to ordinary legislation might explain the unwillingness of the courts, including the Constitutional Court, and the parties to a case to invoke the Covenant?

28. Regarding the situation of foreigners in the Republic of Korea, he understood that the provisions of chapter II of the Constitution prevailed over those of international instruments; he requested clarification in that regard. He asked whether, by virtue of the Constitution, foreigners could appeal to the Constitutional Court in matters concerning their economic, social and cultural rights.

29. **Mr. Sadi** asked how development assistance programmes for developing countries had been affected by the global recession and whether they were subject to certain criteria, such as evidence of progress in the field of human rights. Knowing how strongly the Republic of Korea was committed to respecting the Covenant, he urged it to sign the Optional Protocol and to set an example by becoming one of the first countries in Asia and the world to do so.

30. He concluded from the Government's written replies to the list of issues that the Covenant was not well known within the State party. He believed it would be appropriate to raise awareness of it not only among the judiciary and non-governmental organizations, but also among the general public. He asked whether any alternative to the widespread practice of appointing members of national institutions was being considered, with a view to increasing the credibility to such institutions.

31. As the Republic of Korea was currently considering on what grounds it should base its anti-discrimination legislation, he suggested that it take inspiration from general comment No. 20 on non-discrimination in economic, social and cultural rights, which the Committee had recently adopted.

32. **Mr. Abdel-Moneim**, observing that the Republic of Korea took a perfectionist approach in many areas, such as industry and art, said that it could do the same in the field of human rights. Noting that the social welfare budget currently represented 26 per cent of State spending, he asked whether taxation had been adjusted to allow for equal distribution of the fruits of the growth the country had experienced. Finally, he wished to know whether the Government had specifically taken economic, social and cultural rights into account when negotiating free trade agreements.

33. **Ms. Bras Gomes**, referring to reports that the Republic of Korea had signed agreements with certain countries, including the Philippines, to lease agricultural land in order to ensure its food security, asked what the current situation was in that regard. Agreements of that type did not always respect the right to food and the right to work in the lessor country and could also have negative effects in the lessee country. Also, it appeared that the Republic of Korea had land which it could use for agriculture but which it preferred to dedicate to industrial use.

34. Regarding the anti-discrimination bill, she believed that sexual orientation should be included in the grounds listed for discrimination.

*The meeting was suspended at 4.55 p.m. and resumed at 5.10 p.m.*

35. **Mr. Lee Sung-joo** (Republic of Korea) said that his country was proud of the progress it had made in the field of human rights but that in light of the observations that had just been made he saw how far it still had to go.

36. **Mr. Kim Hyeong-man** (Republic of Korea) said that the staff of the National Human Rights Commission had been cut by 21 per cent, not 30 per cent. The cut was part of a broader policy undertaken by the new Government to reduce public services as well as spending. Moreover, in response to criticism and comments on the efficiency of the Commission, a study had been carried out which had determined that the Commission's size needed to be optimized. The reorganization of the Commission was thus a response to the need for efficiency and in no way reflected a desire to reduce its role or responsibilities. Also, the Government guaranteed the independence of the Commission, even though it was composed of State officials.

37. **Mr. Kim Chong-min** said that the Commission had been established in full conformity with the Paris Principles and that its independence, budget, staff and composition were guaranteed by law. Despite the budget cuts and staff cuts, it still conformed to the Principles. The fact that the chairperson of the Commission was appointed by the Head of State did not in any way detract from the Commission's independence; in fact, that was common practice in many countries. His delegation did not agree with the Committee's comment that the Commission's independence had been weakened since the current Government had taken office, which, if true, would call into question the Commission's accreditation by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

38. The Government respected the recommendations of the National Human Rights Commission and did everything possible to incorporate them in national policies. The only cases in which the Government did not fully accept the Commission's recommendations and subjected them to a long and thorough examination were if they went against decisions of the Constitutional Court or other national courts, if they ignored the realities of law enforcement, or if they were out of step with public opinion.

39. Any private individual who felt they had been the victim of discrimination in respect of their economic, social and cultural rights could bring the matter to court under the law establishing the National Human Rights Commission. Even in the absence of a complaint, the Commission was authorized to examine laws and other provisions and to publish its recommendations and opinions in cases of discrimination. For other violations of economic, social and cultural rights, a review was necessary before the Government could take any decision.

40. The anti-discrimination bill submitted to parliament had been set aside because of the closure of the parliamentary session. Since then, the Government had formed a working group to examine practices in other countries and regions, particularly in the European Union, the United States, the United Kingdom and Germany, whose law on equal treatment was being studied carefully. In October 2009, the Government had established an inter-ministerial working group to report on the preparation of a new bill. The working group was studying some 70 national anti-discrimination laws and was reflecting on how to improve the existing bill and on whether a general law on the subject should be drafted. The bill submitted to parliament in December 2007 included a list of examples of punishable grounds of discrimination, but the list was far from exhaustive. A decision would be taken on the approach to take in the new bill following the discussions in the working group.

41. Under chapter II, article 11, of the Constitution of the Republic of Korea, the provisions against discrimination applied both to Korean nationals and to foreigners. Article 6 of the Constitution stated that signed and ratified international instruments had the same standing as national laws and that the status of foreigners was guaranteed by those international instruments. The Republic of Korea was a signatory to all the major human rights conventions, apart from the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

42. Protection against racial discrimination was covered in the Constitution by the right to equality, and national laws prohibited racial discrimination. However, the Republic of Korea did not have a law specifically dedicated to racial discrimination. That issue would be examined by the working group on the anti-discrimination bill.

43. Most of the rights guaranteed by the Covenant were recognized by the Constitution of the Republic of Korea. Accordingly, any law considered contrary to those principles was examined by the Constitutional Court. The preamble and article 6, paragraph 1, of the Constitution provided the basis for the Court's rulings. The rights guaranteed by the Covenant had never been invoked as such in a case brought before a national court because they were guaranteed by the Constitution. Nevertheless, the Supreme Court and the Constitutional Court had sometimes cited the provisions of the Covenant in their judgements.

44. In order to raise awareness among the general public and government officials, the Government had established a national action plan for the promotion and protection of human rights. Several ministerial offices publicized the rights protected by the Covenant on their websites. A course on economic, social and cultural rights had been given for 6,800 State officials between 2006 and 2009. The National Human Rights Commission had also given training sessions to teachers, members of the armed forces and the general public: some 93,000 people had received training from 2006 to 2008.

45. The Government was currently considering whether to sign the Optional Protocol to the Covenant. However, it was not yet in a position to communicate the results of its considerations.

46. **Mr. Cha Kyu-geun** (Republic of Korea) said that the Republic of Korea had signed the Convention relating to the Status of Refugees in 1992. From that date to the end of October 2009, some 2,230 people had requested refugee status and 1,960 cases had been



processed. A total of 147 people had obtained refugee status, 83 of them on humanitarian grounds. In 2009, refugee status had been granted to 46 people, including some for reasons of family reunification. The Government respected the recommendations of the National Human Rights Commission on refugee status, and people who had been granted refugee status received a minimum income.

47. Since the adoption of the Constitution in 1948, *jus sanguinis* had been the prevailing legal norm with regard to naturalization. Until 1998, nationality had been transmitted only by the father; since that date, it could also be transmitted by the mother. However, in the case of stateless persons or unknown parents, the Republic of Korea could grant nationality on humanitarian grounds. Generally, foreigners must reside in the Republic of Korea for five years to obtain nationality. The falsification of marriage certificates was a real problem, and the Government was taking measures to address it.

48. **Mr. Kim Jung-do** (Republic of Korea) said that the Act on the Treatment of Foreigners in Korea covered both qualified and unqualified migrant workers, as well as foreign spouses of nationals of the Republic of Korea. Foreign women who were married to Korean nationals and wished to extend their residence permit or apply for naturalization did not have to be accompanied by their spouse. The spouse was required to provide a guarantee as the sponsor of a foreign national, though in the case of divorce such a guarantee was no longer necessary. If a foreign wife applied for residency or naturalization, the authorities would check that she had the means to support herself, as was done in many other countries; hence the requirement that she possess a minimum of 30 million won. Nevertheless, if a marriage was deemed to be genuine, those requirements were applied less strictly.

49. **Ms. Yun Jee-yeon** (Republic of Korea) said that the Republic of Korea spared no effort to increase the representation of women and to promote gender equality. Goals had been set within the framework of the five-year plan. In the civil service, the proportion of women had reached 30.9 per cent, with the goal set at 40 per cent. Within the central administration, plans had been made to recruit women to supervisory positions. Annual objectives were defined, and results reviewed every year, for each ministry. In 2008, 10.8 per cent of senior managers were female, as compared with 4.8 per cent in 2001, prior to the adoption of the new policy, and little by little women were being promoted to lower management positions.

50. The abolition of the traditional system based on the subordination of women to men illustrated the importance currently given to the place of women in Korean society. Now that the traditional system had been abolished, attitudes still needed to be changed. In 2004, the Institute for the Promotion of Gender Equality had been established to analyse policies on equality, to train women for positions of responsibility and to improve training. The institute was the spearhead of gender equality policy. To raise awareness among the general public about gender equality, the Government had created programmes specially adapted to different age groups.

*The meeting rose at 6 p.m.*