

school and college graduates, severe differences in working conditions and promotion opportunities, and the deep-rooted bias against manual labour. The income gap among workers based on their educational levels is as follows:

[Table] Income gaps among workers based on their educational level

(unit x)

	Graduates of middle school or less	Graduates of high school	Graduates of junior college	Graduates of universities
1988	100.00	116.8	141.0	223.0
1989	100.00	114.8	136.1	209.1
1990	100.00	114.0	133.0	199.2

* Ministry of Labor, Survey on Wages of Workers, by Occupation (1990)

This problem stems from the Korean government's policies. In past years, the government adhered to its anti-labor policy, violently oppressing the labor movement which struggled for workers' political and economic rights. For example, teachers who had recently been dismissed were reinstated only after they withdrew from the Korean Teachers' & Educational Workers' Union, under President Kim Young Sam's remarks that "teachers are not laborers." Owing to the governmental anti-labor attitude, all students struggle to enter college, leading to problems within the educational system.

Section 3. The Right to Education and Free Education

(Government Report paras. 449-475)

Free primary education (Government Report paras. 449-454)

In order to implement compulsory education fully, the government should assume the responsibility of maintaining students' good health, a basic condition necessary for education. School feeding is the solution to problems such as children's poor health and the nutrition gaps according to students' geography and social class. Primary schools, where school feeding was implemented in September 1994, were 2,300 in number, or 36.1 per cent of the entire 6,366. Only 970,635 students, or 24.8 per cent of the total number of 3,917,631 students, were recipients of the meal system (Ministry of Education). This is a small portion, in comparison with 99 per cent recipient rate in the U.S., 98 in Japan, and 95 in Sweden. Even schools which provide meals have many problems: first, a lack of funds to implement the system; second, the failure to establish administrators in charge; third, the absence of nutritional standards.

Status of vocational high schools (Government Report para. 461)

The number of students applying for vocational high schools is increasing, indicating increases in the numbers of both vocational high schools and applicants. Experimental and

technical facilities play a significant role in vocational high schools, as experimental and technical courses represent a third of their curricula. Experimental and technical facilities can be obtained under the Regulations of School Facilities and Equipment Standard. However, the percentage of schools equipped with experimental and technical facilities is about 50 per cent with the exception of South and North Kyongsang provinces, with 53.5 per cent in Seoul, 48.6 per cent in Pusan and 43 per cent in Kwangju (Material for the National Assembly, Ministry of Education, 1994). As of 1994, the annual expenditure for experiments and technical practice per student was 112,000 won in Seoul, 547,000 won in Pusan, 489,000 won in Taecheon, 361,000 won in Taegu, 218,000 won in Kwangju, 199,000 won in Kyongi, 170,000 won in Kangwon and 224,000 won in Chungbuk, illustrating the poor financial support for experiments and technical practice.

The "two-plus-one" system of industrial high schools - two-year school education and one-year field training - has been implemented partially since 1994 and is scheduled to expand gradually after 1998. However, this system has not been implemented the way it was intended due to several problems: insufficient governmental supervision of the system; the unwillingness of large companies to provide field training and skills education; the lack of workplaces equipped with training centers for three-month compulsory education; the failure to link the system to the school curriculum; the lack of a systematic course for field training; and the lack of guidance and evaluation. Students who receive field training suffer from long work hours and low pay. The training does not allow trainees to practice what they learned in school, as they are merely assigned to positions on the assembly line. Of the trainees, 94.5 per cent receive 200,000 to 700,000 won a month, and 74.8 per cent work from 5 to 60 hours of overtime a week. Engineering high school students must sign pledges stating "I am ready to be punished if I desert my post without notice," "My parents and I will take responsibility for every accident arising during field training," "I will not apply for a higher education institution," and "I will never join the trade union during field training". Trainees call this pledge the modern version of a "slavery covenant."

Pre-school Education (Government Report paras. 526-527)

While the ratio of recipients of pre-school education in developed countries is 60 to 100 per cent, it is merely 47.3 in Korea as of 1993. Provisions concerning pre-schools are prescribed in the Education Act, Enforcement Ordinance of Education Act, Regulation of School Equipment and Facilities Standard, and Pre-school Education Promotion Act. Since pre-schools are not included in the regular school system, the regulations are abstract and mere formalities.

As of 1993, the number of national/public pre-schools was 4,514 (53 per cent of the total 8,515) and that of private pre-schools was 4,001 (47.0 per cent). In terms of the number of classrooms, classrooms of private pre-schools numbered 10,766 (66.8 per cent of the total 16,123 pre-school classrooms). The primary reason for which private pre-schools outnumber national/public ones is their higher quality of education. In larger cities, the private to public ratio is much higher. In Seoul, 97.9 per cent, or 1,325, of all pre-schools are private, and only 29 are public; in Pusan, the figure is 93.1 per cent. The percentage of private pre-schools in Korea, with the exception of six large cities, is 26.3 per cent. The following table provides information on pre-schools according to their type of establishment.

[Table] The Numbers of pre-schools by Establishment Type

Classification	National	Public	Private	Total	Ratio
1989	88	145,168	265,584	410,824	64.6
1990	88	127,056	287,388	414,532	69.3
1991	82	117,796	307,657	425,535	72.3
1992	80	117,004	333,798	450,882	74.0
1993	80	113,252	356,048	469,380	75.9

* Source : Annual Education Statistics, Ministry of Education.

Enrollments in national/public and private pre-schools versus children aged 3 to 5 years are as follows:

[Table] Annual Enrollments (1988-1992)

Year		1988	1989	1990	1991	1992
Eligible Population	age 5	781,100	739,870	680,878	625,411	627,596
	age 3-4	727,811	684,746	649,233	649,222	1,226,053
	total	1,508,911	1,424,616	1,330,111	1,274,633	1,853,649
Total	no. of pre-schools	10,501	10,643	10,400	10,026	9,655
	no. of classrooms	18,754	19,312	19,088	18,298	17,878
	no. of enrollments (age 5)	440,182	420,978	377,227	339,958	297,736
	no. of enrollments (age 3-5)	604,526	599,581	564,842	536,697	793,789
	ratio of enrollment (age 5)	56.4	56.9	55.4	52.4	47.5
	ratio of children aged 3-4	40.0	42.1	42.4	42.1	42.8

*Source: Report of Pre-school Education Situation, Bureau of Primary and Secondary Education, Department of Education, 1982

The reason for which the government fails to include pre-schools into regular public education is that the number of pre-school educational institutions, such as unauthorized pre-schools and private institutions, has increased. Of 32,000 institutions registered as of 1990, institutions specializing in fine arts and music total approximately 7,334, 3,200 of which implement educational programs for young children. Private institutions increase at the rate of 20 per cent annually, due to their lower fees and more specialized programs than public pre-schools. These so-called specialized educational institutions face many problems concerning the quality of teachers, child protection, educational facilities, and operating funds.

The number of children per classroom at private pre-schools is more than 33, casting serious doubt on the educational effectiveness (national/public pre-schools average 21 children). This indicates that private pre-schools prioritize profit to educational effectiveness. In addition, 77.7

per cent of pre-school principals are unqualified (Material of Inspection by the Education Committee of the 14th National Assembly, Ministry of Education, 1993). Most pre-schools do not satisfy the standards for pre-school facilities set by the government.

In 1990, the Ministry of Education allocated 0.16 per cent of its resources for pre-school education, even less than the 0.44 per cent in 1985.

[Table] Planned Investment in Pre-School Education Promotion & the Annual Budget of the Ministry of Education

	1985	1987	1989	1990
Budget of Ministry of Education	2,492,308	3,123,900	4,059,400	5,062,431
Five-year Plan for Pre-school Education Investment (B)	11,035	16,519	18,988	23,082
Pre-school Education Budget (C)	11,035	7,899	7,520	8,157
Ratio	B/A	0.44	0.53	0.40
	C/B	100.0	47.8	39.6
	C/A	0.44	0.25	0.19

Alternative schools for youth workers (Government Report para. 471)

In the past seventeen years, night classes and schools attached to industry have provided a total of 743,330 youth workers with opportunities to learn. As of April 1, 1994, there are 32 schools annexed to industry. The number of enrollments has dwindled sharply from 47,800 in 1989 to 15,100 in 1994, and the schools are likely to be closed soon. This is attributable to the lack of governmental financial support and recognition from the industries. Schools attached to industry should expand continuously, both for the sake of educational welfare, the equality of educational opportunities, and solving the serious industrial labor shortage. The government, however, has taken advantage of the system to attract labor, without providing any administrative policies. The original intention, to provide educational opportunities to youth workers who cannot advance to higher education institutions for financial and other reasons, should be cherished and proceed. For this, the government should improve the educational conditions and surroundings, establish an administrative system, and allocate more of its resources.

Section 4. Lifelong Education (Government Report paras. 479-488)

Status of air and correspondence colleges (Government Report para. 479)

The air and correspondence college has become the single largest institution for higher lifelong education. As of late 1993, the air and correspondence college had 310,995 undergraduate enrollments, up from only 12,000 applicants in 1972. For undergraduates, the percentage of enrollments in the air and correspondence college to the overall enrollments in higher education institutions is 15.6 per cent. In spite of this quantitative growth, the college faces several problems as follows:

First, the primary purpose of the air and correspondence college is to provide opportunities

to further their studies for adults who could not go on to higher educational institutions. Its administration is headed in the wrong direction, however. For example, enrolled students are steadily getting younger. Students under twenty years of age accounted for 20 per cent of the 1993 entering class. In short, the air and correspondence college has become the educational institution for young people who could not go to regular colleges.

Second, the college provides corrective instruction and lectures on radio and television broadcasts. The corrective instruction, however, is not effectively provided, and the rate of viewing the television lectures is merely 30 per cent. Lectures are mainly broadcast over the radio, while the television lectures receive midnight broadcasting. Thus, an independent broadcasting network is necessary.

Third, the percentage of students who graduate is only 17.8 per cent as of 1992.

Fourth, while there are 300,000 enrolled undergraduates, classrooms and libraries accommodate only 10,000 and 2,000 students, respectively. Also, the experimental and technical practice facilities for the use of students is insufficient.

Acquiring capable professors seems to be a lesser priority for the air and correspondence college than employing television and radio broadcasts as educational methods. However, professors are the key to an effective education. As of 1994, the air and correspondence college had 108 professors, 63 per cent of the set number. The student to professor is 1,875:1, compared to 125:1 in France, 107:1 in England, 700:1 in Germany, 111:1 in Spain, 48:1 in Malaysia, 30:1 in China, and 561:1 in Japan. The college should be fully opened and function as a life-long educational institution to serve its functions. Academic advisors for individual students should be assigned to local educational centers in order to increase the level of face-to-face instruction. The present budget accounts for merely 23 per cent of the 1993 budget of Seoul National University (in terms of the expenditure per student, Seoul National University spends 4.88 million won, while the air and correspondence college spends 160,000 won).

Problems facing open colleges

Open colleges were established to provide opportunities for higher education for industrial workers. As time passes, these colleges have lost their original educational aims. Over 45 per cent of the undergraduates were unemployed in 1993, while industrial workers accounted for 24 per cent of the entering class. Open colleges have been reduced to educational institutions which students attend merely to acquire college diplomas. Some students who could not enter ordinary colleges acquire false working backgrounds or work for factories in order to enter open colleges and obtain college diplomas. Undergraduates demand that their open colleges be transformed into regular colleges.

Status of facilities for non-formal education (Government Report paras. 484-488)

Non-formal educational facilities annexed to universities and private academies, a new type of university education and life-long educational institution, provide social services as well as research and instruction. As of July 1994, 53 universities throughout the nation had such social educational annexes. However, the institutions levy high lesson fees for high profit, cancel lectures due to low attendance, and admit four times as many applicants as the legal capacity. In addition, there are few full-time instructors and a severe dependency on part-time instructors. These institutions adopt rote memorization methods unsuitable for adult educational programs.

Section 5. Educational Investment (Government Report paras. 489-495)

The government's low educational investment

The educational budget (Ministry of Education, Budget Planning) accounted for merely 3.76 per cent of Korea's GNP in 1994, lower than the average 3.9 per cent in developing countries as of 1992 (OECD report, 1993). To keep up with international educational standards, the government should allocate at least 5 per cent of GNP for education. The percentage of GNP for educational expenditure was 5.0 per cent in Japan (1986), 6.7 per cent in the U.S. (1986), and 7.2 per cent in Canada (1987). The rate of increase in educational expenditure has been steadily dropping, from 28 per cent in 1990, 27.5 per cent in 1991, 18.2 per cent in 1993, to 10.3 per cent in 1994. Particularly, the 1994 figure falls far below 13.7 per cent, the rate of increase of the gross national budget.

The increased burden of educational expenditure on parents

The government's poor educational investment forces parents to pay substantial educational expenditures. According to a 1991 research report (1991) by the Korean Education Development Institute (KEDI), the total education expenditure was 20.81 trillion won as of 1990, of which direct education expenditure accounted for 18.12 trillion won. Private education expenditure was 9.43 billion won, accounting for 45.3 per cent of total education expenditure and 52 percent of the direct education expenditure. Including the 3.12 trillion won for public educational expenditure spent by parents (entrance, tuition, school supporting fees), the percentage of privately-burdened educational expenditure to the total educational expenditure was 70.7 per cent. In particular, pre-schools and junior colleges are the most expensive educational institutions.

Regardless of this situation, the government has not made efforts to increase its educational expenditure substantially and presents educational policies which place greater economic burdens on parents, under the so-called benefit principle that "the one who benefits should pay." Such examples of the government's policies which were announced by the Ministry of Education in 1994 are its permission of pre-school aged children to attend private institutions in addition to the approved pre-schools, its permission of primary school students to receive private tutoring in Korean, English, and mathematics, its policy of allowing students to skip grades, the reinstatement of high school entrance examinations, and its permission of supplementary classes at school. The primary reason for the heavy burden on parents is the poor educational quality provided by schools along with parents' great interest in education.

Problems of over-sized classes (Government Report para. 494-495)

In addition to increases in private educational expenditure, poor investment in education results in over-sized classes. Classes are too crowded for teachers to administer a standard level of education. The number of students per legally-defined class is 50 (in some special cases, 60). This guideline is rarely observed.

The government's Report states that over-sized classes are dwindling due to steady educational investment. This is not due to considerable educational investment by the government, however, but rather the natural decrease due to the lower birth rate. For example, the number of students per middle school class in 1985 was 61.7. Admission of 1990 newcomers at the same

number of 1985 classes leaves the number of students per class at 50.5, due to the decrease in birthrate. In other words, the government's investment resulted in a decrease of 1.7 students.

Over-sized classes are prevalent in urban areas. As of 1990, 29.1 per cent of primary school classes had more than 51 students (50 per cent in the six largest cities), and in Seoul and Inchon, classes with over 71 students numbered 146 and 91, respectively. Double-shift classes have increased 135 per cent from 1986 to 1990, and those in third-grade-and-over classes numbered 1,028. Middle and high school classes with over 51 students accounted for 66.8 per cent of the total (90.5 per cent in the six largest cities) and 87.2 per cent (96.1 per cent in the six large cities).

Over-sized classes are a harmful factor in educational surroundings to both teachers and students. Generally, over-sized classes cause problems such as decreased educational effectiveness, lack of counselling and guidance, hindrance of students' mental and physical development, decrease in safety, and difficulties in curriculum management.

Shutdown of agricultural and fishing schools

Poor educational investment results in over-sized classes in urban areas, while the migration from rural to urban areas results in under-sized classes in agricultural and fishing schools. The government has not taken active measures to solve this problem, and simply closes agricultural and fishing schools. From 1982 to September 1994, the number of merged and closed agricultural and fishing schools was 1,520. In particular, the number of schools which have been closed or planned to be closed is as follows: 211 main schools and 36 branch schools from 1982 to 1990, 130 main schools and 22 branches in 1991, 177 main schools and 51 branches in 1992, 163 main schools and 47 branches in 1993, 249 main schools and 71 branches as of September 1, 1994, and 365 schools in 1995. The government's unreasonable policy of closing agricultural and fishing schools should be reconsidered seriously in the following respects: smaller schools without over-sized classes should be given priority over the government's financial worries; smaller schools will be the key to preventing rural to urban migration; and closing schools threaten the communities' sense of unity.

Section 6. Special Education for the Disabled (Government Report paras. 502-502)

The rate of education for disabled students

According to the "Report by the Administration Renovation Committee" (October 1993), the percentage of beneficiaries of education for the disabled was about 20 per cent. The target population of people aged 5 to 17 years totalled 243,556 children, and special schools numbered 106, with an capacity of 20,985 disabled children. Schools with special classes numbered 2,683 (1,036 classes in primary schools, 413 in middle schools and 280 in high schools) with a capacity of 49,195. The percentage of disabled beneficiaries of education in the U.S. increased from 55 per cent in 1975 to 61 per cent in 1977, with over 90 per cent of the recipients having mental, linguistic, or acoustic disabilities. In Japan, this figure increased from 32 per cent in 1972 to 95 per cent in 1983 (Research on Special Education Promotion Measures, the Korean Education Development Institute, 1986). The following table shows the situation of the beneficiaries of special education in relation to the total population of each nation.

[Table] The total population of each nation and the number of beneficiaries of special education

nation	Canada	France	Hungary	Poland	Russia	England	Korea
total population (A) (unit: 10,000)	2,590	5,587	1,060	1,476	28,368	5,708	4,198
no of beneficiaries of special education (B)	559,717	335,561	38,197	105,763	575,600	134,908	49,195
B/A	0.022	0.006	0.004	0.007	0.02	0.002	0.001
status of beneficiaries of special education in each nation, with Korea as the base unit of 1.	22	6	4	7	20	2	1

* Source: White Paper On Special Education, Ministry of Education, 1993

Problems in special education

Since the Special Education Promotion Act was enacted in 1977, many special schools and classes have been established. They are not without serious problems, however. First of all, the dependency of special educational institutions on private schools is very high, approximately 60 per cent, varying according to region. Some areas have few special schools, and some have schools only for specific disabilities. Second, even schools for specific disabilities lack progressive curricula, and the students have difficulties in such educational conditions. Third, the number of private institutions for infants and children is insufficient and, as a result, unlicensed institutions have increased. Finally, the government should take measures for students who fail to advance to higher educational institutions because of decreases in their number of classes.

Employment of the disabled

Though the disabled may have diplomas, it is very difficult for them to overcome social constraints and gain employment. National and provincial organizations and workplaces with a more than legally-defined number of workers are required to fill a quota of disabled workers. While the government should lead this movement, the government, and even the Ministries of Health and Labor, do not observe this quota. The current situation of national or provincial organizations and workplaces subject to employ disabled workers is depicted in the following table.

[Table] Status of employment of disabled workers at workplaces subject to employ disabled workers

	Civil Servants to Be Employed	No. of Obligatory Employees	No of Disabled Civil Servants	Ratio of Implementation	No. of the Desired Employees
91.1.1.	291,584	5,793	1,504	26.0	4,289
92.1.1.	256,404	5,071	1,698	33.5	3,373
93.1.1.	279,713	5,548	1,987	35.8	3,561

*Source: Representatives' Consciousness of Disabled People, Ministry of Labor, 1993

After they finish special education, a overwhelming number of people with visual disabilities work as acupuncturists or moxa-cauterizers, massagers, dress-makers. People with acoustic disabilities engage in mainly dress-making or shoe-making, both of which are declining businesses. According to an analysis of employment conditions of graduates of schools for the acoustically disabled (Song Moon-Ho, 1988), 76 per cent get jobs unrelated to what they learned at school, and 86 per cent change jobs within three years after their employment. Research by the Korean Society for Rehabilitation of the Disabled (1992) shows that 48.7 per cent received under 100,000 won a month, 19.3 per cent received 100,000 to 221,000 won, 14.1 per cent received over 221,000 won. Disabled workers paid over 222,000 won, the minimum wage at that time, accounted for merely 14.4 per cent.

Education conditions of disabled children

According to a research conducted by the Society for the Study of Early Education of Disabled Children, early education institutions for special children numbered 223, including 165 private institutions (71 per cent). Only 5,500 disabled children, or 5 per cent of the target population of 100,000 to 120,000 children, benefitted from special institutions, even including unknown smaller educational institutions and private tutoring. In addition, as private institutions for early education are not granted subsidies by the government, tuition is quite expensive, reaching 100,000 to 1 million won a month. In spite of this, the number of applicants outnumber the number of placements at institutions. Most disabled children stay at home, and in some cases they are abandoned. The government has not enacted any policies for special education.

Section 7. Status of the Teaching Staff (Government Report paras. 510-517)

Social status of the teaching staff (Government Report para. 510)

The political and social status of Korea's teachers is lower than they deserve. In other words, the social status of Korean educators is low compared to its role in Korean society. According to research by the Korean Teachers' Association (formerly the Korea Federation of Teachers' Association) in 1989, the social status of primary school teachers among 15 jobs was ranked at 8 by primary school students, 14 by middle school students, 14 by high school students, 12 by teachers, and 10 by adults. The social status of middle and high school teachers was ranked at 10 by primary school students, 9 by middle school students, 8 by high school students, 7 by teachers, and 10 by adults. According to "Research of Korean and Japan Teaching Staff's Social and Economic Status and Their Educational Viewpoint" at the Fourth Korean-Japan Seminar on Educational Study, the social contribution of Korean teachers was rated at 4 for middle and high school teachers and 5 for primary school teachers among 26 jobs, while that of Japanese teachers was ranked at 9 for middle and high school teachers and at 6 for primary school teachers. The actual social status, however, of Korean teachers is lower than that of their Japanese counterparts (Hangyoreh Daily, May 25, 1994).

In spite of the important role of education in Korean society, the low social status of education is attributed to previous governments' policies of neglecting education as they made every effort to maintain their power. They simply considered education an institution to produce a

labor force equipped with basic knowledge to accelerate industrialization, neglecting education's intrinsic functions and quality. This led to the deterioration in the quality of education and low status of teachers.

A school is recognized as a low-echelon administrative unit, and teachers as its officials. Every responsibility and authority of school management is held by principals, and education is administered under order of the principal. The Educational Act, article 75, paragraph 1 states, "the principal is in charge of school affairs, supervises the staff and educates students... teachers educate students by order of the principal." Though there are staff meetings, a personnel consulting committee, a teacher disciplinary consulting committee, and a budget-settlement consulting committee, these committees do not have actual authority and are unable to share the absolute power of the principal to reflect the welfare of teachers. As a result, school administration is controlled undemocratically. Efficient education cannot be implemented without changing the school administration system: the Ministry of Education → the Office of Education → Principal → Vice-Principal → (Chief Teacher) → General Teachers → Students.

In 1991, the government limited principals to serve a maximum of two terms of four years each, and assigned the right to appoint principals to the Minister of Education, in an attempt to reflect the public opinion. This, however, has derailed the educational administration. Principals tend not so much to implement school administration with educational responsibility as follow the orders of the Ministry of Education or the Office of Education, in order to be reappointed.

Teachers' three labor rights and constraints on political activities

Teachers' three labor rights and their freedom to participate in political activities are not guaranteed. The ILO Conventions 87 (freedom of Association and the right to organize), 98 (the right to organize and bargain collectively) and 151 (Civil Servants' Three Labor Rights) state that the government has an obligation to protect teachers' three labor rights. In spite of the ILO's recommendations to the Korean government to guarantee teachers' right to organize, the government refuses to acknowledge teachers' three labor rights and illegalizes the Korean Teachers and Educational Workers' Union (KTEWU), which has gained popular support. When teachers established the KTEWU in 1989, the government dismissed 1,697 teachers, and later reinstated 1,312 on condition of their withdrawal from the union. The remaining 369 former teachers did not return to their schools. Teachers are deprived of their freedom of political activities, their civil right. They are not eligible for election for the offices of education committee members, representatives of provincial parliaments, or representatives of the National Assembly. As they are not allowed to assume official posts or engage in political activities, they cannot express their opinions on national policies. The denial of teachers' three labor rights and their freedom of political activities are major obstacles of teachers' participation in educational policy-making to solve educational problems. Legal constraints on teachers' three labor rights and political activities are stated in the Constitution article 33, paragraph 2, the Labor Union Act article 8, the Civil Servants article 66, Regulation of Civil Servant Service article 28, and the Provincial Civil Servant Act article 58.

Heavy teaching burdens

According to the "Report on the Conditions of Teachers' School Life and Opinions," based on surveys of 1,242 middle and high school teachers by the Korean Teachers and Educational

Workers' Union, many teachers do not have enough time to prepare for lessons because of their large number of classes and extra-curricular affairs.

[Table] Teachers' Time Spent for Students

	regular lesson hours	supplementary class hours	autonomous study hours	extra-curricular hours	extra-class special activities hours	class meeting hours	total
no. of respondents	1,236	570	555	1,008	303	697	1,235
total	20.6	5.5	4.4	1.3	2.3	1.0	26.9
primary schools	26.5	3.8	3.5	1.4	2.6	1.1	31.2
middle schools	18.7	5.7	4.9	1.3	2.2	1.0	26.4
general high schools	16.5	6.0	4.6	1.1	2.0	1.0	24.8
vocational high school	15.9	4.5	4.2	1.2	1.8	1.0	19.9

[Table] Time Allocated for Preparation of Lessons during Working Hours

	no. of respondents	average	under-10 hours	11 hrs - 20 hrs	21 hrs - 30 hrs	32 hrs - 40 hrs	over 51 hrs
total	1,190 person	5.6 hour	88.3 %	11.1 %	0.1 %	0.3 %	0.2 %

Along with over-sized classes, the lack of preparation time is a primary cause of lowered educational efficiency. The government does not observe the class size limit it established, schools are short of teaching staff, while outside schools thousands of prospective teachers await receiving official appointments for teaching posts in public schools. Only 88.6 per cent of the number of teaching posts officially set by the Ministry of Education are filled in public schools, and 80.9 per cent in private schools (a shortage of 35,000 middle and high school teachers and 7,000 primary school teachers). The 1993 Ministry of Education document for National Affairs Inspection shows that while 2,616 people received official appointments for middle and high school posts and 820 for primary school posts, the number of those on the waiting list is 1,121 for middle and high school posts and 820 for primary school posts. Since 1991, the number of teaching licenses issued after has increased by the thousands every year, increasing the number of those on the waiting list for appointments.

Another indicator of the serious problem concerning teachers' heavy workloads is the high number of students per teacher. In spite of this, the government continues to lower the number of teachers per class.

[Table] Number of Students per Teacher in Each Country

Nation	Survey Year	Primary Sch.	Middle Sch.	High Sch.
Korea	1991	34.4	23.7	32.6
Indonesia	1988	23.6	14.8	13.0
Malaysia	1988	21.3	20.0	12.9
Singapore	1988	25.8	21.6	11.2
Japan	1988	22.2	17.5	9.8
Brazil	1988	23.9	14.6	12.0
Argentina	1988	19.3	7.5	12.7

Source : The Korean Education Development Institute, "Korea's Educational Indicators" (1991)

Section 8. Private Schools (Government Report paras. 518-519)

Previous administrations emphasized the stability of schools as important for their own stability and granted school foundations full authority over their school security. This resulted in tremendous irregularities in private schools; the despotism of private school foundations, unfair admission of students in exchange for money, misappropriation and embezzlement of public funds, management of schools as profitable businesses, collection of miscellaneous fees and school-supporting expenses, accounting irregularities, dishonest selection of supplementary textbooks, and wrongdoings related to personnel affairs. These private school problems were said to stem partly from financial difficulties. However, this is not the case. Since 90% of profitable investments owned by private school foundations is real estate, they would probably have no financial difficulty if they managed their investments properly. Therefore, irregularities primarily result from the concentration of authority assumed by the foundations.

One solution to current problems facing private schools is to establish a division system in which three subjects - educational authorities, foundations, and schools - control one another. This requires the amendment of the relevant laws so that the foundation should be in charge of school management, and the school in charge of educational matters. In this way, the openness and autonomy of private schools can be improved. According to the Private School Act, the foundation has the rights to appoint the headmaster and teachers, discipline teachers, and draft the school budget. The foundation should relegate authority concerning educational matters, except school management, to the school. In addition, among the articles in the Private School Act is one stating the institutionalization of professors' or teachers' meetings as a having decision-making power. On a long-term basis, however, parent-teacher school supporting meetings need to be strengthened in each school. Measures should be taken to encourage and guarantee parents' participation in the management of educational affairs. In order to support the institutionalization of professors' and teachers' meetings as decision-making entities, first, the school should have the right appoint teachers and oversee personnel matters; second, the authority to discipline the teaching staff should be assigned to the schools' Disciplinary Committee; third, the authority of drafting the school budget should be assigned to the school's Budget-Settlement Committee.

Section 9. Guarantee of Educational Autonomy (Government Report para. 520)

The right to a national monopoly on textbooks (Government Report para. 520)

As the Regulation Concerning Books for Curriculum article 51 states that "books other than textbooks should not be used in class," only textbooks are used in class in the current educational institution. The government holds a monopoly over the content of textbooks through the system of authorizing and approving textbooks. The Educational Act article 157 paragraph 1 stipulates that the Ministry of Education holds copyrights of textbooks of all schools except universities, education colleges, teachers' colleges, and junior colleges. The government monopolizes everything from textbook publishing, the selection of commissioned institutes, the appointment of members to the publishing inspection committee, the decision and conveyance of the standard of judging textbook content, other considerations concerning textbooks, the appointment of the first and second inspection committee members, and the decision of final approval.

The national authorization textbook system seems to violate the Constitution article 22 on freedom of academy and art, article 21 on freedom of the press, article 31 paragraph 4 on they autonomy, specialization, and political neutrality of education. Freedom to study school subjects and to publish the findings are guaranteed by the Constitution. In accordance with the Constitution article 21 stating that there shall be no censorship or approval system, but rather the free expression of ideas and opinions and freedom of distribution texts. The system of approval and authorization of textbooks may be construed as unconstitutional, as it allows the political control over textbooks. In England, the writing, publication, adoption, and use of textbooks are free, and in the U.S., France, and Germany, the free publication of textbooks is prescribed by law.

Researchers who have analyzed approved textbooks point out their problems: content which distorts democracy (emphasis on the reactionary feudal order, totalitarianism, militarism, praise of the political stance of a specific government), content which violates national autonomy (pro-American attitude, remnants of the days of Japanese colonialism, West-centered international viewpoints), content which hinders national reunification (cold war ideology, propaganda of the government's unification slogans, stress on negative opinions of North Korea), content with a hierarchical bias (the distortion of workplace conditions, negligence of physical labor, praise of capitalism), content which aggravates sexual discrimination (male-centered ideology), and content of regional deviationism (urban-centered notions, distortion of the situation in agricultural villages).

The government's monopoly on drafting the curriculum

The curriculum is the center of school education, as it includes educational goals, subject purposes, educational content, and time allocated for each subject. In Korea, the Ministry of Education holds exclusive authority over drafting the curriculum. In accordance with the sixth curriculum to be implemented starting 1995, the Ministry of Education provides the standard of the curriculum: Municipal and Provincial Offices of Education adopt the curriculum set by the Ministry of Education on a regional basis and implement the curriculum; teachers at each school implement the curriculum based on an implementation guide provided by the Municipal and Provincial Offices of Education. This does not give autonomy to teachers, however, but rather places another burden

on them. The reasons for this are as follows. First, the same textbooks are used throughout the nation because of the exclusive use of approved textbooks, and every school is subject to the uniform national college entrance examinations. Second, under the current undemocratic administration structure, referral to the implementation guide provided by the Ministry of Education and Offices of Education means obeying it. Third, while most teachers complain of heavy workloads and their lack of time for studying, they have great difficulty in drafting the year's curriculum including lesson details for each subject one year in advance.

Section 10. Recommendations

First, the government should draft concrete and long-term plans to abolish social practices which unnecessarily over-emphasize one's educational background, one of the fundamental causes of the current educational atmosphere.

Second, as prerequisites for this, the government should grant teachers exercise of their three labor rights, basic rights guaranteed in the Constitution, as well as freedom of political activities and should encourage lead teachers, parents, and students to participate autonomously in the process of establishing educational policies.

Third, the government should expand the primary school meals system throughout the nation and ensure that vocational high school students receive effective field training.

Fourth, the government should increase the percentage of air and correspondence college professors, which falls far behind that of other countries, take measures to increase the percentage of industrial workers at open colleges, and improve social educational programs which are run by university foundations for profitable purposes.

Fifth, as the government invests so little in education, parents are burdened with great educational expenses. Some students are discriminated against in terms of their education for financial reasons, a great stumbling block in unifying society. Therefore, the government should raise educational expenditure from the current 3.7 per cent of GNP to a minimum of 5 per cent.

Sixth, to strengthen education for the disabled, the government should take measures to increase the percentage of beneficiaries of education for the disabled and implement the quota system to promote the employment of disabled workers.

Seventh, the government should take fundamental measures to improve teachers' poor working conditions and social status.

Eighth, the government should stop controlling education by monopolizing educational content through the system of authorizing and approving textbooks and drafting the curriculum.

Ninth, the government should take measures so that the headmaster, who currently holds most responsibility and authority over school management, shares such responsibilities with the teaching staff.

Article 14. Free Compulsory Education

Though compulsory education is administered at primary education institutions, the term of compulsory education is six years with free tuition and textbooks. In Sweden and Japan, the term of compulsory education is nine years, with free textbooks, school meals, and miscellaneous expenses. France provides tuition, scholarship, lodging fees, textbooks and commuting allowances for ten years. The U.S. administers free education for eleven years, including primary and secondary schools, and schools for disabled children.

The government should strive to administer actual free compulsory education and implement nationwide school meals programs. The government should include pre-schools and middle schools in the scope of compulsory education.

Article 15. The Right to Take Part in Cultural Life and to Enjoy the Benefits of Scientific Progress

Section 1. Overview

Article 15 provides the right for all citizens to take part in cultural life and to enjoy the benefits of scientific progress as well as their right to have their interests protected by law. The right to enjoy the benefits of scientific progress and the right to have one's interests protected by law are not fully guaranteed by the Korean government. However, we must apologize for the fact that we could not find the appropriate NGOs to submit reports on violations of these rights. Therefore, this Counter Report's section concerning article 15 of the Covenant will only cover the right to take part in cultural life.

Section 2. General Comments on the Government's Report Regarding the right Take Part in Cultural Life

The government's Report tediously enumerates all legislation, institutions, systems, and events concerning this cultural right in order to describe "prospective policies" implemented by the government. In fact, however, the effects of these policies on the people is negative rather than positive. Generally, the government's policy is two-sided: the regulation of culture (i.e. censorship) and the arts which are deemed as "unsound," and the support of culture and the arts which are deemed as "sound." The Korean government's policies concerning culture and the arts exhibit tendencies which are in fact remnants of Japanese colonial policy or past military dictatorships. The democratic participation of citizens in the decision-making process, which determines whether a particular artistic or cultural project is to be regulated or supported, is wholly excluded. Instead, the government continues to enact its culture and arts policies unilaterally. Every cultural and artistic event with political overtones differing from the government's positions faces unjust suppression regardless of its artistic value. In contrast, artistic events which are pro-governmental receive enthusiastic support from the government even when their artistic value is questionable. Instead of addressing such realities, the government's Report simply enumerates the general and abstract legislation regulating culture and the arts and fails to explain their principles for such policies or specific cases of the enforcement of their regulations. The existence of most of the legislation, systems, institutions, and events described in the government's Report is not known by the general public. Also, the effects they contribute to the promotion of cultural rights accepted

are indeed questionable, and the assertions in the government's Report should not be accepted at face value. Regarding the government's policies concerning culture and the arts, some of the problems are as follows: first, the undemocratic policy decision-making process; second, the very nominal and bureaucratic enactment of the policies; third, the lack of governmental experts, who are able to understand fully the nature of cultural policies and their possible effects.

As the government's Report states, article 22 of the Korean Constitution states that "all citizens shall enjoy the freedom of learning and the arts." Even with this provision, however, there are numerous violations of academic and artistic freedoms under the self-righteous standards set by the government. The government's regulations of culture and the arts, which are deeply interrelated with the freedom of expression, are two-fold: first, regulations contained in the National Security Law (NSL) and the Criminal Code, and second, the regulations contained in separate and individual laws. The post-production regulation under (i.e., regulation of artistic works after their production) according to the NSL focuses on anti-government and anti-state cultural and artistic works. The post-production regulation under criminal law restricts artistic works if they are deemed to fail the "fine custom" standard, that is, if they conflict with the ethical codes of Korean society. The regulations of the individual and separate laws focus on the pre-production regulation (i.e., regulation of artistic works before their production) of cultural and artistic works which conflict with the government's political positions and/or which fail the "fine custom" standard. Concerning the regulation of cultural and artistic works which are deemed to fail the "fine custom" standard, there is much controversy and public debate surrounding the issue of the validity of such regulation.

Section 3. The suppression of cultural and artistic freedoms under the National Security Law

The National Security Law (NSL), which is the representative law restricting anti-governmental or anti-state activities, has commonly been used as an instrument for suppressing academic and artistic freedoms in Korea. The major provisions of the NSL which infringe upon these freedoms are the first and fifth sections in article 7. The first section states that "[a]ny person who, with the knowledge that such action threatens the nation's existence and security and the order of liberal democracy, praises, encourages, advertises, or supports the activities of an Anti-State Organization or its members, or advertises or advocates a rebellion against the State shall be punishable by imprisonment for the term of not exceeding 7 years," and the fifth section states that "[a]ny person who, for the purpose of committing the acts as stipulated in Sections (1)(3) and (4), has produced, imported, duplicated, kept in custody, transported, disseminated, sold or acquired documents, drawings and any other similar means of expression shall be punished as prescribed in each applicable section." The concept of an "Anti-State Organization" as contained in the NSL indicates states under socialist regimes, North Korea. Many artists, scholars, and average citizens, who supposedly enjoy artistic and academic freedoms, have been arrested, prosecuted, and declared guilty under the pretense that they had sympathized with Communist or North Korean ideals.

The suppression of literature

The vast number of cases in which literary figures were arrested and prosecuted for

violation of the NSL in the past few decades precludes a case by case account. However, a few representative cases which occurred recently are as follows. Baik Jin-ki, a literary critic, was arrested while in the process of compiling a collection of short stories, poems, and creative essays on the subject Lee Chul-kyu, a former student at Chosun University, in whose mysterious death the government was suspected of being involved. Lee Ki-young, a poet, along with Chung Dong-ik, a publisher, were indicted on charges that they praised the activities of "partisans" (i.e., the Koreans in the south who supported the regime in the north) around the time of the Korean War, in the poem "Jiri Mountain." They were each sentenced to three years imprisonment on October 12, 1989. Hwang Suk-young, a famous novelist, was pronounced guilty after returning to South Korea from his visit to North Korea, which was taken without the government's permission. Some of the literary figures arrested for violation of the NSL during former President Roh Tae-woo's administration are listed below:

[Table] Writers prosecuted during Roh's administration

Name	Occupation	Date of Arrest	Reason of Arrest	Date of Release
Koh Kyu-tae	Poet	2/17/91	Publication of North Korean books	5/23/89
Kang Tae-hyung	Poet	3/27/91	same as above	6/23/89
Shin Kyong-rim	Poet	3/27/89	Preparation for the North-South Korean Artists Conference	3/29/89
Hyon Ki-young	Novelist	3/27/89	same as above	3/29/89
Kim Jin-kyong	Poet	3/27/89	same as above	3/29/89
Ko Eun	Poet	3/27/89 4/1/89	same as above	3/29/89 6/2/89
Paek Nak-chung		3/27/89 4/12/89	same as above	3/29/89 4/14/89
Kim Kyu-dong	Poet	3/1/89	Pan-Korean Conference	3/3/89
Hwang Suk-young	Novelist	4/89	Visit to North Korea	
Moon Ik-hwan	Poet	4/89	same as above	
Kim Sa-im	Poet	5/26/89 1/15/90	Publication of Labour Liberation Literature	9/18/89
Im Kyu-chan	Critic	5/26/89 1/15/90	same as above	9/18/89
Do Chong-whan	Poet	6/26/89	National teachers Union	8/28/89
Yoon Chae-gul	Poet	6/26/89	Incident of Assemblyman Suh	
Yi Seung-chul	Poet	7/6/89	Publication of North Korean books	10/20/89
Kim Yi-ku	Novelist	12/4/90	Publication of Hwang's North Korean travel essay	12/6/89
Kim Myong-sik	Poet	7/1/90	Publication of Poem Yoke of Imperilism	
Sohn Ji-tae	Critic		Publication of Labour Liberation Literature	
Park No-hae	Poet	3/10/91	Socialist Workers Alliance	

Source : Park Won-soon, *Study on the National Security Law II*.

The government's suppression of the arts

Many artists are subject to suppression under the NSL. On August 4, 1989, the Agency for National Security Planning announced the arrest of a painter named Hong Sung-dam under charges

of violating the NSL for his participation in the Pyongyang Youth Festival in North Korea and his display of a series of slides of a painting of his which measured 77 by 2.6 meters and was divided into eleven panels, with the help of an institution called the School of Nationalism in Los Angeles, California. Each of the eleven panels depicted the people's democracy movement in five areas of Korea, namely, Seoul, Chonju, Taegu, Pusan, and Kwangju from the last nineteenth century to 1989. This painting was later discovered to be the joint effort of thirty fellow artists of the National Alliance for the Nationalist Artists Movement (now defunct) from the five areas named above, a discovery which led to the subsequent arrest of other artists: Cha Il-whan, Chung Ha-soo, Paek Eun-il, and Chun Sung-il. On August 17, 1989, prosecutors filed charges against Shin Hak-chul, a representative writer in the nationalist arts movement and the former representative of the Korean Nationalist Artists Federation, for depicting former North Korean leader Kim Il-sung's birthplace in his work entitled "Monegi" ("Rice-Planting") and for sympathizing with a possible North Korean armed revolution. As the vast number of artists persecuted under the NSL precludes discussing each case, charts which give brief information on artists who were arrested and convicted for violation of the NSL during former President Roh Tae-woo's administration from 1988 to 1992.

[Table] Artists prosecuted and arrested during Roh's administration

* Korean Nationalist Artists Federation

name	occupation	date	reason for arrest & imprisonment	date of release
Kim Yong-tac	artist	1989.3.1	Pan-national meeting for Korea's reunification	1989.3.3
Shin Hak-chul	artist	1989.8.17	a painting "Rice-planting" (NSL)	1990.2.16
Lee Jong-ryul	artist	1989.11.2	Possession of the document benefitting the enemy (NSL)	1990.2.16

* Seoul branch, National Alliance for the Nationalist Artists Movement

name	occupation	date	reason for arrest & imprisonment
Choi Yul	art critic	1991.3.19	creation of artistic works benefitting the enemy (NSL)
Chung Sun-bee	artist	1991.3.19	
Oh Chin-hee	artist	1991.3.19	
Im Jin-suk	artist	1991.3.19	
Lee Sung-gang	artist	1991.3.19	
Kim Won-ju	artist	1991.3.19	
Yu Chin-hee	artist	1991.3.19	
Park Mi-gyong	artist	1991.3.19	
Cho Chung-hyun	artist	1991.3.19	
Choi El-gyung	artist	1991.3.19	
Choi Min-chul	artist	1991.3.19	

Source : Park Won-soon, Study on the National Security Law II.

The oppression of Academics

There have been numerous incidents of the oppression of academics. On June 23, 1989, Han Chan-su, then a graduate student in Korea University's department of foreign policy, was arrested for violation of the NSL. The activities for which he was charged were purchasing and publishing a North Korean publication entitled "History of Chosun" as well as for his written works entitled "The State of the Korean Peninsula Prior to the Korean War" published in the Hansung University newspaper and "The National Liberation Movement from Korea's Liberation in 1945 to the Korean War in 1950" published in the Chosun University newspaper. On December 1, 1989, the Agency for National Security Planning prosecuted yet another academic. Lee Sung-whan was prosecuted for his work entitled "A Modern History of the Korean National Liberation Movement" and an analysis entitled "The Anti-Japanese Struggle" published in the Seoul National University newspaper under the pen name of Lee Jae-wha. Then, on January 17, 1990, Park Tae-ho, who had initiated the controversy among progressive academic circles concerning the ideological splitting of Korea's labor movement, was arrested for the presentation of his views which supposedly stated "the need to establish the hegemony of the working class through a revolution of the masses." On July 12, 1990, members of the Asia, Africa, and Latin America Research Institute, including the director, Kim Myun-sik, the secretary-general, Bu Jwa-hyun, and a researcher, Lee Jae-ho, were arrested and taken to the Seoul city police authorities for preparing a booklet entitled "The Cheju April 3 Resistance" which was published in collaboration with Sonamu Publishing Company. The booklet allegedly contained contents in violation of the NSL for "benefitting the enemy" (viz., North Korea). On June 27, 1991, six members of the Seoul National University Social Science Research Institute, a group of professors and students in master's or doctoral degree courses in the social sciences, were arrested for violation of the NSL, article 7 section 2. According to the prosecuting authorities, they were prosecuted on charges of subscribing to Marxist-Leninist ideologies and advocating the triumph of socialism in Korea through a people's revolution. The authorities also banned their departure from Korea. Despite the testimony given by fellow scholars claiming that the defendants' works were the results of serious academic pursuits and thus deserving of protection under the law, the court pronounced all defendants guilty of NSL violations. In July 1994, the police announced that a book entitled "Understanding Korean Society," which was co-authored by professors at Kyungsang University and used in classes as teaching material, had contents which "benefitted the enemy." The police confiscated the books for sale at bookstores and arrested by force an offending bookstore's owner by the name of Chung Dae-in. Furthermore, the authorities issued subpoenas to all the authors and banned their departure from Korea.

Section 4. The Pre-Production Regulation System

Overview

Various laws exist which impose regulations on and the censorship of theatre and motion pictures. To prohibit works which do not comply with the government's standards, the basic regulatory device which is used to ban the creation and/or distribution of materials is the system of pre-production regulation which often results in the prior censorship of proposed projects whose ideological or social overtones differ from those of the government. In order to do so, the

government has mandated that all Korean production companies acquire the proper licenses and register their project proposals according to the relevant regulations and then submit their proposals to the Ministry of Culture's Pre-Production Regulation Committee which is responsible for determining the results of pre-production regulation and censorship of works of art. Under such legal provisions, individuals who do not comply with the applicable guidelines are prohibited from displaying their works to the public. Furthermore, individuals who fail to apply for licenses, to register, or to submit proposals to the Pre-Production Regulation Committee in order to avoid any of these processes which can lead to censorship, are subject to criminal prosecution.

Public performances

The Public Performance Ethics Committee was established according to the Public Performance Act article 25 section 3 in order to oversee the regulation and censorship of public performances. Despite this Committee's official non-governmental status, it would be more accurate to label it as a governmental agency. In accordance with the Public Performance Act's article 25 sections 3(3) and 3(6), the Minister of Culture has the authority to appoint members to this Committee, and its operation costs are burdened by the government. Furthermore, the Act's article 21 states that the Committee's chairperson is obligated to report the results of its deliberations directly to the Minister of Culture. Thus, the actions of the Public Performance Ethics Committee can just as well be considered as the Ministry of Culture's own actions, despite the repeated denials by the Korean government that this is the case.

The Public Performance Ethics Act article 14 section 2(1) stipulates, by order of a Presidential Decree, the responsibility of any public performer in any theatrical, musical, or dance performance to submit the script or scenario for the performance to the Ministry of Culture before the actual performance for deliberation. The same article's section 2(2) states that a music or dance performance can be regulated and censored even as it is in progress before a public audience, at the Minister's demands. In the 1980s, these provisions have led to oppression of numerous theatrical performances with progressive tendencies. Later, however, on December 31, 1988, a revised version of this provision in article 18 section 2(1) was passed. The new provision states that the pre-production regulation and censorship of scripts or scenarios for public performances was no longer mandatory. However, the same article still provides for the pre-production regulation of "any public performance created by citizens or organizations of nations which have unfriendly relations with Korea or of other nations specially designated by the Minister of Culture." Thus, the revision of the article was a superficial change which still allows pre-production regulation and censorship just as before. As long as the Public Performance Act provides for the pre-production regulation of performances, even though some performances are now exempt from these provisions, one can not be sure that the Ministry will not amend its new provision to resume its policy of the pre-production regulation and censorship of all public performances.

The Public Performances Ethics Committee also regulates motion pictures based on the Motion Picture Act article 12 and music records and videos on the basis of Music Records and Videos Legislation article 16. The people's rights to the free creation of artistic works, as well as their right to the enjoyment of the arts, are severely violated by the arbitrary decision-making process of committees, which are inappropriately managed at that. Nominally for the protection and promotion of "sound" culture and arts, the pre-production regulation system is actually used as an effective tool for political oppression by censoring works of art which are found to be in conflict with the government's own political leanings. There are no measures in the relevant laws which

provide citizens any protection against such injustices.

Motion pictures

The most egregious problems in the government's censorship policies are evident in its policies concerning motion pictures. Reasons for government's harsh regulations stem from its fears of the great influence motion pictures can potentially have on its citizens. These fears, in turn, are based on two realities. The first is the fact that the general population has a very high level of interest in and consumption of motion pictures. Second, as directors are aware of the highly expressive capabilities of motion pictures, talented and able directors' desires to express their worldviews through cinematic means are quite ardent. Presently, all motion pictures are subject to pre-production regulation according to the Public Performance Act and Motion Picture Act. Anyone who screens a motion picture without having passed the pre-production regulation stage are subject to a maximum fine of 5 million won and/or imprisonment for a maximum of two years. Article 7 of the Motion Picture Act states that is compulsory for all movie productions to register their productions, stipulating that all violators are subject to a negligence fine of a maximum of 3 million won. Thus, all movies whose contents are deemed as different from the government's positions are obstructed by the censorship process.

A movie entitled "The Night Before the Strike" produced by the Jangsangotme Production Company was accused of violating the Motion Pictures Act article 6 section 12. In December 1992, after the movie's release, law enforcement officials were ordered to search movie theaters and confiscate the film, projection equipment, and documents since the government feared the impact the movie would have on workers. However, as the movie continued to receive screenings at college campuses and some movie theaters all throughout the nation, the authorities went so far as to mobilize helicopters to conduct repeated searches and confiscations at screening sites. As a result of such controversy, tens of thousands of people actually viewed the movie. And, for screening the movie, the Hanmadang Theater's proprietor, Kim Myung-gon, and producer, Lee Young-bae, were indicted without physical detention after being sought by the authorities for arrest.

In 1991, at the preview screening of a movie entitled "Oh Mother, Your Children," a movie about student activism produced the Changnyun Production Center, law enforcement officials barged in the theater and seized film materials without a search and seizure warrant, and they arrested and indicted producer Lee Sang-in on charges of violation of article 12 of the Motion Pictures Act. He was later found guilty and sentenced in a court of law.

Also in 1991, governmental authorities intervened in the production of a movie entitled "Opening the Closed Schoolgate," a movie exposed the actual distorted state of Korea's educational system produced by the same producers of "The Night Before the Strike" at the Jangsangotme Production Company. The Ministry of Culture obstructed the development of the movie film and its sound recording. Related to the obstruction of this movie's production, the Constitutional Court is currently deciding as to the constitutionality of the Motion Picture Act article 12 concerning pre-production regulation and article 32 section 5 concerning punitive provisions.

Videos and music records

Article 3 section 1 of the Music Record and Video Legislation requires record producers and producers of videos to register their works with the Ministry of Culture. Article 16 section 1

states that anyone who produces music records or videos for the purpose of sale, distribution, or rental must apply for review of the work in question to the Pre-Production Regulation Committee. The law also stipulates that individuals who fail to comply with the regulations be subject to maximum fines of 20 million won and/or imprisonment for a maximum of three years.

In September 1990, Park In-bae was indicted on charges of non-compliance with the registration and submission for pre-production regulation procedures of his videotape which had pro-labor contents. Park In-bae was pronounced guilty and was sentenced to two years imprisonment by the Southern Seoul District Court.

Section 5. Recommendations

First, the government should switch the focus of its art and cultural policy from one of regulation and censorship to one of support. The government must institute long-term policy to do so.

Second, the government should establish a democratic decision-making process in the deliberations to decide which artistic and cultural projects to censor and which to support.

Third, the government should abolish the outdated pre-production regulation system which regulates the production of motion pictures, videos, music records. Also, the government must implement a civil body which would have autonomy over an equitable rating system which accurately reflects the sensibilities of all citizens.

Fourth, the government should repeal the National Security Law, under which the cultural and artistic rights of writers, artists, and academics have been severely curtailed. Also, the government should grant amnesty to those who are currently imprisoned or wanted for arrest by the authorities and restoring the civil and political rights of those who have had such rights suspended for violation of the NSL.

Committee on Economic, Social and Cultural Rights
1 - 3 May 1995
Centre for Human Rights
United Nations Office at Geneva

Oral Presentation: Economic, Social and Cultural Rights
in south Korea

Mr. Chairperson and members of the committee, we express our heartfelt thanks for offering us this honorable opportunity to describe the economic, social, and cultural rights situations in south Korea. My name is Jin-Young-Moon from PSPD and my colleagues here are two lawyers, Yong-Whan Choj and Seon-Soo Kim from Minbyun and Ms. Chang Soh-Young, human rights activist from PSPD.

It is widely known that the economic development of South Korea during the last three decades is remarkable. However, as an old saying in our country, "the brighter the light is, the darker the shadow becomes" implies that rapid economic development is only one aspect of Korea. Today, we are here to talk about the other side of the picture.

Our presentation will accompany some pictures and slide films, and please also refer to our NGO Report before you. This report was written by eight human rights organizations as listed in the Report. We will be more than happy to answer your questions afterwards.

We would like to invite you to look at a few pictures before you. Just two weeks ago, some 40 workers visited the Ministry of Labour to discuss with the Minister about reinstatement of dismissed workers. They were told O.K. and to wait for a while, and then suddenly attacked by riot police with a 1-meter long stick hammering onto their heads. The workers did not have anything to protect themselves, and two of them immediately fell on the ground bleeding in the heads.

The victims were taken to a hospital and the doctor advised them to go to a larger hospital, suspecting concussion of the brain. Meanwhile, the hospital was surrounded and blocked by the armed police. The police stormed into the hospital and arrested the injured workers. In this situation, if you asked about human rights to workers, they would respond "we are not treated as human beings".

Korea is no doubt a fast developing country in terms of economic growth. Big buildings, giant car makers and electronics factories, and highways give us a clear image of miraculous success. And, diligent industrial workers have been praised as the

major contributor to this remarkable economic success.

(1) But, labour rights are, without doubt, one of the most seriously deprived human rights areas in Korea. Because of that, workers' discontent is great, and the situation often turns into harsh clash with the authority.

This picture shows how the industrial workers are treated by riot police during labour disputes once they are arrested - most often without warrants. They are severely beaten on the spot. This happened in June 1994. When the railway workers started a peaceful sit-in protest, some 6,000 armed police raided them and arrested about 600 workers, of course without warrants.

(2) This picture shows how they are taken to the police station. If they raise heads, they are immediately kicked down. To anyone, they are not treated as human beings.

Why does this happen?

Because there still are serious restrictions on the three fundamental rights of workers. This brings us to article 8 of the Covenant. But before that, let us catch some of the images of the reality of Korean workers.

(3) These waves here show how the productivity and prices are getting higher and higher, while real wage goes just up and down.

(4) This picture shows that the working hour of Korean workers is the longest in the world.

(5) As a result of the long working hours and dangerous working conditions, Korea shows one of the highest rates of industrial accidents. As shown here, the severity and death rates among industrial workers are dangerously high.

(6) If we compare this deadly result of hard work with other NICs, we can easily see the difference. Look at Taiwan and Singapore - showing less than half percent of industrial accident. There is more information in our report.

(7) This is a picture of a teen-age - a high school student receiving industrial training as a part of their normal education - who had his fingers cut off while working in a factory where young people like him were working with dangerous machines that had no protective measures. Not knowing what to do to get compensation, he is now out of work, without compensation, and without hope.

(8) This happens quite often in small factories that hire teen-age workers. They are the ones who are put into the most difficult and dangerous work, because they are easily dictated by managers. The problem of the role of labour inspectors is explained in our report.

3
But, this is not just for Korean workers!

(9) Sometimes, Korea seems to export industrial accidents, too. As in the picture, the machines in the most notorious factory of industrial accidents (called Wonjin Rayon Factory) are being dismantled and exported to China, along with its CS2 intoxication to workers and nearby inhabitants. This factory killed several workers and victimized some hundred others by the CS2 gas it produced for about 20 years. (But, this was revealed only a few years ago)

In the same token, let us look at foreign workers in Korea.

(10) Please witness their outcry here. "No more slavery". Why? They are 'imported' just to fill vacancies in dirty, difficult and dangerous works for low wages. Their average wages in manufacturing sector are only 40 to 50 percent of their Korean counterparts. Let alone 'illegal' workers, even those who have legal status are not treated as 'workers' because they came in the name of 'technical trainees.' This means that they are not entitled to receive social security benefits.

(11) And, look their frustration with their injured bodies. So many foreign workers had to leave Korea with their injured bodies, but without compensation. Other many foreign workers are still questioning the humanity of our society.

We have just taken some examples from economic and social rights situation of workers. This is to illustrate the contrast of our report and the government's one.

In our view, the government report is far from adequate in its contents as well as in the process of submission, and thus it can easily lead to a false understanding of real situation in south Korea. It does not represent a fully accurate account of relevant laws, court decisions, or other practices. Furthermore, it remains silent about the factors and difficulties in implementing the Covenant. We will try to suggest some important ones at the end of our presentation.

Now, we return to article 6, Right to Work.

First of all, the "management rationalization" has put workers in a very unstable position. Also, workers are increasingly being employed under disadvantageous conditions as part-time, temporary, and illegal or subcontracted labor.

Unemployment among teen-age workers is on the rise. This gives harsh conditions for them, as we say in the picture just before. The function of Job Security Bureau offices is insufficient, placing merely 5.0 per cent of all unemployed workers in 1993.

Now, we give a summary of the labor standards, article 7 of the Covenant.

4
Even under the current government, the main labor policy is still constraining wages and controlling the trade unionism in order to enhance economic competitiveness.

51.6 per cent of all workers are not protected under the Labor Standards Law which declares minimum labour conditions, and 56.1 per cent of all workers are not eligible for protection under the Minimum Wage Law. Moreover, the minimum wage prescribed by law is still not sufficient to cover adequate standard of living.

(12) Women workers are subject to discrimination with respect to job application and hiring process, wages, retirement age, promotion, placement, education and training. Companies often clearly state their gender preferences in public advertisements for job applications and, even more, they place individuals to certain jobs based on their gender and physical shape.

(13) This is a picture of "physical and clothing fitness review" of a bank. Physical fitness is a requirement for women employees in both acquiring and keeping the job. Last year, it was above 160 centimeters tall and below 50 Kilograms in weight for some banks. However, prosecutors' office decided this practice did not fall under discrimination against women. Nothing was left but to protest.

Currently, the average wages of women workers are only 55.7 per cent of that of male workers. Government's commitment to realize equal pay for equal work is largely doubted. Government is reluctant to take any measures to stabilize various forms of insecure employment concentrated on women. Social policy to lessen women's over burden coming from pregnancy, childbirth, child care, etc. is really insufficient.

Inviting you to refer to our report for the full detail of the situation concerning the three basic rights of workers under article 8 of the Covenant (pp.33-40), let me turn to this picture,

(14) There are now at least 800 workers who are fighting for reinstatement, like this picture, (15) and around 200 workers have been imprisoned for their exercise of trade union rights since 1993.

Here, we have no choice but to repeat recommendations by the ILO Committee on Freedom of Association (case No.1629).

- (a) to ratify ILO Conventions Nos. 87, 98, and 151,
- (b) to guarantee the right to form and join unions of their free choice,
- (c) to guarantee public officials and teachers three trade union rights,
- (d) to repeal the laws which prohibit the third party intervention on labour relations.

If I may add, I would like to indicate one more flash point for

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your understanding. In 1989, 1,490 teachers were dismissed simply because of their joining the Chunkyojo, Korea Teachers and Educational Workers' Union. Since then, more 209 teachers were again dismissed in relation with their activities of their union. Among them, 1,342 teachers were reinstated in April ~~this year~~, but only after they withdraw their membership from Chunkyojo. Others who have refused to present letter of withdrawal from the union have not been reinstated.

This is, citing the words of the ILO recommendation, deplorable. This is the case.

Now please look the situation of the right to social security under article 9 of the Covenant.

(16) First of all, it must be noted that there is no reliable survey on the poor and other vulnerable groups. According to government statistics, as of 1993, ratio of population in absolute poverty with monthly income around 170 US \$ is 4.8 % of whole population. However, it is estimated that at least 10 % of population is in absolute poverty because their earning is less than minimum living expense for 5 member family (500 US \$). Still this level of minimum living expense is too low. Ratio of those who can not earn 60 % of average spending of 4 member family (700 US \$) is estimated as 30 % of whole population.

(17) Social security system is too deficient to provide those in need with meaningful assistance. Similar to this homeless person sleeping on a street, development of social security in Korea is almost as still as sleeping.

While selection of recipients for livelihood assistance is not always reasonable, financial support for the recipients is no more than 40 % of the minimum living costs which is again still very low.

The same applies to the National Pension System which will start in the year 2008. Expected pension benefit is much lower than the minimum living costs. However, the most striking is that this pension system is bound to go bankrupt at some time in the next century because of undemocratic, lax, and arbitrary management of the pension fund by the government (see our report, p.44).

Limitation on the period to receive medical treatment and excessive financial burden of the patients under the Medical Insurance System give serious disadvantage to the poor. Think of 24.4 % of population with chronic disease mainly composed of the poor (1989) and 24.8 % of the population who had to stop receiving medical treatment in 1990.

(18) Simply put, level of social welfare expense is extremely low by any standards. (19) Indifference to the state responsibility may be a reason. In addition, too high military budget imposes a

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fundamental limitation on social development.

(20) Let's see more on women's status, in relation to article 10 of the Covenant.

This graph symbolizes the status of women in Korean society. The table below shows annual trend of gender ratio on childbirth. Rate of male children becomes bigger and bigger unreasonably. This rate is ever aggravating. As revealed by the upper table, around the year 2010, about 30 % of male can not find their spouses. Simply speaking, discrimination against women begins even before their birth in the most cruel manner.

There has been some positive development in respect of discrimination based on law. However, legal discrimination rooted in the patriarchal tradition still remains and the more sincere efforts have yet to be made.

To correct current low social status of women, more positive and active policy should be taken. To enlarge women's participation in various field of social life, including politics, we request the government to introduce a system of affirmative action.

Together with this, integrated and concerted efforts should be made. Just for example, special protection of poor households led by women and children, security in employment, expansion of child-care facilities, and reform of legal system to protect women and children from domestic violence and sexual assault are indispensable and urgently needed.

It may be safely said that every socially weak people are discriminated against in Korean society. Children are at the bottom of this spiral of discrimination.

(21) Korea is lacking social system to raise children who do not receive proper protection from their parents. Child abuses are rampant. However, because of insufficient protection provided by law, those children have difficulties in finding shelters. This lack of social responsibility makes south Korea as a big 'exporter' of orphans. They are abandoned and deprived of the right to be raised as nationals of their mother country. Blaming Korean people's reluctance to adopt orphans, government announced the policy to stop the adoption of orphans to foreign countries. However, this policy should be supplemented with the policy to expand social security assistance including health and education.

(22) The number of the aged accounts for 5.4 % of the whole population and is ever increasing year by year. However, social security investment to address hardships of the aged people is again too far from adequate. Inviting you to refer our report (pp.58-59), we emphasize that it is immoral not to take urgent steps for them who have sacrificed themselves for economic development..

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(23) Until now we have seen a few aspects of lives of the socially weak, but with normal physical conditions.

Please look at these people. Who are they? The infuriated disabled people are desperately crying out something in deadly silence and bitterness. Why do they entangle their necks with each other?

(24) On March 8 this year, a street vendor named Choi Jung-hwan who had physical disabilities set himself a fire to death at the Seocho-Ku district office, in Seoul. This was caused by the forceful confiscation of his last means of living, a pushcart, and ensuing violence onto him by the public officials. Without the cart and vending in the street, earning life was impossible for him. However, his sorrowful request to return the cart was simply refused. Finally, he set a fire on himself. (25) Disabled people like him had nothing but to protest by screaming out their anger and frustration. Their request was just to allow minimum means of earning lives. However, please do not assume that this kind of rally of the disabled people was permitted. Those who met them were, to your surprise, armed police. (26) They burned away Mr. Choi's pushcart.

(27) Naturally, many of the disabled are suffering from poverty. (28) To address this problem, providing opportunities of employment is imperative. However, the greatest violators of the Law to Promote Employment of the Disabled are governmental authorities, administration, the National Assembly, and the Judiciary. (28-1) Support provided by the Special Education Law to enhance education of the disabled children is at a miserable level, and these disabled children are requesting practical protection of their right to education.

(29) The first task of the government is to open door and to consult with the disabled. Officials are always saying welcome. Then imagine how this disabled person climb the stairs of the entrance of the Seoul City Hall.

Ignorance, indifference and contempt of the disabled seem to be in the ground of the problem. Vending stuffs with dragging a cart by a disabled person in the street of metropolitan Seoul may be a nuisance. Yes, that is a nuisance. This simple nuisance to ordinary people may lead to deprivation of one's life. This is nothing more than a naked violence and total negation of humanity. This rampant violence against the socially weak should first be addressed in Korea. This again reminds us indivisibility and interdependence of civil and political rights, and economic, social and cultural rights.

(30) Now we go to the right to adequate standard of living, article 11. In the process economic growth, prices of land and houses have skyrocketed due to speculation on real property. This rise of real property prices aggravated economic condition of

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the poor and violates their right to decent standard of living.

(31) While there is not a Minimum Standard of Housing, it is estimated that about 25 % of whole households are living in just one room. (32) Therefore, needlessly to say, general living condition of the urban poor is almost miserable. (33) Meanwhile, near 60 % (in Seoul as of 1991) of whole households who are tenants are suffering from ever rising rent. "Mom, moving once again?", it is the question raised by this little baby. Rent control by law is far from adequate. In addition to judicial procedure, more simple and convenient procedure should be introduced to solve problems between owners and tenants.

(34) These complicated problems surrounding land and housing are bring about another pattern of consistent and gross violation of human rights of the urban poor. Forced eviction of the tenants in the urban redevelopment areas caused rampant violence against those poor people. Without providing minimum means of sheltering, poor tenants in redevelopment areas are evicted by force of organized hooligans with implicit support of the police. Compare this elderly woman's despair in front of her demolished house with ever increasing golf-courses inside the city. Number of the wounded and even the killed has not been calculated and of course they have not been duly redressed.

Regarding the right to health under article 12, we would like to give you some insight with a few slides on the threat to health caused by environmental pollution.

(35) This is a picture of Nakdong River, the most polluted river in Korea. The major cause is the unregulated industrial wastes from factories in the upper stream.

(36) Unable to drink even the tap water, even a little child like this one has to look for drinking water, as happened in 1994.

(37) Water pollution is really serious, as the color of the river here shows, and, (38) this picture of Seoul shows - the air pollution. (39) As a result, Even this bronze statute had to wear a gasmask.

However, environmental policy seems to lose priority to the policy to lift regulation in the name of strengthening national competitiveness.

(40) Nuclear power plants and their waste processing facilities are also growing concern for Koreans. (41) The problem is that they are planned and built by the government without thorough investigation and without consultation with people of the targeted areas. (42) Thus, they face popular resistance, arrests, and (43) more dissidents. People are again excluded, alienated, and silenced by force.

This shows again, the traditional scheme of disconcert between

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human rights and national interest. The first push is always economic-oriented national interest in sacrifice of consensus of social groups. Human rights approach is subordinated by state interest and participation of the civil society is usually blocked. Then, the situation is relayed to clashes between people and the government.

Contrary to wide spread belief, governmental investment has not been adequate to guarantee the right to education, under article 13. Only 6 year primary school education is provided free and compulsory. While educational investment is merely 3.76 % of the GNP in 1994, parents are bearing extremely high burden which is around 70 % of all educational expenditure as of 1990. Lack of education budget brings about poor educational condition, and has mutually reinforcing negative effect with high private educational expense. (44) For example, as you see in this picture, number of students per teacher is extremely high. This lessens quality of education and thereby necessitates private spending on extra-curricula education. As a result, parents' financial ability is becomes a key factor to determine the quality of education a students receives. To make matters worse, huge gap in wage and social status between university graduates and those with lower level of education (see table in page 74 of our report) ~~has~~ drives students into harsh competition to enter universities. This bitter competition again forces parents to pay more on extra-curricula education impairing student's mental and emotional development.

Roughly speaking, about 70 % of territory of south Korea is composed of mountain areas and hundreds of islands with inhabitants. To address the problem from this geographical situation the "Law to Promote Education in Islands and Remote Areas" obligates the government to make special investment in the schools of those areas. (46) However, since 1993, government began to close down the schools of those areas whose numbers of students are below certain level. Besides negative effect of the rights to education of the children, this policy facilitates dissolution of these areas. Children of these schools, like those of Doomil elementary school in Kyungki-Do Province, had to beg not to close down their school or (47) to protest but to fail.

Content of education is completely controlled by the government. Under the Education Law, only the Ministry of Education has the power to publish textbooks for elementary, middle and high schools. Use of textbooks or materials other than published by the Ministry itself or those published under special certification is prohibited. This monopoly of education damages diversity and creativity in education and often used to indoctrinate students with government sponsored ideas.

Now, we turn to the cultural rights under article 15 of the Covenant. We would like to raise two points in this regards; censorship on cultural activities and the National Security Law.

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(48) This is a scence from the movie "The Night Before Strike" (counter Report, p.95) which was banned by the government because its producers had not subject it to the prior censorship. When this film was continued to be shown by students in spite of the ban, the government raided university campuses by mobilizing thousands of armed police and even the helicopters.

The function of the Public Performance Ethics Committee (GR, para.572-573) is, despite of its non-governmental appearance, nothing but a naked censoring of cultural activities, including public performance, films, record and video works under very vague and arbitrary rules. It is needless to say that failure to receive prior censorship by this Committee leads to criminal punishment.

(49) If we take this prior censorship as a procedural barrier to cultural rights, we are facing a really insurmountable, substantive one, namely the National Security Law.

It is beyond our capability to articulate all of its absurdities and unreasonableness in a few words. Among all of them, article 7 of this Law is the biggest obstacle to all human rights. It punishes, mainly, activities to "benefit the anti-State organization", i.e. north Korea, "by way of praising, encouraging, siding with or through any other means" or by "production, importation, duplication, possession, transportation, dissemination, sale or acquisition of documents, drawings or any other means of expression." The government has been insisting that this Law is applied only to "violent" activities threatening national security.

To the contrary, however, this Law has been misused to imprison any kind of cultural activities which are deemed anti-governmental or otherwise undesirable. The wide and far-reaching net of this Law does not stop at punishing the people like this novelist, Hwang Suk-young, who may be labelled as an activist. Writers, artists, painters, trade unionists, poor people, human rights activists or any other people who have sought to express their ideas differently from the official policy or interpretation of the government have been sacrificed at the altar of this Law.

(50) Even the highly respected university professors sometimes have to hold this kind of press conference, in bitterness, protesting arbitrary criminalization of professors who wrote a textbook titled, "Understanding of Korean Society" in a different point of view.

Once assumed as 'benefitting north Korea,' there is no way to escape from punishment. It is automatically presumed that the person has intention and purpose to benefit north Korea and that north Korea has really received benefit. To increase its chilling effect, various supplementary mechanisms have been devised by the Judiciary. Simple visit to and return from north Korea are regarded as 'illegal escape and infiltration.' Under this Law, even

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official letter of invitation of north Korean authorities which have been transferred through south Korean authorities was turned out to be a 'secret direction' from the 'anti-State organization.' According to established rulings of the Supreme Court, even the 'common sense knowledge' of south Korean people constitutes 'state secret' under this Law. That is to say, for example, just talking about high living cost in Seoul or giving a copy of newspaper or a magazine published in Seoul to a north Korean is a sufficient ground to subject you to a harsh punishment in the name of spy. Now, we are looking for any advice on how to defend those charged under this Law for revealing 'state secret' of common sense knowledge.

Our report contains some examples of cases where this Law has been applied to cultural activities under the form regime (pp.90-93). Then, how about the situation under the current civilian government? According to a statistics gathered by a human rights group, Minkahyup, since inauguration of present president in February, 1993 until February 1995, at least 1,010 people were imprisoned for political reasons of whom 524 people or 51.88% were imprisoned under the National Security Law. It is needless to say that, among them, writers, professors, publishers, historian, artists, trade unionists and even singers are included. Even the argument to request to repeal this Law has often been punished as a violation of this Law.

This is the other side of the picture, the way the right to cultural life is protected in south Korea.

Why does this happen? One reason of it may be authoritarian notion of "almightiness of the state." The government is assuming to have any and all power to regulate every aspect of human life, including even to spiritual activities, and those who have different ideas and voices must be silenced or crackdown with every possible means.

<<Conclusion>>

As we have shown above, serious structural violation of all human rights have been taking place in Korea. However, through 30 years' determined struggle to overcome poverty and dictatorship, the people of Korea are standing at a new starting point. We have achieved certain level of economic growth which can guarantee minimum level of human dignity of all members if efficiently and equitably mobilized. Series of elections since the people's uprising in June 1987 may be called as 'founding elections' which have made formalistic democratic process irreversible. Korea is now again at the crossroad where both positive development and backward setback is wide open.

The Korean model of democratization is said to be a unique one made in the midst of economic success. At the time of

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democratic breakthrough, this favorable economic condition gave the government sufficient means to consolidate democracy by reducing huge disparity in the distribution of wealth and addressing social injustices and thereby recovering social integration. However, enhancing economic, social and cultural rights of marginalized people did not receive priority in policy which it should have deserved. To the contrary, under the banner of 'national competitiveness', exclusion of important segment of population from economic progress and political participation become more structuralized. This in turn cause violation of civil and political rights of people. In addition, structural exclusion of many people and lack of substantive reform may prove current state of Korean democracy as a 'frozen democracy' and may become the catalyst for a spiral of delegitimation. More ominous is that the very ground of human existence is put in serious danger through environmental devastation. As a result, critical questions are raised; is the fragile democracy of Korea sustainable? and, is current economic development sustainable?

If we turn eyes into broader context, we see that Korean model of economic development is now exported. It is often praised as a successful model to be followed by poor countries which are striving for economic development and democracy. There must be some lessons worth being shared with international community. However, what we are concerned about is that the whole picture of Korean model is distorted intentionally or negligently. If unspeakable sufferings of people which are not expressed in the superficially appearing macroeconomic statistics, are continued to be ignored, it would be nothing more than a self-congratulatory propaganda of the winning elites of the game. Indiscreet application of Korean model may deepen already existing contradictions of other societies. In this context, genuine contribution to the world can be accomplished through reconsideration of past development policy in terms of human rights and human development. This is the time to change.

Korean peninsula remains as the last isle of the Cold War. The tide of confrontation surrounding two Koreas is still high. The extremely unstable political climate may at any time drive whole Korean peninsula up to the brink of war. The artificially mobilized

tingoistic social atmosphere have destroyed major, if not all, progress of human rights in a moment. Militarization of both societies across the DMZ caused by hostility and unnecessary arms race undermines the very ground of peace and human rights. From this perspective, we can not but to urge all the parties, including both Korean governments and certain members of international community, to clearly give up the option of military solution under any circumstances. Only the principle of peaceful solution through dialogue should be respected.

In this regard, we recommend the Committee to pay special attention to the National Security Law. As explained before, under this Law, free and creative exercise of cultural and social rights

is fundamentally impossible. In addition to absurd punishment, this Law endlessly functions to label, separate and exclude certain members of society from social life. This Law has little relation with the protection of existence of the nation or its territorial integrity or political independence against force or threat of force. We have to testify before the Committee that without addressing the problems of this draconian Law, it is really difficult to anticipate improvement of human rights and consolidation of democracy in Korea.

As mentioned before, one of the most significant characteristics of development model of Korea is exclusion of people. Different ideas and different voices have been repressed with excessive use of force. Any abuse of power have been justified in the name of 'law and order.' This has led to a 'vicious circle' of violation of both sets of human rights in turn. In this context, use of force as a solution of social problems should be taken as a major obstacle to realization of economic, social and cultural rights.

While we are still facing difficult challenges ahead, we feel embarrassed to find that Korea is emerging as another type of human rights violator. Expansion of Korean economy has invited migrant workers, whether their status are legal or illegal, from other countries. However, frankly speaking, they are treated as mere disposables. Without making true efforts to reduce their adversities, Korean government is trying to cover up the problems with threat of arrest and deportation. With great shame, we request our government to change its policy immediately. They must first be acknowledged as human beings.

Korea has become an active member of international society. Whatever the motives may be, she has adopted various international human rights treaties as part of domestic legal system. Therefore, if those acceptance of international norms are more than diplomatic decorations, Korean government should sincerely publicize and educate contents of them. However, international human rights norms, including this Covenant, are largely unknown to the people. Even the judges do not deem to understand the autonomous meaning of international law. In addition, Any systematic review of domestic legislation and policies in accordance with international norms have not taken place. This leads us to raise a doubt on the 'political will' of the government.

Once government has ratified international human rights treaties, it is bound by and obliged to perform the treaties in good faith. To perform the duty, the government and the judiciary should interpret the treaties in good faith in accordance with the 'ordinary meaning' to be given to the terms of the treaty. Considering that international treaty has its own autonomous meaning, we are of the opinion that the party of the treaty should respect and accept the interpretation provided by the supervisory body of the treaty as the 'ordinary meaning' of the terms. In this regard, we have serious doubt on the commitment of the Korean government. In spite of its diplomatic rhetoric, Korean government

and the judiciary do not respect interpretations of the supervisory bodies of human rights treaties. For example, recommendation of the Human Rights Committee in 1992 to phase out the National Security Law or repeated recommendations of the ILO Committee on Freedom of Association to repeal restrictive labour laws have been simply ignored until now. Further, as shown in its report to the Committee, Korean government is persistently sophisticating unreasonable grounds to excuse violation of these rights. It does not show any intention to respect those recommendations. This should be pointed out as a 'willful failure' to meet a generally accepted international minimum standards of achievements and therefore falls into a serious violation of the Covenant.

Based on the above findings, we are requesting the government of Korea to take immediate steps to undertake following measures as minimum starting point of its performance under the Covenant;

(1) The government should clearly declare that the interpretation of international norms by their supervisory bodies, including this Committee, will be accepted as 'ordinary meaning' of the norms and recommendations of such bodies will be performed in good faith. In addition, it should guarantee that all domestic legislation and practices will be changed in accordance with already existing recommendations of international human rights organs, like the Human Rights Committee and the ILO.

(2) The government should acknowledge that structural problems accompanying violations of economic, social and cultural rights are existing as a result of past development process and that the government has not fully performed its obligations of result as well as conduct under the Covenant.

(3) It should declare that it will pursue, under any circumstances, peaceful solution as the only possible option of dealing problems in the Korean peninsula. In the same token, it should not seek physical repression of peaceful exercise of economic, social and cultural rights of people.

(4) It should lift all restrictions on economic, social and cultural rights imposed by labour laws and the National Security Law. As a temporary measure, application of these laws must be suspended until final reform of them by the National Assembly.

(5) It should set up a detailed national action plan to protect and promote economic, social and cultural rights under the Covenant. Accurate assessment of current problems, identification of targets to be addressed and strategies to be pursued must be elaborated. In the process, genuine consultation with and participation of those groups as well as dialogue with the Committee should be guaranteed. To facilitate this process, to link among the government, people and the Committee and to coordinate overall human rights policy in the future, the national human rights commission should be established in accordance with the

principles set forth by the UN General Assembly and the Commission on Human Rights.

This report or ours was prepared and presented to this Committee in the belief that only the human rights bound development can guarantee socially integrating progress. Before ending our presentation, we again ask our government to take this chance to have frank and constructive dialogue with the Committee.

This is all and thank you very much for paying attention to our presentation till the end. I wish you all the best in your deliberation. Thank you.

구두발표 시 사용된 사진과 표 목록

사진

- 1) 공권력에 의한 노동자의 기본권 진압 1, 2 (한겨레21 17호, 16호)
- 2) 2+1 제도로 인한 공고생의 착취적 노동 1, 2 (한겨레21 29호)
- 3) 이주 노동자의 현실; 노동환경, 집회 장면 1, 2, 3 (한겨레21 18호, 43호, 23호)
- 4) 성차별적 노동 조건; 용모 단정 (한겨레21 12호)
- 5) 파업쟁의와 진압 1, 2 (한겨레21 8호) (94. 9. 2 ?)
- 6) 사회복지; 저소득 계층 생활수준 조사 (94. 10. 10)
- 7) 노숙자의 모습 (한겨레21 13호)
- 8) 아동; 해외입양 (한겨레21 13호)
- 9) 노인문제 (한겨레21 41호)
- 10) 장애인 집회?, 규탄대회, 최정환씨 장례식, (한겨레21 51호, 시사저널 95. 3.30, 한겨레21 54호, 시사저널 95. 3. 30)
- 11) 장애인 노동환경 (한겨레21 41호)
- 12) 농아 학생들의 상경농성 (94. 9. 7)
- 13) 장애인 시설 부족 (95. 4)
- 14) 토지의 사적 소유(한겨레21 22호)
- 15) 빈곤 지역 (한겨레21 36호, 13호)
- 16) 토지의 공공재적 성격, 철거촌 (한겨레 21 22호, 40호)
- 17) 썩어가는 낙동강, 영산강 등 수질 오염 (한겨레21 40호, 7호)
- 18) 대기오염, 그린피스의 시위 (한겨레21 33호)
- 19) 핵폐기장 결사반대 시위, 덕적도 주민들의 시위 (한겨레21 46호, 1호)
- 20) 교육환경, 학교 통폐합 (한겨레 13호, 26호)
- 21) 파업전야 (한겨레21 37호)
- 22) 국가보안법; 재판정에 들어서는 황석영, 한국사회의 이해 사건에 대한 학술단체협의회 기자회견 (한겨레21 25호, 22호)
- 23) 급식비용 공동부담 (한겨레21 41호)
- 24) 노숙자의 생활(한겨레21 8호)
- 25) 1995 4. 18. 노동자들의 노동부 항의방문과 진압 1~10

표

- 1) Consumer prices, real wages and productivity-prices
- 2) Comparison of Weekly working Hours to Other Nations
- 3) Characteristics of Industrial Accidents
- 4) Comparison of rate industrial accident'
- 5) Functional classification of national government's expenditure by income-level nation groups (in1986)
- 6) Ratio of military/defense and social security expenses in the national government's expenditure
- 7) Gender Ratio at Marriageable Age (한겨레21 9호)

- 8) Monthly income of a Family Headed by Disabled Person
- 9) Number of Student per Teacher in Each Country
- 10) The Korean government's tally of foreign workers un Korea

Supplementary Information for the Committee on Economic, Social and Cultural Rights on the situation of south Korea

I. General Information

1. Before and after ratification of the International Covenant on Economic, Social and Cultural Rights, there have not been any overall review of domestic legislation, policies, and other practices. Therefore, it is not correct for the government to insist that domestic legislation and policies are compatible with the Covenant.

2. According to the explanation provided by the government, regarding the status of the Covenant in domestic laws, the principle of the *lex postriori* rules. It is so interpreted.

Then it is impossible for the government to guarantee that the National Assembly not to enact domestic laws which are not compatible with the Covenant.

If the principle of *lex postriori* applies, all domestic laws which were existing and not compatible with the Covenant at the time of ratification should be invalidated by the *posterior* application of the Covenant. However, there is no case where already existing domestic laws were changed or invalidated by the Covenant.

3. There have not been any incidents where the government proposed any opinion or *amicus curiae* brief to the National Assembly or the Court in terms of the rights recognized under the Covenant.

4. In interpreting and applying the Covenant (and all other international human rights treaties, like the Civil and Political Covenant and the ILO Constitution), the autonomous meaning of the Covenant has not been known or ignored. Leaning on the terms of the Covenant whose translated languages are almost similar to those in the domestic laws, the government and the Judiciary have been educating that all domestic legislation and policies are compatible with the Covenant and there is no problem within domestic laws in terms of the Covenant.

5. In accordance with the principles under the Vienna Convention on the Law of Treaties, to which Korea is a party, Korean government and the Judiciary are obliged to interpret the terms of the international human rights treaties in good faith and according to the ordinary meaning of the terms. In this regard, interpretation and recommendation by the treaty supervisory bodies should be respected as "ordinary meaning" of the terms of the treaties. However, this principle has not been acknowledged by the government until now.

6. For example, the Human Rights Committee recommended the government to phase out the National Security Law by pointing out that this Law was the major obstacle in realizing human rights

in Korea and is not compatible with the Covenant. Since 1993, ILO Committee on Freedom of Association repeatedly recommended the government to repeal or change legal restrictions on trade union rights pointing out that those restrictions are in violation of the ILO Constitution, which again has been accepted as a part of domestic law. However, these interpretations have been simply ignored.

In late 1993, the Supreme Court ruled that, in the case against Mr. Tae-Hoon Park who was finally found guilty under the National Security Law, the recommendation of the Human Rights Committee does not have any influence on the interpretation of the Law. In 1994, the Supreme Court, in convicting Mr. Tae-Hoon Noh under the NSL, did not mention any word on his argument that interpretation of the NSL should be changed in line with the recommendation of the Human Rights Committee. In issuing warrants of arrest and in convicting workers who have allegedly violated labour laws, the court have ignored recommendations of the ILO Committee on Freedom of Association.

7. No court decision has been known which directly cited any provision of the Covenant in ruling the case.

8. The official position of the government is that the right to decent standard of living with dignity under the Constitution is not the "concrete right" and therefore people are not entitled to seek redress based on the Constitution without more detailed laws enacted by the National Assembly.

In the case of Constitutional Petition filed by an 80-year-old person seeking practical increase of livelihood assistance, the Ministry of Health and Security Affairs insisted, in its reply submitted to the Court, as cited above. Because that is the case and common practice of the government, victims of economic, social and cultural rights have great difficulties in getting redress.

9. In 1994, the Korea Federation of Press Unions filed a civil lawsuit against the Ministry of Labour seeking compensation for its damages by the government. The KFPU received a great damage in its operation because the Ministry refused to issue the certificate of registration for 3 years since 1989, which gave legal status under the Trade Union Law. However, Seoul Civil District Court dismissed the case. The court ruled that officials of the Ministry, in refusing to issue the certificate, followed the internal guidance which banned recognition of unions outside the government sponsored Federation of Korean Trade Unions and therefore this does not constitute a tort and the FKTU is not entitled to get compensation. Therefore, when violation of social rights are committed by the government policy, it is impossible for the victim to get compensation.

10. Regarding some measures taken to publicize the Covenant by the government, there are problems like the following;

(1) Even though those events were really held, they have not been made public.

(2) The government does not seem to have raise the issue of compatibility of domestic laws with the Covenant in light of

autonomous meaning of the Covenant.

(3) The examinations for the governmental officials must not have contained real discussion on the influence of the Covenant, namely governmental obligation to review and change domestic laws in line with the covenant. They must be those compelling the answers to insist the "compatibility of domestic laws" with the Covenant.

(4) All other measures taken by the government to publicize the Covenant have same problems. Without accepting and educating people about autonomous meaning of the Covenant and the duty to change laws in accordance with the interpretation and recommendation by the treaty supervisory bodies, this measures of publicization rather impair people's awareness of human rights.

(5) Among the books published by the government, two "Collected Cases" are translations of the casebook edited by the Human Rights Committee under the ICCPR. In addition, all of these book are not made public and not sold to the public. They do not contain any discussion on the incompatibility of domestic laws with the Covenant.

II. The National Security Law - trade union rights and the right to participate in cultural life

1. The definition of the term "subversive activities" is very vague and arbitrary. Practically, any kind of expressions which deemed contrary to official ideology or position may be considered as "subversive."

2. There is no standard to determine whether any activities are "harmful and dangerous" or not. According to the court decisions, even a book (which is considered as benefitting north Korea) put in a bookshelf of a person, personal communication between friends and diary are deemed to pose "clear and present danger" to national security.

3. Once an expression, whether it is a book, document, painting, script or scenario, is considered to be benefitting north Korea, the person is presumed to have intention and purpose to give benefit to north Korea and that north Korea has been really benefitted. Therefore, the accused person has the burden of proof.

4. A few examples of "enemy-benefitting expressions" which have been punished

(1) all works of Karl Marx, Engels, Lenin, Stalin, and other recognized authors who have advocated socialism and communism

(2) books or other expressions which explain any aspects of north Korean society and politics in different point of view

(3) any expressions which positive evaluation of independence movement, labour movement, or other incidents with socialist character under the Japanese colonial rule (1910-1945) or American Military government (1945-1948)

(4) any expressions which criticize capitalist economic system or relation between Korea and the US

(5) Any expression which have criticized military dictatorship (under former regimes).

(6) sometimes, particularly in case of those with low social background, the argument to request to repeal the National Security Law,

5. The logic to regard these expression as "violent" and "harmful and dangerous" is as following, the advocacy, positive evaluation or "beautification" of socialism, situation of north Korea or harsh criticism of south Korean situation inherently, sometimes with ulterior motives, have inclination to advocate "violent revolution to realize socialist revolution" and thereby give benefit to north Korea which is "still trying to find a chance to overthrow our country." In the same token, even though the accused have criticized economic and political system of north Korea, the same logic applies as long as they have advocated socialism.

6. A few examples of cases

(1) In June 1993, professor of law, Cho Kuk was arrested and convicted under the NSL for his publication of articles and participation in a group which discussed contradictions of current economic and political system. He was a well known critic on north Korea but at the same time passionate opponent to the NSL.

(2) In early 1994, in the case of "Heemangsae" (bird of hope), about 10 members of a dramatic troupe, including the scripter and main players, were arrested and convicted.

They were preparing a play which was about to describe leftist independence movement before Liberation in 1945. Writing a script and rehearsal were ground of their punishment. Even without public performance, they were found to have been violent and posing clear and present danger to national security.

(3) In 1994, 8 professors of the Kyungsang University located in southern part of Korea were criminalized by a concerted campaign of all governmental authorities including the Prosecutors office, police, Ministry of Education, and the Agency for National Security Planning, etc. The only reason of such campaign was that they wrote a textbook for students titled, "Understanding of Korean Society" in a different point of view and thereby they "contaminated" spirit of students. Even before the official charge, governmental authorities and some rightwing medias (which were evidently under control of the government) instigated hostility against them by labelling them as "anti-anti professors."

There are so many cases like these.

III. Discrimination and status of Foreign Migrant Workers

1. There are many categories of workers who are excluded from the protection of various labour laws and social security laws. In most cases, these are based on the size of the business places

and may fall under discrimination based on economic or social status.

2. The government has not taken effective measures against the sex-discriminatory practices which places women workers on inferior positions and/or allocating women with low quality works. The government has also authorised the practice of companies which, in recruiting, set a minimum fitness and physical requirements on women, like those with more than 160 centimeters high and less than 50 kg of weight.

3. The efforts of the government to correct practically existing discrimination against women, the disabled and other vulnerable groups. For example, the principle of equal payment for equal work has not been well implemented. Many women workers gave up to file suit knowing reluctance of the Ministry of Labour and the court.

4. In case of the disabled, all the governmental authorities (administration, the National Assembly and the Judiciary) do not perform duty to employ the disabled upto 2 % of all employees under the "Law to Promote Employment of the Disabled." Without active implementation of measures to enhance inferior status of the socially weak, the situation will not be improved.

5. In terms of protection by labour laws, social security laws, the right to move and to choose one's own job place, foreign workers are discriminated against with various excuses.

6. When a migrant worker, whose status is illegal, is seeking a compensation for injuries from industrial accident, he is instantly arrested and deprived by the government. Therefore, even though the government is insisting that they are entitled to get redressed, they are prevented from filing suits.

7. Many employers are illegally seizing passports of the foreign workers to prevent their "escape." Their transfer of workplace on their own will is prohibited. No case was known where these employers were punished and it is believed that the government is informally encouraging the employers to take every possible measures to prevent the "escape" of foreign workers.

8. They are not entitled to receive protection under the Minimum wage Law.

9. Their rights to trade union activities are not guaranteed.

10. Even those "legal" workers are not entitled to invite their family members to stay with them during the period of employment.

11. The role of the Korea Small and Medium Size Business Federation is to exploit foreign workers. It is delegated power to manage the "technical trainee system." It is getting a huge profit from the brokerage fees and 20% of foreign workers wages deposited as a security.

12. The "illegal" workers are subject to fine. First of all, the procedure to impose fine is not fair enough to guarantee them the right to protect themselves and to raise oppositions to the procedures and the result. Even though they raise opposition and file a suit, deportation is not suspended.

13. When they can not pay fines or refuse fines, the following procedures are not well defined and publicized. It is reported that, in some cases, immigration officials searched their pockets and took away money from them as fines.

14. The facilities of the detention center of those illegal workers waiting for deportation has not been made public.

15. In early this year, many foreign workers hold a rally, with the support of human rights groups and trade unions, to protest against the "slavery-like" conditions. The government promised improvement of the condition, however, the promise is not well implemented until now. The change of policy to compensate injured workers has not been made public to those foreign countries. This difficult works have been done by trade unions and other voluntary groups.

IV. Right to Work

1. In many companies and especially the National Assembly, are setting retirement age which is very disadvantageous to women.

2. Recently, many people in their 40s or 50s have been forcefully retired, regardless of official retirement age, due to "structural adjustment program" and "management rationalization" campaign. This in turn brings about various social problems, however, the government has been encouraging those trend rather than taking proper measures to stabilize employment.

3. The level minimum wage under the Minimum Wage Law is still too low to guarantee decent standard of living for workers and their families, while its scope of protection is too narrow.

4. The formula to calculate the level of the minimum wage is unreasonable. It should be change to guarantee decent standard of living.

5. The punishment under the Gender-Equal Employment Law is too light therefore employers are choosing to pay fines rather than following the law. No case has been reported where an employer has been arrested for violation of this law.

6. The government has not taken proper actions against complicated forms of discrimination against women. For example, discrimination concerning placement, assignment of work, promotion, etc. are not duly addressed.

V. Right to Trade Union Activities

1. The government has been refusing to respect the recommendations of the ILO Committee on Freedom of Association. It has to lift ban on forming unions of workers own choice, ban on the rights of public officials and teachers and the prohibition on the third party intervention and should ratify ILO Conventions Nos. 87, 98, and 151.

2. The current presidents of the Minju-Nochong (Korea Council of Trade Unions), Mr. Kwon, Young-Kil and Yang, Kyu-hun are on the police wanted list. They are alleged to have violated the "prohibition of the third party intervention law" by supporting the industrial action by the KCTU's member union, Railway Workers' Association. The KCTU is now representing about 1,000 independent trade unions with about 420,000 workers.

3. Emergency adjustment and arbitration ex officio practically deprive workers of their right to strike. It is very arbitrarily and selectively applied and leads to massive arrests of workers. This does not seem to be compatible with the Covenant considering the Limberg principles.

4. The restriction on the right to industrial action by workers of "defense industry" is very arbitrary.

5. While many workers give up to seek legal redress for those complicated, time consuming and "unfairly" looking procedures, there are many other workers who were refused to be reinstated in spite of the court orders. The government has not taken proper measures to guarantee the implementation of the court orders.

6. On 18 April this year, workers who tried to meet the Minister of Labour were attacked by the armed police. They were physically injured and 6 of them are now in prison. Even though they did not exercise any violence, they were so attacked and punished.

7. Restrictive labour laws and the National Security Law are mutually reinforcing negative effect on trade union activities. It is estimated that about one fifth of whole arrested persons under the NSL are trade unionists or those related with trade union activities.

Just for one example, in addition to the example of the presidents of the KCTU who are now on the wanted list for violation of the "third party intervention", a highly respected member of the National Assembly, Lee Boo-young, a vice representative of the opposition party and former leader of human rights movements is now receiving a trial for his alleged violation of the National Security Law and the third party intervention law. All the charges are related with his activities before inauguration of the current government to advocate independent trade unions and human rights. It is expected that, beyond doubt, he will be finally convicted and lose his membership in the National Assembly as its result. Supplementary Information for the Committee on Economic, Social and Cultural Rights

VI. Information of those appeared in NGOs Slide Presentation

1. A youngster who was victimized by industrial accident

Name: Mr. LEE, Chunik
Iri technical high school' student in Korea in 1994

When he was third year student he received industrial training as a part of their normal education. He had his fingers cut off while working in KORUS company in Chunra Buk-do province in southern part of Korea. In this case of trainees who are high school students are not entitled to receive normal level of compensation paid to ordinary workers. Even in the case where some money is given, commonly it is not the "compensation" under the law, but the "consolation money."

2. The disabled who burnt himself to death

Name: Mr. CHOI, Jung-whan
a street vender

He had physical disabilities from a traffic accident, and his left foot was wounded again when he protested a ban of street vending by assault of local government officers in June, 1994. On March 8 this year, Mr. CHOI set himself a fire to death at the Seocho-ku district office, in Seoul. This was caused by the forceful confiscation of his last means of living, a pushcart, and ensuing violence onto him by the public officials. Without the cart and vending in the street, earning life was cart was simply refused. Finally, he set a fire on himself.

VII. Right of Women and the Child

1. The employment situation of women workers(pp.8-9,NGOs' report)

Since 1990, the percentage of Korean women who have becoming economically active has been increasing. However, as the barriers of women's entrance in the labor market and other forms of discrimination against women workers continue to exist, the gender equality has yet to be realized. Especially, unstability in employment is concentrated on women workers.

The percentage of women workers who are employed at enterprises hiring less than five employees is 69%, while those employed at large-scale workplaces hiring 300 or more employees only represents 3.3% of all women workers. As the majority of women workers are employed at small businesses, the status of their employment is quite insecure, and a considerable number are not even protected under the Labor Standards Act. Moreover, since 77.5% of all married women workers are employed at workplaces with less than five employees, the Nursery Law for Babies and Infants, which mandates workplace childcare facilities at enterprises with 500 or more

regular women workers, is completely irrelevant to their welfare. Even this obligation is not performed due to lack of proper measures of the government like criminal punishment.

2. Problems of the Family Laws(pp.50-51)

The system to recognize superior position of a male (i.e. husband) over all family members in the name of householder or "master of family" put women in inferior position in every aspect of family life.

3. The number of intercountry adoption and the ratio of intercountry adoption have not decreased since 1990. Even the policy to ban such adoption of orphans to foreign countries are not supplemented by expansion of welfare services to those children as well as those who adopt orphans.

4. Those children who are in poor condition without protection of their parents are not receiving enough support to guarantee their right to education.

5. The provision of shelters or other facilities to protect women and children from domestic violence and sexual abuse is very difficient.

VIII. Right of the Disabled

1. According to the government, ratio of the disabled is extremely low (only 2.2 per cent of the population, when compared to 22 % in Canada, 14.5 % in the US and 10 % of the WHO estimates). Considering the high rate of industrial accidents and traffic accidents in Korea, it must not be based on through and objective investigation of the situation.

2. Level of education which the disabled receive is extremely low; 29.1% without even a minimal level of education, while another 30.9% with only primary school education. Moreover, they are not receiving integrated education with normal students. This lack of integrated education deepens bias to the rights of the disabled.

3. Unemployment rate of the disabled is very low, at 32.6 %. The Law to Promote Employment of the Disabled is not implemented by the government as well as private companies. Technical training for the disabled is too far from giving practical opportunities of employment for the disabled.

4. Legal mechanisms to guarantee equal participation of the disabled in social life is almost non-existing. For example, the person on wheelchair can not move by him or herself in the street because of a few staires.

IX. Right to Social Security

1. The level of financial support for the poor is too low to guarantee their right to decent standard of living.

2. Too high land and housing prices should be tackled with proper measures including increase of tax rate of real property and reduction of tax rate on wages.

3. The government should take measures to expand housing for the poor and introduce simple and convenient procedure to solve problems between the owners and the tenants, including rents.

4. Government should set up the minimum standards living including housings and implement them.

5. In the process of urban redevelopment, tenants are often evicted with force of organized hooligans with implicit support of the police. The statistics of those arrested tenants and the hooligans who attacked tenants should be provided. The government should specify concrete procedures and substantive measures like provision of temporary sheltering to protect the tenants.

X. Right to Health

1. The government has not taken proper measures when the "evaluation of influence on environment" was falsely made in the process of development plans.

2. Participation of and consultation with the people in the areas of development project, including nuclear waste facilities, are not guaranteed.

3. Many regulations on industrial activities to protect environment are now being lifted as a part of "national competitiveness" policy.

4. Proper measures have not been taken to reduce great disparity between the poor and the rich in terms of national health services.

5. When a person who has failed to pay the premium for the medical insurance became ill, he is not entitled to receive proper medical treatment.

XI. Right to Education

1. Because of so high burden of private spending on education, parents financial capability becomes a key factor in determining the quality of education a student receives. Government should take urgent measures to reduce private spending and increase quality of public education.

2. Government has to take proper measure to expand public support

for school-feeding system.

3. To promote standards of living in remote areas and to guarantee the right to education of children in those areas, government should expand support for the schools in those areas instead of closing down. The government should keep the Law to Promote Education in Islands and Remote Areas.

4. The government should guarantee free writing and publication of textbooks and the selection of textbooks should be made by the teachers in consultation with parents.

Key issues on women's status

1. Family law

Family master system - recognizes superior status of male(husband) of female (female)

2. Inheritance Tax Law

Properties of a couple are, in principle, regarded as common property of the couple. However, main properties, especially real property, are owned in the name of the husband, in practice. When a husband dies, certain part of the property is inherited to family members, including wife and children. In this case, heavy rate of tax is imposed because it is regarded as a gift if the value of property exceeds certain level, not the return of property to wife which was originally hers.

3. There is no discrimination against women as far as adultery is concerned.

4. In case of prostitution, in spite of laws prohibiting prostitution, male are not punished. Only the females are punished in practice.

5. Requirements of fitness and beauty for women applicant for employment is not regarded as discrimination against women by the government, in spite of clear provision of law which prohibits discrimination against women.

6. Some governmental authorities, including the National Assembly, is setting disadvantageous regulation of retirement age against women.

7. Under the law to prevent sexual violence, proper protection of women victims are not provided. For example, the crime is regarded as a crime on women's chastity, not on women's freedom and dignity. In practice, women victim is investigated by male policemen, summoned again and again by the police, prosecutors and by the court to repeat her statement on the crime, proper measure to protect her privacy is not guaranteed.

8. No provision to protect effectively women from domestic violence. For example, government is reluctant to interfere "domestic affairs" and no public sheltering is provided.

Minimum Measures to be taken by the Government of the Republic of Korea

NGOs delegation from south Korea

I. General Issues

1. The government should recognize that it has not fully performed its obligations under the Covenant.

2. The government should guarantee that (1) interpretation of international treaties by their supervisory bodies will be accepted as 'ordinary meaning' of the terms, and (2) recommendations of the supervisory bodies will be respected and performed in good faith.

3. The government should make every efforts to ensure peaceful solution of all problems surrounding Korean peninsula.

4. The government should repeal the National Security Law and provide amnesty to all of those punished by this Law. Under the National Security Law, people's efforts to improve all human rights are fundamentally restricted.

5. The government should refrain from using excessive force on the exercise of economic, social and cultural rights and guarantee genuine consultation with and participation of the people.

6. The government should set up a national action plan to protect and promote economic, social and cultural rights under the Covenant and establish the national human rights commission in accordance with principles set forth by the General Assembly and the Commission on Human Rights.

II. Specific Issues

1. Gender equality: government should acknowledge its obligation to take every positive action to correct discrimination against women which is still existing in various forms.

2. Migrant workers: government should provide protection in accordance with the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of

Their Families.

3. Employment: government should take steps to eliminate irregular employment.

4. Labour standard: government should expand the protection of labour related laws to the workers who are not covered by such laws.

5. Social security: the level of livelihood assistance should be increased to the level of minimum living costs.

6. The disabled: thorough investigation of the current situation of the disabled should be taken and the requirement to employ the disabled should be implemented..

7. The aged: positive policy should be taken to restrict early retirement from workplace.

8. Right to housing: adequate sheltering should be provided with to the tenants before eviction in redevelopment process.

9. Health: participation of the people should be guaranteed in every development project which affect environmental soundness.

10. Right to Education: the policy to close down the schools in remote areas without certain level of enrolled children should be changed into more supportive one.

11. Right to cultural life: prior censorship on cultural activities should be eliminated.

12. Trade union rights: (1) right to form and join trade unions of one's choice should be guaranteed; (2) trade union rights of public officials and the teachers should be guaranteed; (3) the law prohibiting the third party intervention should be repealed and the presidents of the Korea Council of Trade Unions, Kwon Young-Kil and Yang Kyu-Hun should be given amnesty; and (4) trade union's political activity should be allowed; (5) the National Security Law should be repealed; and (6) ILO Conventions Nos. 87, 98 and 151 should be ratified without reservation.

III. Conclusion

Considering the grave impact of the National Security Law on all human rights as well as insufficient information provided by the government of Korea to the Committee, the Committee is recommended to ask the government to submit supplementary report on the relation of the Law and the realization of economic, social and cultural under the ~~Committee~~ as soon as possible.

(doc04/5/3)

Rights

Covenant

Statement to the Committee on Economic, Social and Cultural Rights by the NGO delegation from south Korea

1. We express our deepest gratitude to all the members of the Committee for the welcome and allowing a chance to present information on the real situation of the rights under the Covenant. We are also very thankful to the members for the most sincere efforts to contribute to the protection of human rights in our country. Our special are extended to the chairperson who had patiently and smoothly presided all the process of the consideration.

2. At the same time, we regret that the information provided to the members of the Committee by us was late in time and far from comprehensive in its contents and thus might have been too deficient to help members of the Committee to fully understand accurate situation of south Korea. However, we ask the members to recognize that such shortcomings were made in spite of our best efforts, not because of lack our sincerity.

3. Before criticizing the government of our country, we have to apologize for the attitude which was not worth being trusted. The government, as shown in its report to the Committee, was not frank and sometimes seemed to try to lead the members to misunderstanding of the situation by concealing, exaggerating or denying the fact, evading answers, and time consuming. Because of this, it is really regrettable for us that the Committee could not have time to cover the situation of the rights under article 13 to 15 under the Covenant.

4. Especially, it is our opinion that the National Security Law did not receive proper attention from the Committee when we think about the gravest obstacles the Law imposes on our people. Even though the Law may be said to have more or less close relationship with civil and political rights, the fundamental and almost ^NX,d, barrier coming from this Law in promoting economic, social and cultural rights should have been duly addressed by the Committee. All human rights are equally important. However, it is also clear that, without seeking, expressing and imparting ideas and though and without getting together with their colleagues, people will be silenced and the momentum of human rights movements will be lost. This is the case in our country with the National Security Law. The excessive referring to the political confrontation with and exaggerated threat from north Korea by the government delegation and at the same time so scant information by the government on how this law has been applied shows that something very important has been missing, the truth.

5. In this context, we respectfully advise the Committee to request the government of the Republic of Korea to submit an additional,

supplementary information on the National Security Law in terms of its relation with the trade union rights and the right to cultural life. Without addressing, we reiterate, the people of Korea are certain to feel that something the most important has been missing in the consideration of the report by the Committee.

6. In addition, the obligation of the government to perform the treaty in good faith in accordance with the ordinary meaning can not be too emphasized. To the people under the government which does not have intention to respect international norms, application of the Covenant by its own sense of justice instead of interpretation and recommendation provided by the supervisory bodies means that international norms are nothing more than decorations. Moreover, this deepens people's frustration to see that domestic laws, which are clearly deemed as unjust and draconian, are compatible with the international standards and they do not have any recourse under the international law. Therefore, the persistent repudiation of the recommendations of the Human Rights Committee and the ILO's Committee on Freedom of Association should be clearly pointed out as a grave violation of the Covenant.

7. We came to Geneva to watch, listen, record and to learn. Questions and comments made by several members on various aspects of rights were really impressive and inspiring. We return to our country with a little more courage and belief. We will do more efforts to improve human rights in our country and thereby contribute to the peace and human rights of the world. We will try best efforts to keep the Committee informed of further development of human rights situation of south Korea. Thank you again.

representing
 Korea Center for City and Environment Research
 Korea Council of Trade Unions
 Korea Research Institute for Workers' Human Rights and Justice
 Korea Teachers and Educational Workers' Union
 Minbyun (Lawyers for a Democratic Society)
 People's Solidarity for Participatory Democracy
 Research Institute for the Handicapped Rights in Korea
 Sarangbang (Center for Human Rights),
 Yong-Whan Cho
 Seon-Soo Kim
 Soh-Young Chang and
 Jin-Young Moon

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경제·사회·문화적 권리위원회의 최종 견해 : 대한민국.

1995년 6월 7일. 문서번호 : E/C.12/1995/3.

경제·사회·문화적 권리위원회

규약의 16조와 17조에 따라 가입국이 제출한 보고서의 심의

1. 위원회는 1995년 5월 2일과 3일 열린 3차, 4차 및 6차 회의(E/C.12/1995/SR.3,4 and 6)에서 규약의 1 조부터 15조까지에 대한 대한민국 정부의 최초 보고서(E/1990/5/Add.19)를 심의했다. 그리고 다음의 최종 견해를 1995년 5월 18일 열린 27차 회의(12차 회기)에서 채택했다.

A. 머리말

2. 위원회는 한국 정부가 위원회의 지침에 대체로 부합되는 포괄적인 보고서를 준비한데 대해, 그리고 질의 사항들에 대한 서면 답변을 회기 전에 제출한 데 대해 감사를 표한다. 당사국은 또한 보고서를 토론하기 위해 상당히 고위직의 대표단을 파견하고 위원회와 유용한 대화를 하게 해 칭찬을 받았다. 그러나 위원회는, 보고서가 형식 면에서는 포괄적임에도 불구하고 내용면에서는 많은 분야에서 극히 일반적인 정보를 담고 있음을 지적한다. 따라서 한국정부가 위원회가 제출한 질의 사항에 대해 더 상세하고 정확한 서면 답변을 제공한 것을 환영한다. 위원회는 대한민국정부가 1995년 5월 5일에 답변을 신속하게 제출한 것을 높이 평가한다.

B. 긍정적 측면들

3. 위원회는 지난 30년 동안 한국이 성취한 빠른 경제 성장을 만족스럽게 생각하며 주목한다. 그리고 상당한 물질적 진전이 경제·사회·문화적 권리의 향유를 진전시키는데 기초가 되어야 함을 지적한다. 나아가 위원회는 한국의 발전 단계에 적절한 사회보장 제도의 발전을 향한 첫 조치들에 더욱 주목한다. 한국 사회에서 더욱 긍정적인 발전은 노년층을 제외하고 사회 모든 부문에서 나타난 실질적인 문맹 퇴치, 평균 수명의 연장, 국민주택조합(national housing pool)을 늘리기 위한 노력에서 입증된다.

4. 위원회는 가정 내 여성에 대한 폭력의 문제를 개선하기 위한 최근의 입법 노력과 여성의 상속권을 인정코자 한 점에 주목한다.

5. 위원회는 공공법무관 제도(the Public Legal Officers)의 도입을 통한 법적 지원을 제공하는 것을 포함하여 정부 주요 부처의 핵심 인권사안에 대한 정책수립을 환영한다.

C. 규약의 적용을 저해하는 요인과 장애

6. 위원회는 한국이 사회 정치적 이행을 거치고 있다고 본다. 각 분야들이 충분히 균형감있게 발전하지 못했다. 눈에 띄게 빠른 경제 성장을 유지하기 위한 노력과 성과가 항상 적절한 수준의 경제·사회·문화적 권리의 보호로 이어지지 않았다. 한국은 최근에는 군사 통치 기간을 벗어나 민주적 정부 체제를 갖추고, 특히 뿌리깊은 사회적 편견들에 직면해 시민사회 형성이라는 무거운 변화의 시대를 맞고 있는 것으로 안다. 마지막으로, 한반도의 정치적 분단이 야기한 문제들 때문에 국가 안보 위협에 이유를 둔 광범위하고도 고착된 적대 의식이 지속되고 있다.

D. 가장 우려되는 분야

7. 위원회는 규약의 국내법 상 지위에 대해 우려한다. 정부의 대표들은 모든 국내법이 규약의 규정과 일

치한다고 단언했지만, 위원회는 국내법이 규약의 규정들에 부합하는지를 입증할 만한 아무런 방법이 없다는 점을 계속 유감으로 생각한다.

8. 위원회는 노동조합결성권과 관련된 제약들이 규약의 8조에 따른 한국정부의 의무에 배치된다고 생각한다. 특히 방위산업체의 노동자 등의 집단에게는 적용하지 않았으면서, 교직 종사자 등에게 노동조합결성권을 금지하는 것은 뚜렷한 이유가 없다. 마찬가지로 파업권에 관한 규제는 지나치게 제약적이고, 노동자들 행위의 합법성 여부를 판단하는 것은 정부 당국에게 거의 절대적인 재량권이 주어져 있는 것으로 보인다. 교사들이 높이 존경받는 한국의 문화적 전통을 인정한다 하더라도, 자신이 선택한 노조에 가입할 기본적 권리와 자유를 과도하게 제한하고 이를 옹호하고자 문화적 전통을 내세우는 것은 전혀 받아들일 수 없는 근거라고 판단한다.

9. 위원회는 또한 노동조합 활동에 참여했다는 이유로 해고되는 사례들과 조합원들의 평화로운 활동에 대한 경찰의 공격에 대해서 대단히 놀라게 생각한다.

10. 한국정부는 여성문제에 관한 정책과 광범위한 특별 계획들을 발표했지만, 위원회는 한국 사회에서 여성들이 현재 차지하는 지위가 매우 불만족스럽다는 견해를 갖고 있다. 생활의 모든 분야에서 여성들은 오랜 문화적 편견을 포함해 여러 요인으로부터 파생되는 차별적 관행들로 인해 피해를 당하고 있다. 가정에서의 여성의 종속 상황은 정부 보고서에도 나타난 가정내 폭력의 심각성이 증명한다. (국제결혼의 경우처럼) 여성들이 그녀의 국적을 자녀에게 물려줄 수 없는 경우와 같이 여성의 법적 능력을 박탈하는 시대착오적 규칙도 주목해야 한다. 교육 분야에서도, 중등 및 고등교육기관에서 나타나는 남녀학생 비율의 격차가 우려스럽다. 이와 관련해, 위원회는 중등 및 고등교육에 드는 높은 비용과 접근의 어려움이 여성들의 교육 수혜 비율의 저하를 야기하고 있다고 생각한다.

11. 위원회는 고용 시에 명백하게 드러나는 높은 빈도의 성차별 행위 등의 작업장에서의 차별적인 관행과 남녀 간 임금격차에 대해서 각별한 유감을 표한다. 위원회는 또한 한국 정부가 이러한 문제에 대해서 법률과 정책을 제대로 집행하지 않고 있는 점에 대해서 유감을 표한다.

12. 위원회는 한국의 작업장에서 상대적으로 높은 빈도의 산업재해가 발생했고 정부가 이 문제를 효과적으로 개선하는데 실패했다는 점을 무척 놀라게 생각한다. 여러 노동 관련 규제가 10인 미만 사업장들에 적용되지 않는다는 점은 특별히 우려할 만한 점이다. 이러한 소규모 사업장에 최저임금제를 확대 적용하지 않고 있다는 점 역시 유감스럽다. 그러므로 위원회는 정부가 이러한 상황을 재검토하겠다고 의지를 표명한 것을 환영한다. 한국의 작업장에서 외국인 노동자들에 대한 처우와 작업조건은 우려를 야기하고 있으며, 한국정부가 위원회에 제출한 정보에는 이러한 노동자들을 보호하기 위한 충분한 범위의 법적 조치들이 드러나지 않는다.

13. 위원회는 한국의 교육제도의 많은 요소들에 대해 우려를 갖고 있다. 단지 초등교육만이 무료로 제공되고 있다. 그러나 한국의 경제력을 감안할 때 무상 교육이 중등 및 고등 교육에까지 확대되는 것이 적절한 것으로 보인다. 또한 위원회는, 정부 대표가 경쟁적인 입시 요건을 낳는 고등 교육 기회의 공급 부족에 문제의 심각성이 있다고 구두로 인정한 사실에 주목한다. 이러한 결과의 하나로, 사설 학원들이 쉽게 학원비를 올리고 이에 따라 저소득층의 아동들은 이러한 제도 밖으로 강제로 배제되고 있다.

14. 위원회는 한국 내 주거 상황을 우려한다. 위원회는 이 주제에 관해, 특히 부적합한 주거상황·무주택자의 숫자 및 강제퇴거 등에 대해 충분한 정보를 받지 못했다. 국제 민간단체의 자료에 따르면 서울 올림픽을 계기로 72만명이 사후대책에 대한 아무런 통보없이 퇴거당했으며, 1992년 2월 이래로 1만6천

명이 역시 퇴거당한 것으로 알려졌다. 최근 한국내 민간단체의 자료에 따르면, 1994년 4천명이 퇴거당했다. 이와 같은 위원회의 우려에도 불구하고, (정부로부터) 주거문제에 관한 질문에 대한 답변은 물론, 좀 더 일반적으로 주거권 문제에 대한 의견도 듣지 못했다.

15. 위원회는 한국의 경제적 자원을 고려할 때 한국 정부가 사회 내 한계 계층의 경제·사회·문화적 권리를 충분히 진전시키지 못했다고 생각한다. 더 큰 관심과 염려가 필요한 사람들의 범주에는 극빈층, 무주택자와 특히 심각한 신체적·정신적 장애를 가진 사람들이 포함된다.

E. 제안과 권고

16. 위원회는, 경제·사회·문화적 권리의 영역에서 본 규약이 모든 신규(新舊)를 막론한 모든 국내법에 우선하도록 한국 정부가 그 법적 지위를 보장해야 할 의무가 있다는 점을 상기하고자 한다. 위원회는 규약의 규정에 부합하도록 하기 위해 한국정부가 모든 국내법을 검토할 것을 권고한다. 또한 위원회는 한국사회에서 규약 규정에 대한 인식을 높이고, 법 집행 기관들이 규정을 준수하는 것 뿐 아니라 사법 절차에 규정을 적용할 수 있도록 하기 위해 교육 프로그램을 확대할 것을 권고한다.

17. 위원회는 노동조합 결성의 자유와 파업권과 관련한 법과 규정을 본 규약 및 기타 적용 가능한 국제 규범에 일치하도록 즉각 개정할 것을 정부에 권고한다. 특히 교사와 공무원 및 기타 집단의 노동조합결성권과 파업권을 보장하기 위한 조치가 시행되어야 한다.

18. 위원회는 정부가 기존에 수립한 여러 계획의 의의를 인정하면서도, 한국사회에서 여성의 역할을 증진하는데 우선 순위를 둘 것을 권고한다. 위원회는, 여성차별에 대처하기 위해서 광범위한 정책을 추진하는데 재원을 배정할 필요가 있다고 권고한다. 그 중에서도 특히 청소년 및 성인 교육, 고용 기회의 증진, 법개정 및 사법행정의 개혁이 필요하다. 또한 한국 사회에서 여성이 갖는 지위의 불평등성을 시정하기 위한 정책의 도입이 추진되어야 한다.

19. 위원회는 한국정부가 산업안전에 대한 규제 및 최저 임금제를 10인 미만 사업장에까지 확대할 것을 권고한다. 모든 노동조건 개선은 한국인 노동자 및 외국인 노동자 모두에게 평등하게 적용되어야 한다. 그리고 현재 한국에서 고용된 외국인 노동자들에 대한 기존의 차별 행위는 근절되어야 한다.

20. 위원회는 한국 정부가 주거권을 보다 효과적으로 보장하기 위한 적절한 대책을 마련할 것을 권고한다. 특히 위원회의 일반논평 4에 따라, 주거 대책 없는 철거를 중단할 것을 권고한다. 위원회는 한국에서의 본 규약 11조의 적용에 관한 보충 정보, 특히 주거권에 관한 보충 정보를 얻기를 희망한다.

21. 위원회는 또한 교육 분야의 문제들, 특히 여성을 포함해 사회적으로 가장 취약하고 불리한 계층의 중등 및 고등 교육과정에 대한 접근을 강화하고, 고등교육부문을 확대해야 할 필요성에 즉각적인 관심이 필요하다고 권고한다. 위원회는 또한 정규 교육의 모든 과정에서 인권 교육을 제공하는 것에 더 많은 관심이 필요하다고 권고한다.

22. 한국 정부가 사회보장제도의 기본 요소를 도입했다는 점은 인정하지만, 외국인 노동자를 비롯해 사회의 한계계층의 욕구를 충족시킬 수 있도록 사회보장제도를 신속하게 확대할 것을 권고한다. 특히 외국인노동자를 보호하기 위해 그들의 사회적 고립과 취약성을 고려하는 특별한 관심이 필요하다. 아울러 극빈층과 무주택자 및 심각한 정신적 신체적 장애를 가진 사람들에게도 특별한 관심이 필요하다.

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(Concluding Observations/Comments)***

COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee on Economic,
Social and Cultural Rights

REPUBLIC OF KOREA

1. The Committee considered the initial report of the Republic of Korea on articles 1 to 15 of the Covenant (E/1990/5/Add.19) at its 3rd, 4th and 6th meetings (E/C.12/1995/SR.3, 4 and 6) held on 2 and 3 May 1995 and adopted* the following concluding observations.

* At its 27th meeting (twelfth session) held on 18 May 1995.

A. Introduction

2. The Committee expresses its appreciation to the State party for its comprehensive report, prepared largely in conformity with the Committee's guidelines, and for the written replies to the list of questions made available to it before the session. The State party is also to be commended for sending a large high level delegation to discuss the report and for its useful dialogue with the Committee. The Committee, however notes, that the report, although comprehensive in form

provided information which in many areas was excessively general in content. Accordingly, the offer of the

Government to furnish further and precise written responses to questions posed is welcomed. The Committee appreciates the subsequent prompt submission of those replies on 5 of May 1995 by the Government of the Republic of Korea.

B. Positive aspects

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

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

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

C. Factors and difficulties impeding the application of the Covenant

6. The Committee recognises that Korea is passing through a period of social and political transition. The developments in each of these areas have not been sufficiently balanced. The efforts and achievements in securing outstanding and rapid economic growth have not always been matched by an appropriate level of protection of economic, social and cultural rights. It is also acknowledged that the country has only recently emerged from a sustained period of military rule to a system of democratic government and that it faces a heavy agenda of changes in the establishment of a civic society, particularly in the face of deeply entrenched social prejudices. Finally, problems deriving from the political partition of the Korean peninsula continue to impose a pervasive fortress mentality arising from perceived threats to national security.

D. Principal subjects of concern

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

8. The Committee is of the view that restrictions concerning the right to form trade unions are not consistent with the obligations assumed by the Republic of Korea under article 8 of the Covenant. There is no apparent reason for the ban on the formation of trade unions by groups such as the teaching profession, particularly where the prohibition does not apply to other groups including workers in the defence industry. Similarly, the regulations concerning the right to strike are

excessively restrictive and would appear to leave to the authorities an almost absolute discretion in the determination of the legality of incidents of industrial action. Whilst acknowledging the cultural traditions of the Republic of Korea, including the high esteem in which teachers are held, the Committee finds this to be a wholly unacceptable basis on which to defend the excessive limitation on the freedom of significant sectors of the Korean society to enjoy the basic right to belong to unions of their choice.

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

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

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

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

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

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

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

E. Suggestions and recommendations

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

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

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

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

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

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

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

illness.

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Office of the United Nations High Commissioner for Human Rights
Geneva, Switzerland

1. 한국정부보고서 검토 사회권위원회 심의회 참가보고 (인민 김선우)

* 민간단체반박보고서 준비과정 및 경과는 95.4.25 기자회견자료 참조

가. 민간단체 대표의 발표(5. 1.)

0. 회의첫날은 민간단체들의 발언을 듣는 날로 한국, 필리핀 및 FIAN, 파나마, 캐나다 NGO 대표의 진술이 있고, 한국의 경우 40분이 할애됨.

나. 한국정부 보고서에 대한 심의회 진행(5. 2.-5. 3.)

(1) 정부대표단

0. 정부 대표단으로는 허승 제네바대사를 비롯하여 이준희 참사관, 김용길 제네바대표부 노동권, 서범석 교육부, 장재구 노동부, 황인자 정부제2차관실, 마영삼 외무부, 인창호 법무부 검사, 윤강현 제네바대표부, 임인택 복지부, 김양현 노동부, 공지현 외무부, 정계원 한국보건사회연구원 등이 참석.

(2) 모두발표

0. 허승 대사의 모두발표(introductory statement)을 함. 모두발언중에서 복이할만한 점은 한반도의 분단과 한반도를 둘러싼 냉엄한 현실로 말미암아 국가보안법의 필요성을 강조. 분민정부 수립이후 인권상황에 엄청난 발전(tremendous development)이 있었음을 강조. (문민정부는 인권증진을 위한 굳은 의지(firm will)를 가지고 있다. 의지가 정책에 반영되어 법률적, 제도적으로 인권을 보장하게 되었다.) 정부의 기본적인 철학은 경제발전이 사회발전을 견인한다는 점이라는 것을 강조.

(3) 검토회의의 진행방법

0. 정부보고서에 대한 검토는 1994년 7월 8일 채택된 서권침의서(E/C.12/1994/XP.11)에 대한 정부의 답변을 중심으로 하여 이루어질. 위 침의서에 대한 답변을 한국을 준비하기 전부터 정부측에 제출하여 줄 것을 요청하였으나, 정부측은 정리가 되지 않았다는 이유로 넘겨주기를 꺼려하여 결국 제네바에 도착한 이후 4월 29일 저녁때 전달받음.

다. 검토회의 중 위원들의 구두질의와 그에 대한 답변 (발췌)

- 관련자료 : 정부측 서면 답변서(영문) 총 58 쪽

아래 질의응답 중에는 답변이 준비되지 않아 다음으로 미룬 것들이 있음

(1) 국제조약의 국내법상의 지위 및 홍보문제

- 질의서 1,2,3항

것이고, 냉각기간은 파업에 대한 제한이 아니라 일선과 조정을 위한 단속인 원사이다. 각국 긴급조정은 사용을 제한하고 있어서 전쟁위험에 직면하여 2번 적용했을 뿐이다. 각국의 체계는 독특한 문화, 시기에 따른 특징을 갖는다. 북수노조금지외 문제도 미국의 배타적 고집체도를 취하고 있으며, 기본적인 출발점은 민주주의이다. 한국의 노동제도도 개별적으로 파업권에 대한 제한으로서가 아니라 종합적으로 이해해 주기를 바란다." "장애인시설과 재활시설 및 장애인이 사회활동을 할 수 있도록 노력하고 있다. 장애인을 위하여 특수기관의 컨설팅 등의 활동으로 장애인을 지원하고 있다. 한국보건사회연구원 정계원, 임양자수가 줄어든 원인은 우선 가족계획으로 팔미암아 출생이 감소하고, 그리고 하그이 경우 이드세 고자 나이오 보다가 지는데 기조까지

다. 출입국에 대해서는 모든 외국인에 대해서 출입국관리법이 적용된다. 따라서 현행 법상으로 외국인에 대한 보호는 충분히 이루어지고 있으므로 특별법은 필요없다."

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질문 "최저임금법이 10인 이상 사업장에만 적용된다고 하는데, 그러면 사용자들이 10인 미만으로 고용함으로써 최저임금법의 적용을 회피하려고 하는 입찰현상이 있을 것으로 예상되는데, 이에 대한 대책은 무엇인가?"
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질문 "ILO조약 제87호, 제98호, 제151호는 비준하여야 할 것이다. 교원노조를 인정하지 않는 것에 정말 놀랐고(great surprised), 교원노조를 결성했다는 이유로 교사직을 잃는 것을 도저히 이해할 수 없다. 정부보고서에 의하면 교사가 훌륭하고 존경을 받아 노조를 결성할 수 없다는 것을 이해할 수 없다. 파업에 대한 제한이 너무 많다. 이래서야 파업권이 있다고 할 수 있는가. 노동부장관을 면담하려 간 해고자들이 경찰에 의해 동들과 같이 맞아서 다쳤고, 그들이 입원해 있는 병원에까지 경찰이 난입하여 그들을 연행하였다. 공공질서(public order)의 정치적 의미는 무엇인가. 이것이 정치적으로 악용되는 것이 아닌가. 공공질서를 이유로 파업권을 제한한다면 파업권은 형해화(skeletonization)하고 말 것이다. 모든 파업은 비파업자에게 영향을 미치게 마련이다."

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"파업권에 대한 정부보고서에 따른 제한으로 팔미암아 이미 파업권이 사라졌다고 할 수 있다. 어떠한 파업도 이미 합법적으로 할 수 없다. 노동운동의 경향이 태디랄하다는 설명도 이해가 가지 않는다. 정부보고서의 통계에 의하면 1990년 이후의 불법파업의 건수가 급격하게 감소하는데 그 이유는 무엇인가. 급격하게 감소하는 데는 심각한 문제가 있다."

"파업권에 대한 제한은 자유시장원칙과도 양립하지 않는다. 노동자와 사용자의 힘의 관계상 한쪽을 일방적으로 약화시키는 것이다. 분쟁건수가 급격하게 감소하는 것은 강력한 빈노조적인 분위기가 있었다는 증거이다. 노동조합권이 제한되는 공무원들에게 어떠한 보상조치가 주어지는가. 이러한 제한 속에서 노동자들의 파업권행사의 결과가 무엇인가."

"교원노조를 제한하는 헌법상의 근거인 제37조 제2항에 의하면 국가안보, 공공질서, 사회복지를 위하여 제한할 수 있다고 되어 있는데, 교원노조가 어떻게 국가안보를 위협

한다는 것인지 이해할 수 없다. 정부보고서는 같은 페이지에서 방위산업체 노동자들의 노동조합권을 인정한다고 하였는데, 국가안보를 위하여 방위산업체 노동자의 노동조합권을 인정하면서 교원노조를 인정하지 않는다는 것은 모순되지 않는다. 노동조합법을 개정할 용의가 있는가. 교원노조를 인정하지 않으면서 전교조 관련자를 복직시키지 위하여 협의를 하고 있다는 것은 앞뒤가 맞지 않는다. 교원노조를 인정하지 않는 것은 한국에서 이루어지는 일반적인 민주적 발전과도 양립되지 않는다. 정말 바뀌어야 한다.

"공무원과 교원노조에 대한 제한조치 및 파업권에 대한 제한조치를 정당화하는 것은 정말로 놀랍다(surprising). 교사들의 노동조합권에 대한 제한이 국민들의 비판적인 여론 때문이라고 설명하는데, 법을 개정하거나 개정하지 않으려 할 때 국민여론을 보는 법적 절차가 있는가. 교원노조가 교육제도의 발전을 위하여 활동할 수 있는 것은 어느 민주국가에서도 정상적인 것이다. 국민들의 권리행사를 제한하기 위해 여론을 핑계대는 것은 구 공산주의국가인 나와 조국(former communist country) : 루마니아)과 같다."

- (6) 집의서 14항(혼인의 자, 국제결혼 또는 외국 부모의 자의 지위 또는 국적, 해외인양 현황), 15항(장애인에 대한 차별), 16항(외국인 노동자에 대한 차별), 17항(가정내 여성에 대한 폭력문제 및 가족장식 가족제도)

질문 "파업을 근로계약의 파기라고 할 수 있느냐. 파업이 해고의 사유로 사업주에 의해 고려되고 있는가"

"산재를 줄이기 위해 어떤 노력을 하고 있는가. 교원노조의 금지와 합헌판결이 조약과 일치하는가. 교사의 노동조합권은 조약에 근거하여 보장되어야 한다. 4월 18일과 19일에 있었던 노동자들에 대한 경찰의 적대적인 폭력에 대해 답변할 것을 다시 요구한다."

"공무원과 교사의 노조가 공공질서나 사회복지를 위하여 금지된다는 것은 인정할 수 없다. 공무원과 교사의 노조를 인정하지 않는 것은 헌법에도 어긋나는 차별이다. 법 개정을 고려하고 있다고 하면서도 교원노조를 금지하는 것은 인그이어이다." "정부의 보고서는 제철을 통해 노동을 할 수 있는 사람에게 축적이 맞춰져 있다. 그러나 노동을 할 수 없는 사람, 특히 장애아를 가진 가족을 지원할 수 있는 어떤 체계를 갖추고 있는가."

"장애인의 보호와 고용을 촉진하기 위한 특별기구가 있는가"

"한국 여성과 외국인이 결혼한 경우 우선적으로 아버지의 국적을 따르고 아버지의 국적이 출생지주의인 경우 무국적자가 된다고 하였는데 이는 매우 놀라운 일이다. 1991년에 들어 입양이 급격히 감소하고 있는데, 그 이유는 무엇인가. 입양을 신청한 아동의 86.5%가 혼인외의 자라고 정부보고서에 되어 있는데, 도대체 어떻게 어린 아동들이 입양을 신청할 수 있는가. 누가 입양을 신청한 것인가. 그리고 여성폭력에 대하여 전 세계 걸쳐 6개의 쉼터와 370명의 카운셀러가 있다고 했는데, 이것은 절대적으로 부족한 것이 아닌가."

"공무원 채용시 장애인에 대한 쿼터제가 있는가. 장애인의 고용권, 고용서비스는 어떤가. 장애인의 교육과 노동을 위한 시설은 어떤가. 장애인으로서 분신자살한 죄정환

씨의 사건을 보고 매우 놀랐다. 도대체 어떻게 이러한 상황이 발생할 수 있는가."

- (7) 제11조에 관한 서면질의서 18항(빈곤선 이하의 인구에 대한 정책), 19항(도시의 주택부족에 대한 조치), 20항(최저주거기준 부세의 문제), 21항(경제집거의 문제)

질문 "최소의 주거면적은 점점 늘어나고 있는가. 임차인에 대한 낮은 월세가 공익을 위해 이루어진 것이었는가. NGO와 Habitat에 따르면 1988년 올림픽때 많은 철거가 이루어진 것으로 되어 있는데, 도대체 어떤 일들이 일어난 것이며, 지금까지의 진행상황은 어떤가. 1990년 이후 4,000가구에 대한 철거가 이루어졌다고 하는데, 어떤가. 그리고 최근에 신흥층 등에서도 철거가 이루어지고 있다고 하는데 그 이유는 무엇인가."

"정부가 새로 주택을 지을 때 몇 퍼센트를 빈곤자에게 공급하는가. 주택공급에 있어서 입주자 선정은 어떻게 하는가. 철거인에 대한 주택공급은 어떻게 하는가"

답변 "교원노조의 문제는 법적인 문제가 아니라 철학과 원칙의 문제이다. 전통적인 가치와 관련된 것이다. 솔직히 말해서 교원노조를 인정하는 문제에 대해서는 부정적이고, 어려움이 있다. 한국 국민의 다수, 국회의원과 교사 자신들이 노조를 바라지 않는다. 일반적으로 국민들에 의하여 인정되고 받아들여진다면 교원노조를 인정할 것이다. 현재로서는 개선을 고려중에 있는 단계라고 말할 수 있다. 국가안보문제가 아니라도 직종에 대한 이해가 다르다는 것을 이해해 주기 바란다."

질문 "일반적으로 거의 모든 나라에서 교원노조는 오웬 전공중의 하나이다. 내가 가난한 나라(피지아)에서 왔는데, 우리나라에서도 교원노조를 인정하는데 교원노조보다도 덜 공격적이다(less aggressive). 지식외종에 종사하는 사립들은 그들의 이익을 위한 권리가 없어야 한다는 말인가. 이해가 되지 않는다. 나도 대학교원노조원이다"

"교사들이 스스로 말하고 결정하도록 하여야 한다."

"교원노조는 너무나 당연한 것이고 자연의 법칙 내지 순리이다. 교원노조의 문제는 민주적 원칙의 문제이며, 문화적 차이의 문제가 아니다."

- (8) 집의서 22항(헌법상 건강하고 쾌적한 환경권 보장의 의미), 23항(수의개종에 대한 건강보호의 향상과 제약), 24항(주요 산업지역에 대한 환경정책의 경제, 사회적 비용)

답변 "여성단체나 여성NGO에서 민법에 차별적 요소가 여전히 존재하고 다시 개정되어야 한다고 주장하고 있다. 여성에 대한 폭력을 위한 쉼터나 카운셀러의 수 문제에 있어서는 정부보조기관이 많이 있고, 민간단체들에 의한 것도 많이 있으며, 정부가 민간단체들을 지원하고 있다."

"우리나라의 부당노동행위제도와 노동쟁의조정법은 우수하다. 우리나라의 노동쟁의 조정법에는 파업기간중의 대체채용금지 규정이 있고, 파업참가를 이유로 해고하지 못한다. 그러나 미국의 경우 파업시 대체고용을 인정하고 있고, 또한 파업을 이유로 해고가 가능하다. 파업에 대한 제한에 관하여 많은 지적이 있었으나, 우리나라는 유일한 분단국가이고, 북한의 핵문제 등 전쟁위험이 계속되고 있는 상황에서 파업비용 내지 파업손실을 다른 나라와 동등하게 비교할 수는 없다. Textier는 우리나라가 파업에 대해 너무 많은 제한을 하고 있다는 선입견이 있는 것으로 보이나, 다른 나라와 비교해서 반

드시 제한이 많다고 할 수도 없다. 예를 들면 안전을 위한 제한은 ILO에서도 인정하는 것이고, 냉각기간은 파업에 대한 제한이 아니라 알선과 조정을 위한 단순한 절차이다. 긴급조정은 사용을 제한하고 있어서 전생위협에 직면하여 2번 적용했을 뿐이다. 각국의 제도는 독특한 문화, 시기에 따른 특징을 갖는다. 복수노조금지 문제도 미국은 배타적 교섭제도를 취하고 있으며, 기본적인 출발점은 민주주의이다. 한국의 노동제도도 개별적으로 파업권에 대한 제한으로서가 아니라 종합적으로 이해해 주기를 바란다."

"장애인시설과 재활시설 및 장애인이 사회활동을 할 수 있도록 노력하고 있다. 장애인을 위하여 복수기관의 컨설팅 등의 활동으로 장애인을 지원하고 있다. 한국보건사회연구원 정계원, 입양자수가 줄어든 원인은 우선 가족계획으로 말미암아 출생자수가 감소하였고, 그리고 한국의 경우 아동에 관한 책임은 부모가 지는데 가족환경이 좋아져서 입양이 적어졌다."

- (8) 집외서 25항(여성의 문맹률), 26항(장애아외 교육), 27항(여성의 대학진학률)
 집외서 26항(국가보안법에 의한 문화적 표현의 자유의 침해)

질문 "서면 답변으로는 충분하지 않다. 고등교육으로 올라갈수록 여성의 비율이 줄어드는데, 이것은 여성차별이라 할 수 있다. 대학에서의 여성의 비율이 지나치게 적다. 교육기회의 불평등이 모든 영역의 불평등과 저임금을 낳으며, 따라서 등등한 교육기회가 중요하다."

"교육비용에서 공적 비용과 사적 비용의 비율은 어떻게 되는가."

* 민간단체 대표가 사회권위원회에 제출한 자료:

- 1) 경제 사회 문화권에 관한 정부보고서에 대한 반박보고서
- 2) 보충정보서면(Supplementary information for the Committee on Economic, Social and Cultural Rights on the situation of South Korea) : 한국의 인권침해에 있어 국가보안법의 중요성을 강조하고 국가보안법이 노동권에 대한 탄압수단으로도 악용되고 있다는 점을 강조
- 3) 여성차별에 대한 보충자료(Key issues on women's status): 위 자료에서는 가족법에 남성 우위조항이 있고, 상속에 있어서 남녀차별은 폐지되었으나 배우자가 상속을 받는 경우 상속세를 납부하도록 되어 있어 차별적 요소가 있고, 간통죄에 있어서는 남녀간의 차별이 없고, 매춘의 경우에 남성은 처벌되지 않고 여성만 처벌되며, 채용시의 용모제한이 차별로 취급되지 않았으며, 국회를 포함하여 정부기관이 남녀차별적인 정년규정을 두고 있고, 성폭력특별법과 관련하여 여성피해자에 대한 적절한 보호가 없으며, 가정폭력으로부터 여성을 보호하기 위한 적절한 조치나 시설이 없다는 점을 지적
- 4) 최소한의 조치(Minimum Measures to be taken by the Government of the Republic of Korea).