

## REPUBLIC OF KOREA

### Follow-up - State Reporting Action by States party

CESCR, E/C.12/KOR/CO/3/Add.1 (2010)

[Advance unedited version, 3 February 2010]

### Comments by the Government of the Republic of Korea on the concluding observations (E/C.12/KOR/CO/3)

1. The Government of the Republic of Korea would like to thank the Committee on Economic, Social and Cultural Rights for the frank and constructive dialogue during the consideration of Korea's third periodic report at its forty-third session held on 10 and 11 November 2009.
2. The Government is, however, concerned that the Committee did not duly reflect in its Concluding Observations the comprehensive and detailed information presented by the delegation of the Republic of Korea during the interactive discussion, and that its Concerns and Recommendations contain a number of inaccuracies. The Government considers it important to note some of the errors and misleading information in order to ensure constructive and progressive dialogue with the Committee during the next review process.
3. In **paragraph 6**, the Committee expresses concerns that "the scope of economic, social and cultural rights under the Constitution is narrower than in the Covenant" and that "the Constitution only applies to citizens."

In accordance with Article 10<sup>1</sup> and Article 37 paragraph 1<sup>2</sup> of the Constitution of the Republic of Korea, all human rights, including those not explicitly elucidated in the Constitution, are guaranteed. In regard to Article 37 paragraph 1, the Constitutional Court referred that "even the freedoms and rights not enumerated in the Constitution shall be guaranteed if they are needed for human dignity as provided in Article 10."<sup>3</sup> In this respect, the Constitution of the Republic of Korea provides a comprehensive framework for the guarantee of human rights and thus, it is inappropriate to conclude that the scope of economic, social and cultural rights under the Constitution is narrower than in the Covenant.

It should be noted that the Constitution of the Republic of Korea applies not only to citizens, but also to foreigners. Article 6 paragraph 2 of the Constitution stipulates "the status of foreigners shall be guaranteed as prescribed by international law and treaties," and the Constitutional Court also

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<sup>1</sup> Article 10 of the Constitution states “all citizens are assured of human worth and dignity, and have the right to pursue happiness. It is the duty of the State to confirm and guarantee the fundamental and inviolable human dignity of individuals.”

<sup>2</sup> Article 37 paragraph 1 of the Constitution states “freedoms and rights of individuals shall not be neglected on the grounds that they are not enumerated in the Constitution.”

<sup>3</sup> Constitutional Court Decision, 2001 Hun-Ba 43, 31 January 2002.

concluded “a foreigner has a status similar to that of a national, and therefore, a foreigner is entitled to the fundamental human rights in principle.”<sup>4</sup>

4. In **paragraph 6**, the Committee also recommends that the Covenant should be accorded with a legal status to be invoked directly within the domestic legal system.

The Covenant, however, enjoys the legal status to be directly invoked within our domestic legal system, as Article 6 paragraph 1 of the Constitution stipulates “treaties duly concluded and promulgated under the Constitution and the generally recognized rule of international law have the same effect as the domestic laws of the Republic of Korea.” The Covenant has been directly invoked in courts’ decisions. The Constitutional Court, for example, concluded in its decision of 30 August 2007 that the administrative regulation of the Ministry of Labour, restricting the right to enjoy equal working conditions for equal value of work, had violated the ICESCR and the constitutional principle of respect for international law.<sup>5</sup>

5. Regarding the National Human Rights Commission, the Committee expressed concern in **paragraph 8** on its limited jurisdiction over Covenant rights, the lack of its investigative power, and recent developments that have brought its independence under severe pressure.

The mandate of the National Human Rights Commission of Korea is extensive. As for its investigative power, the Commission investigates laws, institutions, policies, and practices, which are related to human rights, and makes recommendations or expresses views for improvement. It also investigates complaints on human rights violations and discriminatory acts, and provides remedies thereon. Regarding the Covenant rights, the Commission may investigate discriminatory acts in relation to employment, education, goods, services, transportation, etc.

The independence of the Commission is fully guaranteed in compliance with the Paris Principles and the National Human Rights Commission Act, and adequate human and financial resources are allocated. Currently, 164 people are employed under the Commission with an annual budget of \$2 million USD.

6. In regards to the Anti-discrimination Bill, the Committee notes in **paragraph 9** that the present version under assessment by the task force does not exclusively enumerate anti-discrimination grounds and only contains certain grounds for discrimination. To clarify, there is no draft of the Anti-discrimination Bill under assessment by the task force. The Anti-Discrimination Bill submitted to the National Assembly in December 2007 had been

discarded due to the end of the 17<sup>th</sup> Assembly Session in May 2008. The task force has been carefully studying Anti-Discrimination Acts of other countries from a zero-based perspective to draw up a new draft bill.

7. In **paragraph 16**, the Committee states its concern because “there continues to be a lack of understanding on what constitutes sexual harassment at work” and because “sexual harassment at work is not criminalized.” In fact, Article 12 of the Act on Equal Employment and Support for Work-Family Reconciliation stipulates that sexual harassment is prohibited in the workplace, and Table 1 of the enforcement ordinance of the Act specifies in detail what constitutes sexual harassment by classifying them into physical, verbal and visual conduct. Moreover, sexual harassers at the workplace are punished according to relevant articles of the Act on the Punishment of Sexual Crimes and Protection of Victims and the Criminal Act.

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<sup>4</sup> Constitutional Court Decision, 99 Hun-Ma 494, 29 November 2001

<sup>5</sup> Constitutional Court Decision, 2004 Hun-Ba 670, 30 August 2007

8. The Government of the Republic of Korea considers it inappropriate for the Committee to express its concern over labor inspection on the grounds of unverified and unsubstantiated allegations (**paragraph 17**). The allegations that labor inspections focus on the immigration status of workers rather than on occupational safety and working conditions are untrue. The mandate of labour inspectors is to ensure occupational safety and proper working conditions, and the inspection of the immigration status of workers falls outside of their authority and mandate.

9 With regard to the Committee’s concern over the excessive use of force demonstrated against striking workers in **paragraph 19**, the Government of the Republic of Korea makes it clear that peaceful assemblies and demonstrations are fully guaranteed and protected. It is only against unlawful and violent assemblies that the Government takes law enforcement actions, and even in such cases, the Government takes heed of the law enforcement actions being carried out to the minimum extent necessary and in a legitimate manner.

10. In **paragraph 22**, the Committee notes that the rate of mandatory reporting of domestic violence is very low, and that legal action against perpetrators is seldom taken. Given that no statistical data exists on the ratio of mandatory reports of domestic violence, we are puzzled as to what grounds the Committee has based its comments on. Furthermore, the ratio of legal action against perpetrators of domestic violence, which includes prosecution as well as a transfer to family court, is higher than that of prosecution against suspects of all criminal cases.

11. In **paragraph 29**, the Committee makes a recommendation to take effective measures in ensuring local communities are not deprived of ground water resources necessary for farming and drinking purposes. The Government has already taken on such measures by requiring environmental impact surveys and on-site inspections to be undertaken before a development permit is issued. The Government also sets a limit on the daily volume of water for consumption so as to prevent any negative impacts on the local communities’ use of water resources.

12. The Government of the Republic of Korea hopes the Committee will take into consideration the aforementioned points. Reiterating its strong commitment to advancing human rights in Korea, the Government will give careful consideration to the Committee's comments and recommendations in our future endeavors to further the promotion and protection of economic, social and cultural rights.