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**COUNTRY REPORT
ON THE LEGAL, ADMINISTRATIVE
AND INSTITUTIONAL MEASURES FOR
IMPROVING THE RIGHTS OF THE CHILD**

AUGUST 1994

THE REPUBLIC OF KOREA

**THE LEGAL, ADMINISTRATIVE AND
INSTITUTIONAL MEASURES FOR
IMPROVING THE RIGHTS OF THE CHILD**

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I. Introduction

1. All children in the Republic of Korea are entitled to a good start in life, and a secure and happy childhood. They are also entitled to have their material and emotional needs provided for. The aims of the child perspective in Korea are to ensure that "every child should have human dignity and the equal right without discrimination, receive respect as the emerging future generation, and enjoy the opportunity of developing with rectitude and self-assurance"(Children's Charter of the Republic of Korea), and to help them "grow to be a pillar of the fatherland, and realize global peace and freedom"(Youths' Charter of the Republic of Korea).

2. The philosophy of the Convention is in close accord with the Korea's perception of children's rights and needs. The basic view of the Convention concerning children's rights and needs takes concrete shape in all measures of Korea to improve children's lives in a wide range of areas.

3. The Children's Charter of the Republic of Korea consisting of preamble and eleven articles, states that the child and his/her rights must be respected. The Charter reads as follows:

CHILDREN'S CHARTER OF THE REPUBLIC OF KOREA

The Children's Charter of the Republic of Korea, affirming the spirit enshrined in Children's Day, holds as its guiding principles the equal rights without distinction of all children to receive respect as the emerging future generation and to enjoy the opportunity of developing with rectitude and self-assurance.

1. Children should be born under healthy circumstances and nurtured in a warm and loving home.
2. Children should receive a balanced diet, should be provided preventive measures against disease and medical treatment as required, and should be able to live in a bright and clean environment.
3. Children should receive an education in good facilities, and should be taught with due regard to their abilities and aptitudes.
4. Children should value the great national cultural tradition and should be trained to use their creative powers to develop and extend that culture.
5. Children should be given adequate space and facilities for happy and wholesome play and recreation.
6. Children should learn to observe good manners and social orders, and as members of the one national family should help others, maturing through their own strength to become fully responsible democratic citizens.
7. Children should acquire a love of nature and the arts, and should cultivate the mind and attitude of scientific inquiry.
8. Children should, above all, be protected from all harmful social conditions and dangers.
9. Children should never be subjected to abuse or neglect, nor exploited for any wrongful purpose of heavy labor.

10. Children with physical or mental disabilities should be given the education and treatment they require, while children with behavioral difficulties should be provided with guidance.
11. Children are our future and our hope for tomorrow. They should grow and develop as Korean citizens who can assume responsibility for the nation's future, and as world citizens who can contribute to the peace of all humanity.

4. Youths' Charter of the Republic of Korea, in which the term "youth" means all the young citizens between aged 9 to 24, presents the way Korean youths should take for furthering the happiness and freedom of the human race in the world. The Charter is as follows.

YOUTHS' CHARTER OF THE REPUBLIC OF KOREA

The youth shall be master of the new era.

With burning vigor and love for nature and knowledge in their hearts, youths shall unite solidly, working for the nation's development, and to bring freedom and happiness to all mankind.

Thus, we declare the direction we must take as follows:

Youths are not to be discriminated against on the basis of family background, gender, school attainment, or physical condition. It is by refining and nurturing their aptitudes and abilities that youths are to obtain the wisdom and courage to overcome the difficult tasks of life before them.

Home is where the youth fosters sentiments, and shares love and dialogue. Parents should present a model of honest life, and youths should develop manners respectful towards elders and attain a positive attitude.

School is where youths, through balanced learning, develop culture, knowledge, and physical strength. A youth's talent must be respected and the school should teach ways to enrich life through self-fulfillment, as well as raising the spirit of cultural awareness and democratic citizenship.

The society is where youths enjoy working and render services with pride. The society should assist the growth and development of youths and provide a good neighborhood for leisure and healthy living.

The nation must love its youth, and should make its utmost efforts for policies affecting them. The nation must provide them with all necessary learning and working places, and youths in need must be protected by the state on an individual level, so that they can adjust themselves to their surroundings and become fully independent citizens.

5. The past thirty years have witnessed great socio-economic development in the Republic of Korea. There have been achievements in the health area with economic growth. The prenatal care rate has increased to 95 percent, and the institution delivery rate to 99 percent. There has been a rapid reduction in infant mortality and the rate was 12.8 per 1,000 births in 1992. The national health insurance system

established in 1989 has provided high-quality health care for adults and children alike.

6. Education is regarded as of great importance in Korean society, and has functioned as the driving force of socio-economic development in Korea. Compulsory nine-years' education is every child's right. Higher education is provided to those suitably qualified and motivated to benefit from it. Of the children completing their six-year's primary education 99.9 percent are in junior high school, and 99.1 percent of junior high school graduates are in senior high school. The government has sought to raise the standards of education as well as to increase the opportunities of education for all children.

7. The Child Welfare Act in Korea reflects the principles of the Convention. It was established in 1961 to provide social security benefits for the children in need, such as children in poor household, and orphans during the Korean War. Even though economic growth, started since 1960, brought general rise of standard of living, new problems began to occur: That is, family disorganization such as divorce, separation, and abuse, and the increasing needs of day-care for working

mothers' children. The need for a comprehensive program not only for children in need but also for all the children of the country is required. Thus, on 13 April 1981, the original Child Welfare Act was fully amended to broaden welfare services from children in need to all children for their healthy development.

8. In the majority of cases, children and youths grow up in good conditions. But the government recognizes that there are still children who are in need of help in Korea. Some children are getting off to a worse start than others. The government is conscious of the deficiencies to be tackled. In the Republic of Korea we have a large number of non-governmental organizations contributing for children's rights. The government continues through legislation, policy and practice to strive to promote the best interests of children.

9. As of the end of 1990, the number of children aged 18 years or under was 13,752,575, 31.7% of the total population. There were more boys than girls; the sex ratio of children was 107.3 in 1990. The number of children population is projected to decrease to about 12 million(26% of the total population) in 2000, 11 million(23%) in 2010, and 10 million(20%) in 2020.

<Table 1> Children Population Profile, by Age Group

(unit: 1,000 persons)

	1980	1985	1990	1995	2000
Total	37,407	40,420	43,390	44,851	46,789
Children (Children/Total, %)	15,219 (40.7)	14,844 (36.7)	13,752 (31.7)	12,801 (28.5)	12,037 (25.7)
0 year	755	611	632	673	669
1-5 years	3,840	3,929	3,313	3,304	3,363
6-11 years	5,486	4,763	4,877	3,956	3,947
12-17 years	5,138	5,541	4,930	4,868	4,058

II. INFORMATION IN RELATION TO THE ARTICLES OF THE CONVENTION

A. General Measures of Implementation

10. The Republic of Korea signed the Convention on the Rights of the Child on 25 September 1990, and committed the act of ratification on the Convention with reservations on three points on 20 November 1991. The Convention entered into force for the Republic of Korea on 20 December 1991.

11. The reservations to the Convention by the Republic of Korea are paragraph 3 of article 9, (a) of article 21 and (V) of (b) of paragraph 2 of article 40. The Convention guarantees children's right to maintain personal relations and direct contact with their parents when they are separated from one or both parents by the paragraph (3) of article 9, while the Civil Code of the Republic of Korea provides only parents' right to maintain relationship with their children. The Convention allows the adoption of a child by permission of competent authorities only, while Korea doesn't require any permission of the family court when the parents of a child make agreement on adoption of their child, and it is possible to adopt a child

with a legal report according to the Family Registration Act. Concerning the right to reassessment of decisions, which is guaranteed in article 40, paragraph 2, (b), (V), the single-trial system in a military trial is allowed when the State is governed by the Martial Law.

12. The reservations to the Convention by the Republic of Korea are not considered as having a great influence on children's rights. The government of the Republic of Korea is trying to take a step on the reserving points in order to realize children's rights the Convention ensures.

13. The Convention makes it the duty of the participating State to make its provisions and principles generally known to both children and adults in the individual country. The Republic of Korea did not take concrete steps to publicize the provisions and principles of the Convention. However, the Korean Committee for United Nations Children's Fund, established in 1993, plans publicizing the Convention as the main project of this year, and the fund for this project is supported by the government and voluntary organizations.

**1. Measures Taken to Harmonize National Law and Policy
With the Provisions of the Convention**

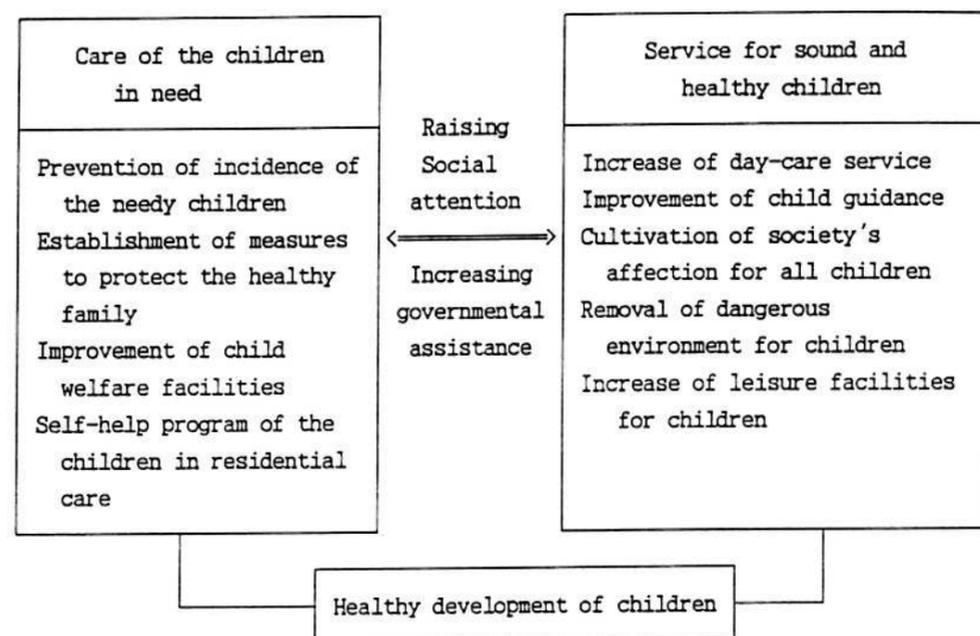
14. The Republic of Korea had been endeavoring to realize children's rights before the ratification of the Convention. The Child Welfare Act, enacted in 1961 and amended in 1981, aims to guarantee healthy birth and development of all the children of the country. This amended legislation makes clear that all children are the subject of child welfare, which is advanced from the original Child Welfare Act in which child welfare was defined as merely a relief for the children in need. The Children's Charter of the Republic of Korea, promulgated in 1957 and revised in 1988, proclaims children's right to grow up with the equal rights without discrimination, to receive respect as the emerging future generation and to enjoy the opportunity of developing with rectitude and self-assurance. The Youths' Charter, promulgated in 1990, proclaims the right of youth to grow up to achieve the freedom and happiness of mankind, which is required for the youth as the next generation.

15. Measures to bring Korean conditions more closely in line with the rules and principles of the Convention included the following. The Republic of Korea signed in June 1991 the Declaration of the Survival, Protection and Development of

Children and a Plan of Action to implement the Declaration in the 1990's, which is adopted in the World Summit for Children. As a consequence, a national plan of action was submitted to UNICEF in February 1992. For Korea's part, the plan of action is focused on i) improvement in child health care, ii) provision of safe water, iii) food sanitation and nutrition, iv) improvement of the quality of education, v) improvement of maternal and child health care and family planning, vi) free day-care programs for the children of low-income families and the protection of employed children and youth, vii) expansion of child-facilities, viii) the promotion of welfare for the disabled children, and ix) assistance to disadvantaged children.

16. The national plan of action in the 1990's is included in the sector of child welfare of the Seventh 5-Year Social-Economic Development Plan for the period 1992-1996. To realize children's rights in accordance with the Convention, the basic direction of the policy for children and youth is to promote their healthy development by increasing social attention and governmental support.

<Figure 1> Basic Direction of Child Welfare in the 7th Social-Economic Development



17. Despite such endeavor it is hard to say that children's rights presented in the Convention are fully exercised in the Republic of Korea. Many non-governmental child agencies suggest that, in order to realize children's rights, comprehensive and intensive effort must be made and that special measures are required to solve many evolving problems resulted from the rapid changes today's Korean society is experiencing.

2. Mechanism for Coordinating and Monitoring Implementation of the Convention

18. National policies for children and young persons are handled by various government departments and national authorities. Within the Government, the Ministry of Health and Social Affairs is responsible for the policies concerning children as the main department to plan and carry out child welfare policies, while the Ministry of Culture and Sports is responsible for the policies concerning youth.

19. The Division of Child Welfare of the Bureau of Family Welfare in the Ministry of Health and Social Affairs takes charge of child welfare administration. Its main functions are: i) counseling service for the prevention of incidence of the needy children, which is practiced in child guidance clinics; ii) family protection service supporting the child-headed family, adoption and foster care programs; iii) residential child care program; iv) sponsorship program for disadvantaged children; and v) self-help programs for the children leaving residential facilities, such as providing living places and jobs. The Child Welfare Committees at central and provincial level, especially, investigate, study and deliberate issues on child welfare policy and system, improvement of child-care facilities, and the sound

development of underprivileged children.

20. The Office of Youth Policy in the Ministry of Culture and Sports governs youth fostering policies. The Basic Act on the Youth of Korea was amended and enforced on December 31, 1991 to provide a legal ground for the effective implementation of the Basic Plan for Youth. Its main operation is: i) developing and distributing youth fostering programs; ii) supporting the construction and operation of youth facilities and increasing their use; iii) fostering, training and supporting youth leaders; iv) supporting youth in adverse environment; and v) developing and operating international youth exchange programs.

21. The Ministry of Education is responsible for the education system to guide and train children and youth.

22. The Ministry of Justice tries to eliminate harmful environment detrimental to the healthy development of youth, and provides services for social reintegration to young offenders through guidance, supervision or education and training. The education and training programs provided in juvenile reformatories aim to help them cope with the society so as to

grow up as a whole person. In order to enlarge the effectiveness of remedial education, juvenile delinquents are classified and accommodated by juvenile delinquents' characteristics and needs.

23. The role of the family court is to mediate domestic conflicts. However, when the intervention fails, a judgment is made in accordance with the ideology of child welfare, the principle of the best interest of the child.

24. The Ministry of Labor is responsible for vocational training, providing jobs and various cultural and leisure activities for children and youths who are engaged in economic activity.

25. There are many government-funded research institutes developing policies for children and youths. The Korea Institute for Youth Development carries out research on the way to protect and guide the youths, develops and distributes youth policies and programs and trains youth leaders of the society. The Korean Educational Development Institute carries out comprehensive and scientific research on the purpose, content and methods of education, and new educational

systems in harmony with Korean tradition and circumstances. It also operates the Education Broadcasting Station. The Korea Institute for Health and Social Affairs is established to assist in formulating and developing policies on health and social affairs through policy research on national health care, social welfare and population policies. The Family Policy Department in the Korea Institute for Health and Social Affairs carries out research on adoption and day-care service besides general research on child welfare policies. The Korean Women's Development Institute, established to improve and enhance women's status through comprehensive research projects on women's issues, and educational and training programs to raise women's consciousness, develops women's potentials and initiate various action-oriented programs concerning women, and undertakes study on children, especially on measures to assist working mothers to bring up children.

26. Non-governmental organizations are playing an important part in work for children and promotion of their rights. There are the National Teachers' League, Korea Private Institutions' League, National Parents Society for True Education, Parents Cooperation for Realization of Humane Education and Korea Youth Association as organizations related with children's education. The Korea Council of Child Organization, Korea

Association of Child Welfare Facility, Korea Association of Day-Care, Korea Women's Welfare Association, Child Welfare Board and Maternal and Child Welfare Board are voluntary associations concerning child welfare.

B. Definition of the Child

27. The Child Welfare Act provides that "The term 'child' means a person under 18 years of age". The Livelihood Protection Act states that a child under 18 years of age shall be protected for a good start in life, and its material and emotional needs shall be met.

28. Persons under 20 are legally minors and have no voting rights in Korea. In order to perform any legal act, a minor must obtain the consent of its legal representative. The father or mother who exercises parental right shall become the legal representative of his/her child who is a minor. If there is no person to exercise parental right over a minor, or if a person with parental authority is unable to exercise the right or representation with respect to the juristic acts or the rights of management of property of a minor, a guardian shall be appointed for the minor.

29. Children may not enter into contracts of employment. There are special rules for the protection of minors at work. A person under 18 may be employed in limited occupations only. A person under 13, with a written permission for working issued by the Minister of Labor, may be employed on light

work which cannot be detrimental to his/her health, development or schooling.

30. Schooling is compulsory for all children domiciled in Korea. This duty to attend school is matched by entitlement to education in elementary and middle school. Schooling ceases to be compulsory when the child has satisfactorily completed 9 years' compulsory schooling. Entitlement to education (art. 28) is further discussed under the heading Education, Leisure and Cultural Activities.

31. Children committing crimes before they are 14 years old may not be sentenced under the Penal Code. A young offender less than 20 years old receives special treatment under the Juvenile Act. It is provided so in consideration of the Civil Code and other statutes regulating voting rights, in order to satisfy the objectives of the Juvenile Act. One of the objectives is to ensure fostering of juveniles by carrying out protective measures related to the environmental adjustment and character correction of juveniles demonstrating anti-social behaviors, and by providing special measures regarding criminal punishment.

32. A person of 20 years of age and over may freely marry.

A man who has reached his full 18 years of age and a woman of her full 16 years of age may marry with their parents' or guardians' consent. If a minor gets married, he/she is deemed to have attained the full age and, thus, is granted legal capacity, independent from parental authority or guardianship.

33. Korean men are liable for military service in the year of their 18th birthday, and must attain the age of, at least, 19 if he wants to be in active service during the year of acceptance. However, a person aged 17 or over who voluntarily applies for military service may be enlisted in the army, navy or air force.

34. No minimum age has been set for giving testimony in court. A child may testify if he/she can be able to express himself/herself and is physically and mentally strong enough to handle all proceedings of the court. Whether the testimony made by the child is accepted or not is at the judge's discretion. A person under 16, however, cannot testify on oath.

35. A person under 20 should not smoke, drink and be a frequent visitor to the entertainment districts, according to the Minor Protection Act, whose purpose is to forbid minors from smoking, drinking and frequenting the red-light districts which

may corrupt public morals on the one hand, and to guide and nurture minors properly and to protect their health on the other.

36. The minimum age for a car driving licence is 18, while a person aged 16 or over may ride a light motor cycle.

C. General Principles

1. Non-discrimination (art. 2)

37. The requirements of this article are met through the Constitution. The Constitution prohibits any form of discrimination against a child by providing that "all citizens shall be equal before the law, and there shall be no discrimination in all fields of political, economic, social or cultural life on account of sex, religion or social status". It requires courts of law and administrative authorities and other agencies performing public administration duties in the course of their activities to respect universal equality under the law and to observe objectivity and impartiality. As Korea is a very homogeneous country, special mention can be made of the provisions aimed at preventing discrimination on grounds of sex, and there is little discrimination because of sex.

38. Children born out of wedlock have been receiving indifferent and/or unkind treatment due to the emphasis on the social custom of monogamy and legal marriage. The government of the Republic of Korea, valuing every individual as equal, endeavors to treat such child equal to a child born from legal marriage in terms of status and property. The Civil

Code provides for a child born out of wedlock not to be legally discriminated against in most areas including inheritance. However, in deciding the order of succession to family headship, the child born during marriage has priority among lineal descendants having the nearest relationship. Also, under the Family Registration Act, whether the child was born in and out of wedlock is stated on the birth report.

39. No privileged class shall be recognized or ever be established in any form. Also, no citizen shall suffer unfavorable treatment on account of an act not of his own doing but committed by a relative. That is, privileged class is not recognized and a child is, by regulation, protected from disadvantages due to actions of relatives.

2. Best Interest of the Child (art. 3)

40. Korea's policy concerning children is based on parents bearing the main responsibility for their children's maintenance and upbringing. Parents are the most important persons in the children's lives. Parents must have community support for their parenting, and parental rights may be kept within limits under some circumstances. The child must be entitled to protection from offensive treatment even from his/her parents.

41. The principle of best interest of the child is explicitly upheld in the Child Welfare Act. It is a primary consideration to deal with all areas regarding the care, custody, education and property of the child, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. This principle underlies all the measures which have been set in place for promoting the welfare of children in the Republic of Korea.

3. The Right to Life, Survival and Development (art. 6)

42. The Constitution provides that all citizens shall be assured dignity and value of human being and have the right to pursue happiness. It is the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals.

43. Under the Juvenile Act, a juvenile sentenced to the death penalty or penal servitude or imprisonment for life for a crime committed before 18 years of age, shall have the sentence reduced to 15 years of penal servitude. Children's right to survival and development is further dealt with in the section headed Basic Health and Welfare.

4. Respect for the Views of the Child (art. 12)

44. The parental authority has the right and duty to protect and educate the child. However, if a parental authority or its representative abuses, is guilty of gross misconduct or endangers the property of his/her child by mismanagement, parental rights are forfeited. Moreover, forfeiture or pronouncement of forfeiture of the right of representation on juristic acts of the child and the right of management of the property of the child may be requested.

45. When the person with parental authority is representing a child, in the case where an obligation is to be assumed requiring any act of the child, the consent of the child itself shall be obtained. Also, a minor with the ability to express his/her own thought, with approval of his/her parental authority, may conduct business acts. Juristic acts for the purpose of merely acquiring a right or being relieved of an obligation may be done without consent from the parental authority.

46. Pronouncement of forfeiture of parental authority may be requested by the relatives, pursuant to the provision of the Civil Code, prosecutor, Mayor of Seoul or the provincial

governor, and is adjudged by the Family Court with a prior petition to the Court for arbitration.

47. When the parents cannot reach agreement on matters concerning custody in case of legal separation, a child who is more than 15 years old is consulted as to which parent he/she wants to stay with. In case of adoption of a child aged 15 or over, the child may not be adopted without his/her own consent.

D. Civil Rights and Freedom

1. Name and Nationality (art. 7)

48. Concerning the registration and the surname of a child, the Civil Code provides that a child shall take his/her father's surname and the origin of his surname and enroll in the father's family registry. In the case of a child whose father is not recognized, his/her mother's surname and the origin of her surname are taken, and enrolled in the mother's family registry. However, a child whose father and mother are not ascertainable, with approval of the court, may establish a new surname and origin of surname, and establish a new family.

49. Under the Family Registration Act, parents of all children must report the date and time of birth, place, etc. at the child's birth-place, within one month from the date of the birth of the child. For foundlings and children in residential care, authorities of municipality, district, and town or the directors of the residential facilities, with the court's permission, establish the child's surname and origin of surname, and later decide on the name and permanent domicile to be entered on the family registry.

50. All children, including children born out of wedlock, foundlings, and/or stateless children, are guaranteed to acquire nationality as provided under the Nationality Act. (i) A person whose father is a national of the Republic of Korea at the time of his/her birth, (ii) a person whose father died before his/her birth and was a national of the Republic of Korea at the time of death, (iii) a person whose mother is a national of the Republic of Korea or, (iv) a person who is born in the Republic of Korea, if his/her father is unknown or they have no nationality, is a citizen of the Republic of Korea. However, in the case of a child born of a Korean mother and a father whose country follows the birth-place principle in determining nationality, there is a possibility for the child to have no nationality.

51. All foundlings discovered in the Republic of Korea are presumed to have been born in the Republic of Korea, and therefore a child is prevented from being stateless.

2. Preservation of Identity (art. 8)

52. No Korean citizen who is or had been domiciled in Korea may be deprived of his/her citizenship except when he/she expresses consent to become a citizen of another country. In

the case of children or minors under 20, however, it may be prescribed that citizenship is to follow the parents or one of them. The conditions on which a Korean may be deprived of citizenship are defined in detail by the Nationality Act. Korean nationality is lost by (i) one who has married an alien and has acquired the nationality of the spouse; (ii) one who has been adopted by an alien and has acquired the nationality of the alien; (iii) one who once acquired the nationality of the Republic of Korea by marriage but acquired the nationality of a foreign country by annulment of the marriage or divorce; (iv) one who has voluntarily acquired the nationality of a foreign country; (v) one who, having a dual nationality, relinquished the nationality of the Republic of Korea with the permission of the Minister of Justice; (vi) one who, being a minor of nationality of the Republic of Korea, has acquired the nationality of a foreign country by acknowledgement of an alien, provided that it will be an exception if such minor has become the wife of an adopted child of a national of the Republic of Korea; (vii) In case of an alien who has obtained the nationality of the Republic of Korea and has not lost the nationality of his original country after six months have elapsed.

53. When a person has forfeited the nationality of the

Republic of Korea, he/she may restore nationality of the Republic of Korea with the approval of the Minister of Justice. A child of a person who acquires the nationality of the Republic of Korea and who is a minor under the law of the country, obtains the nationality of the Republic of Korea together with his/her parents.

54. A child born out of wedlock may be acknowledged by his/her father or mother. A child born out of wedlock is deemed to be born during the marriage by the subsequent marriage of the father and mother from the time of their marriage.

55. A child, any of his/her lineal descendants or the legal representative of any of them, may bring a legal action against his/her father or mother for acknowledgement. Also, an action claiming acknowledgement may be brought against the prosecutor within one year from the day on which the death of the father or mother becomes known.

3. Freedom of Expression (art. 13)

56. Children's freedom of expression and gathering information is guaranteed under the Constitution presenting that all citizens

enjoy freedom of speech, the press, learning and the arts. A provision to prohibit licensing and censorship is newly established in the Constitution so as to prevent violation of human rights through activation of the supervisory and critical functioning of the press.

57. Right to freedom of expression is not only the core of spiritual freedom, but also a cornerstone of a democratic society. However, unlike the intrinsic freedom of thought, the right to freedom of expression is not absolutely unrestricted, but can be restricted under the some social conditions. The Constitution clearly states the specific duties and responsibilities pursuant to the exercise of this right by providing that neither speech nor the press shall violate the honor or rights of other persons, or undermine public morals or social ethics, and that if speech or the press violate the honor or rights of other persons, claims may be made for damages.

58. The Article 309 and 751 of the Civil Code are the major legal provisions regulating the incidents of abuse by overstepping the inherent boundaries of speech and the press. A person who violates other's reputation by means of the newspaper, magazine, radio or other publication with intent to

defame is punished by penal servitude or imprisonment for not more than three years or by a fine not exceeding one million won(\$ 1,250). A person responsible for injuring the reputation, freedom or secrets of privacy of another through unlawful acts is liable to pay compensation for the damages resulted from that behavior. Other legal provisions concerned regulate insurrection and inducement of foreign aggression, disturbance of the public peace or instigation to destroy the national order, and distribution of obscene material, etc.

59. With respect to freedom of expression, the Constitution restricts general basic rights, in which freedom of expression may be restricted by law only when necessary for national security, the maintenance of public order or public welfare. Accordingly, any necessary and reasonable restriction on freedom of expression is deemed to be allowed to a certain extent unless it violates the essential content. When the President issues an emergency decree, freedom of speech and press may not be subject to the general principles described above and is restricted by the emergency decree. When the Extraordinary Martial Law is proclaimed, the martial law commander may take special measures, as provided by law, by the decree with respect to freedom of press and publication.

4. Freedom of Thought, Conscience and Religion (art. 14)

60. The provisions concerning the right of the child to freedom of thought, conscience and religion refer to rights which, in Korea, are guaranteed to every citizen through the provisions of the Constitution on freedom of conscience and religion. Although there is no stipulated provision to guarantee freedom of thought in the Constitution, it is interpreted that freedom of thought is included in the notion of conscience.

61. Freedom of conscience includes freedom of not having any enforcement, pressure and interference with respect to the decisions of conscience and keeping silence in respect to such decisions. Accordingly, in criminal cases, the suspect or the accused shall not be compelled to testify against him/herself.

62. Freedom of religion includes: freedom of belief by which one shall not be compelled by external influences with respect to the belief and can express one's religious faith freely; freedom of religious actions by which one may practice one's belief such as praying, services, reading of scriptures, etc.; freedom of religious assembly and association by which one may assemble or establish any organization for religious purposes; freedom of mission by which one may propagate

one's religion and gather new believers; and freedom of religious education by which one may practice such education. Freedom of speech and the press provided in the Constitution is secured in religious activities. Each religious group is not be discriminated against in comparison with other groups and may produce and distribute publications.

63. The Civil Code provides that a person with parental authority has rights and duties to protect and educate his/her child, and guarantees that a parent or legal guardian has freedom to educate his/her child with religious and moral education. It is not deemed natural, however, in the Republic of Korea that the belief of a parent shall be succeeded by that of his/her child. Even if students attend schools established by religious organizations, they may have their own respective religion. Any adult or child chooses his/her religion according to his/her own discretion and free intention. However, under the current system of deciding schools, from elementary to high school, except private elementary schools, in which students are allocated to the schools located nearest to the student's residence without any consideration on the student's orientation in terms of religion, students' right to enjoy freedom of religion is encroached substantially by receiving religious education they

do not want and not receiving what they do want.

5. Freedom of Association and of Peaceful Assembly (art. 15)

64. Under the Constitution all citizens are guaranteed freedom of assembly and association. Licensing of assembly and association is not allowed. Peaceful assembly is institutionally guaranteed. The Act Concerning Assembly and Demonstration provides that no person may disturb a peaceful assembly or demonstration and disrupt public order by means of violence, intimidation or any other means.

65. Freedom of association and freedom of assembly may be restricted by law, subject to the same conditions which apply to those concerning restrictions of freedom of expression. However, even when such restriction is imposed, no essentials of freedom or right is violated. Therefore, while restriction by law is acknowledged, limitations thereon are provided.

6. Protection of Privacy (art. 16)

66. It is one of the fundamental principles of democracy and the rule of law that no person should be subjected to intrusion of the kind referred to in article 16. One of the objectives

declared in the Constitution is for government to assure men and women of equal rights and to safeguard the privacy and family life of the individual. The Constitution guarantees freedom of residence, freedom of privacy and secrecy of communication. In case of seizure or search in a residence, a warrant issued by a judge upon request of a prosecutor shall be presented.

67. These rights can only be restricted by law, when, as stated earlier, speech or the press is considered to violate the honor or rights of other persons, or undermine public morals or social ethics.

7. Access to Appropriate Information (art. 17)

68. The structure of broadcasting in Korea has been changed from the public system to the mixed one of public and commercial to satisfy people's increasing information need. The Broadcasting Act enacted in 1987, whose purpose is to engage in public opinion formation with democratic process and to strive for the national cultural development and the public welfare, provides the extensive freedom of expression and public responsibility of broadcasting. In 1994, there are 5 television and 13 radio stations including 1 educational

television station to provide educational programs exclusively.

69. The total publications in 1991 was about 186 million books, among which children's book composed 14.5% and text reference books are to 53.8%.

70. In order to express children's and youths' dream and ideal and to allow them to grow up in a sound cultural environment, the government tries to produce and distribute appropriate movies. The State pays grants for good scenarios for children and youth as a part of the project to select sound films.

71. Any movie, television or radio program offensive to the proprieties of language and behavior of children is prohibited. There are the Broadcasting Inquiry Council to preserve public responsibility and objectivity and to promote the quality of television and radio programs, the Performance Ethics Commission to oversee performances, movies, tapes and videos, and the Publication Ethics Commission to investigate all kinds of publication.

72. All movies are classified into four grades by their contents.

Movies graded as 'general' are showed to the people of all age groups; movies for 'persons over 13 years old' are permitted to those aged 13 or over; movies for 'persons over 16 years old' are shown to persons aged 16 or over; and, 'restricted' movies are permitted to persons aged 18 or over only. It is unlawful for any person below 18 years of age to enter, misrepresent or make use of any false evidence about his/her age in order to gain admission into a movie house showing a motion picture classified as restricted. It is against the law if any employee of a movie house sells to anyone below 18 years of age an admission ticket to such motion pictures. In case of doubt about the age of a person seeking admission, proof of age is required.

73. In order for children to access appropriate and healthy information, under the Child Welfare Act, those who induce a child see a harmful show, movie and similar public performance, and to make books, publication, advertising matters and other materials which might seriously hurt children's moral character, or to sell, distribute, offer, exchange, display, narrate orally or broadcast them to children or make another person to do so, are punished.

8. The Right Not to be Subjected to Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 37 (a))

74. Under the Constitution, all citizens are assured the dignity and value of human beings. Torture and cruel punishment is prohibited. No citizen is to be tortured or to be compelled to testify against him/herself in criminal cases. In case a confession is determined to have been made against a defendant's will by means of torture, violence, intimidation, unduly prolonged arrest, deceit etc., such a confession is not to be admitted as evidence toward a conviction nor punishment be meted out on the basis of such a confession. By forbidding confessions obtained by torture to be admitted as evidence, obtaining legal evidence with such acts on victims is prevented.

75. In Korea, the death penalty is provided for in the Criminal Code and the Special Laws, etc. However, crimes subject to death penalty are limited to very severe crimes, such as, crimes to jeopardize the country's existence including insurrection and felonious crimes of killing and injuring human life. In case of such severe crimes, the penalties are enforced in compliance with a proper process by securing judgement through fair examination by an independent and authorized court, presumption of defendant's innocence, guarantee of right

to representations, right to appeal, and right to request for re-opening of a procedure.

76. In the past, the minimum age subject to death penalty was 16 years. On December 31, 1988, the Juvenile Act was amended under Law No. 4057 to the effect that the minimum age was raised to 18 years. The amended Juvenile Act states that in case of death penalty for a child of less than 18 years of age, penal servitude for 15 years shall be sentenced in place of death penalty. Penal servitude for life for juvenile offenders has been prohibited. The Juvenile Act also provides that penal servitude for a child of less than 18 years of age is limited to 15 years.

E. Family Environment and Alternative Care

1. Parental Guidance and Responsibilities

(arts. 5 & 18, paras. 1-2)

77. Children are the dream of tomorrow and will lead this country in the future. The basic direction of the government's policy in the child and youth sector is to secure an optimal environment for all children and young persons to be able to grow up with a healthy mind and body. The main responsibility for care and upbringing rests with the family. Children are best brought up by their parents in their own home. One of the most important tasks of the government is to improve and encourage family functioning so that children have enough concern and love from their parents. The Civil Code states that both parents jointly exercise parental authority over a child who has not attained the age of majority.

78. Parents are jointly responsible for the upbringing and development of their children. It places a duty on government to provide services for children in need to help parents bring up their children. The welfare of the child is the paramount consideration when arrangements are being made for the care of children following divorce or separation of the parents. A

person with parental authority has rights and duties to protect and educate his/her child.

79. Under the Labor Standards Act a female employee, who is pregnant, has a 60 day paid maternity leave before and after childbirth; provided, however, paid maternity leave is granted for not less than thirty days after birth. A female employee who has an infant under one year old is guaranteed 30-minute break for nursing twice a day. Also, a female employee with a baby aged one or less may apply for one-year childcare leave to nurture the baby including the 60 day paid maternity leave, provided by the Labor Standards Act. The period of the childcare leave is included in working years.

80. The Republic of Korea has passed and enforced the laws providing the state's assistance to children in need to help parents perform responsibilities of raising a child. The Maternal and Child Welfare Act has been passed and enforced in order to secure a healthy and decent life for female-headed families; the Maternal and Child Health Act, to contribute to promotion of national health by improving the health of mother and child and encouraging child's health development; the Child Welfare Act, to guarantee the child's welfare in that the

child is born sound and brought up with happiness and health; the Infant's Education Promotion Act, to provide a good educational environment for the infants so as for infants to be sound in mind and body and to develop their potential, which leads them to be raised as well-rounded citizens and to contribute to the Nation's development; the Infant and Preschool Child Care Act, to bring up children as the sound members of society through sound education and to care for infants and preschool children, where their guardians are unable to care for them due to their work, ill health, or other reasons, and to make the guardians' economic and social activities more harmonious. The Livelihood Protection Act, with the purpose of promotion of social welfare through securing the minimum standard of living and encouraging self-sufficiency by providing necessary protection required by persons who do not have the ability to maintain a living or who have a low income.

2. Separation from Parents (art. 9)

81. In Korea the parents are primarily responsible for the child's basic needs. On the other hand, society has laid down that the basic rights and needs of all children are to be provided for. This makes it the duty of society to intervene in

cases where children's basic rights are violated. If a father or mother abuses parental authority or is guilty of gross misconduct, or there exist any other cogent reasons for terminating parental rights, the court may, upon the application by any of the child's relatives or a public prosecutor, adjudge the termination of parental power.

82. The Civil Code guarantees the parent's right to maintain relationship with the child when the parents are divorced or separated, by providing that a father or mother has visitation rights with respect to a child who has been brought up by the other parent. However, the child's right to visit and maintain relationship with the parent is not guaranteed. The Family Court, when deemed necessary for the welfare of a child and with request from the child concerned, may limit or terminate the parent's visitation. That is, limitation or termination of visits is allowed when a child does not want them, in the interest of welfare of the child.

83. A child aged 15 and over may express his/her own consent when adopted. When parents are divorced or legally separated and they disagree on custody, the opinion of the child who is more than 15 years old is taken into

consideration.

84. The Code of Criminal Procedure institutionalizes a written notice of arrest to be sent immediately from the arrest with the reason for the arrest. The Penal Administration Act Enforcement Ordinance provides that in case of death of a prisoner, the prison officer must immediately notify the family or relatives the cause of death, the case history, and the date and time of the person's death.

3. Family Reunification (art. 10)

85. Freedom of residence, moving within the country, emmigration and travel to a foreign country is guaranteed by provision under the Constitution.

86. An alien with a valid passport and visa is allowed to enter Korea, except for those who may be prohibited from entering pursuant to the Immigration Control Act, such as patients with an epidemic disease, carriers of unlawful firearms, mentally disabled persons, those who are deemed to have reasons to committ any act detrimental to social order or good morals, etc. For aliens residing in Korea their departure is guaranteed except those whose departure is suspended pursuant

to the same act, ie. persons suspected of committing a grave crime, persons in arrears with the payment of taxes, etc. Therefore, except for those who fall under the Immigration Control Act, there is no restriction on entry and departure of children and parents as provided under the Convention.

4. Recovery of Maintenance for the Child (art. 27, para. 4)

87. Concerning article 27, paragraph 4, an account of maintenance advances is given with reference to the article 27, paragraphs 1 to 3, heading Standard of Living.

5. Children Deprived of a Family Environment (art. 20)

88. Children must be born and brought up in a family environment. Having a family environment is children's right and essential for their healthy growing up and development. However, when a child cannot have such an environment or remaining in his/her parents' home is detrimental to the child's development, a child-caring institution may be a substitute. In 1993, 2,940 children were placed in residential facilities, composing of 64% of the entire needy children occurring in the same year.

89. The number of residential facilities for children, established to protect orphans resulting from the Korean War, decreased after the 1970's. Residential care has been accepted as the most generalized alternative to care for children in need. Attaching weight to the residential care in caring for needy children is due to the lack of the development of substitutional caring arrangements. To develop a broad range of substitutional caring environment is one of the urgent tasks that Korea is facing to improve the welfare of children in need.

<Table 2> Status of Needy Children and Placement, 1990-1993

Year	Total	Origin		Placement		
		Abandoned children	Lost children	Residential care	Foster care	Adoption
1990	5,721	4,213	1,508	3,734	1,134	853
1991	5,095	3,630	1,465	3,414	999	682
1992	5,020	3,294	1,726	3,122	1,212	686
1993	4,451	3,234	1,217	2,940	943	568

90. Foster family care, as an alternative to institutional care, is practiced at an experimental level. Foster family care is classified into foster family care for adoption and for apprenticeship, and paid- and non-paid foster family care.

Although foster family care is emphasized and encouraged at policy level, it is still inactive and functioning merely as a previous stage for adoption. It is estimated that i) the blood-oriented family system, ii) economic instability, iii) insufficient living place, iv) deficiency in social security, such as child allowance, and v) the lack of specialized foster family care agency are the primary reasons for inactive foster family care.

6. Adoption (art. 21)

91. Adoption, regulated and administrated under the Civil Code and the Special Adoption Act, is classified into domestic adoption and intercountry adoption. Permission for adoption can only be granted if the adoption is beneficial to the child. A person under the age of 18 may not be adopted without his/her parents' or guardian's consent. A person aged 15 or over may not be adopted without his/her own consent. The applicant or the prospective parent by adoption is assessed by the adoption agency whether he/she can give the child good care and upbringing and generally favorable conditions to grow up. In case of domestic adoption, the adoption process is completed with a legal report according to the procedure of the Family Registration Act, and in case of intercountry adoption,

with the permission for emigration of the Minister of Health and Social Affairs and removal of the child's nationality from the family court of the registry.

<Table 3> The Trend of Adoption, 1958-1993

(units: person, %)

Year	Total	Domestic adoption	Intercountry adoption	Ratio of domestic adoption
1958-1960	2,700	168	2,532	6.2
1961-1970	11,481	4,206	7,275	36.6
1971-1980	63,551	15,304	48,247	24.1
1981-1985	50,502	15,424	35,078	30.5
1986-1990	41,322	11,079	30,243	26.8
1991	3,438	1,241	2,197	36.1
1992	3,235	1,190	2,045	36.8
1993	3,444	1,154	2,290	33.5
Total	179,673	49,766	129,907	27.7

92. The recent trend of domestic and intercountry adoption is that, as in <Table 3>, the number of adoptions is decreasing. It is expected that, if there is no sharp decline, about 1,000 children are adopted within Korea and about 2,000 children to foreign countries every year. The ratio of intercountry adoption to domestic has decreased. Intercountry adoption is 2.8 times

higher than domestic adoption in 1975, 3.3 times in 1987 and 1.9 times in 1993. In 1993, 1,154 children were placed for adoption in domestic families, and 2,290 children to abroad. Nine countries of U.S.A., Sweden, Denmark, Norway, Netherland, Australia, Belgium, France and Luxemburg adopted Korean children. Of them, 78.9% of children are adopted to U.S.A. The government seeks measures to improve the adoption system to encourage domestic adoption so as to reduce intercountry adoption 10-20% yearly.

<Table 4> Distribution of Intercountry Adoption, 1993

Country	The number of the adoptees
U.S.A.	1,807
Sweden	60
Denmark	139
Norway	104
Netherland	4
Australia	69
Belgium	1
France	85
Luxemburg	21
Total	2,290

93. Domestic adoption service is carried out by five authorized

non-profit agencies and twenty five child-guidance clinics in cities, counties, and districts. Since 1988, to activate domestic adoption, the government has given family reduction benefit to the income tax of the family adopting a child. The upper age limit for adoption parents is increased from 45 to 55, and a housing grant up to 35 million won, equivalent to US\$ 43,750, is granted to the family adopting a child.

94. Intercountry adoption service, started to aid orphans and mixed blood children born during the Korean War, is provided by four authorized non-profit organizations. Even though intercountry adoption has a similar procedure to domestic adoption, special attention and assistance to the adoptee and adopting parents and post-placement service in a concrete form are required because of the differences in ethnic background, culture and language. When the child gets the adopted country's nationality after adoption, the agency of the foreign country reports it to Korea's adoption agency. Then, Korea's adoption agency reports to the Ministry of Law so that the child's nationality may be deleted from Korea. The foreign country's adoption agency makes a report on the child's progress, at least, every six months and sends it with his/her photographs to the Korea's adoption agency until the child gets

the country's nationality.

95. About 86.5% of all children who apply for adoption are from out of wedlock in 1993. Poverty, death of parents and divorce are the other causes for adoption.

96. Under the Child Welfare Act, Korea forbids persons rendering assistance in connection with an adoption to derive improper financial gain from the adoption proceedings.

7. Illicit Transfer and Non-Return (art. 11)

97. A person who kidnaps a child by force or inveiglement is punished by penal servitude for not more than ten years. In particular there is a great effort to eliminate illegal transport of a child abroad by providing that a person who kidnaps by force or inveiglement or buys or sells a person for the purpose of transporting him/her out of the Republic of Korea, is punished by penal servitude for not less than three years.

8. Abuse and Neglect (art. 19), Including Physical and Psychological Recovery and Social Reintegration (art. 39)

98. The duty of society to intervene in cases where a child's

basic rights and needs are neglected is provided in the Child Welfare Act, the Minor Protection Act, the Labor Standards Act and the Criminal Code. In order to protect children from violence, cruelty, exploitation, etc., the Criminal Code provides that a person who delivers a child under 16 years of age, who is under his/her protection or supervision over, to a proprietor or his/her operator who will employ the child in such work as is dangerous to life or limbs, is punished by penal servitude for not more than five years. A person who kidnaps a minor by force or inveiglement is punished by penal servitude for not more than ten years. The Additional Punishment Law of Specific Crimes provides that a person who kidnaps a child with intent to obtain pecuniary or proprietary gain or with intent to kill the child, is punished by penal servitude for life and up to death penalty respectively.

99. The Child Welfare Act provides that all citizens, the State and local government are responsible for the protection and sound upbringing of children. For such provisions, the Act prohibits various kinds of acts such as violence, cruelty, exploitation against children, etc., and such violation is punished severely.

100. The typical form of child abuse in Korea is abandonment. The incidence of lost and abandoned children has decreased, but the rate of incidence of abandoned children is 2-3 times higher than that of lost children(see Table 2). Since all abandoned children caused by family conflict are cared for, Korea's protection services for abused children are focused on caring services for those children.

101. There is no standardized definition of child abuse in Korea. With the Confucian culture and tradition in which parents' and teachers' corporal punishment is considered as educational discipline and even called the "spanking of love", there has been confusion between abuse and discipline. For this reason, there has not been a growth of awareness concerning problems connected with child maltreatment and abuse, nor has general consensus evoked. However, the problem regarding child abuse in Korea is, according to small-sized surveys on child abuse, estimated much more serious than had been actually assumed.

102. The Children's Rights Protection Center, as the voluntary agency for the prevention, finding and treatment of abused children, was established in 1985 within the Child Guidance

Center in Seoul. The Area agency on Child Abuse and Neglect was also organized as a substructure of the Korean Association for the Prevention of Child Abuse and Neglect in 1989. In addition, in 1990 the Parents Cooperation for Realizing of Humane Education created the 'Horuragi(whistle) Hotline' as a part of the campaign to banish violence in schools.

103. Social intervention for child abuse and neglect in Korea has remained at the level of "finding-out", which is the initial stage of the way to confront and solve the problem of child abuse and neglect. Specialized and active intervention for the prevention and treatment of child abuse by professional personnel has not developed, due to the lack of legal device for the professional intervention. Above all, legal institutionalization of reporting child abuse is necessary as the first step for solving the problem.

104. The state has a plan to provide a shelter service for abused children as part of a long-term plan for promoting child welfare. In the first stage, planned 1994 and 1995, preparing a guide for shelter service for abused children and assisting research on child abuse, are set as its goals. In the second stage from 1996 to 1997, experimental establishment of child