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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 on Economic, Social and Cultural Rights considered the third periodic report of the Republic of Korea on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/KOR/3) at its 42nd, 43rd and 44th meetings, held on 10 and 11 November 2009 (E/C.12/2009/SR.42, 43 and 44), and adopted, at its 55th meeting, held on 19 November 2009, the concluding observations as set out below.

A. Introduction

2. The Committee welcomes the submission of the third periodic report of the Republic of Korea and the written replies to its list of issues, including statistical data (E/C.12/KOR/Q/3/Add.1). The Committee appreciates the frank and constructive dialogue with the delegation of the State party, which included representatives from various ministries with expertise on the subjects covered by the Covenant.

3. The Committee notes with appreciation the contribution of the National Human Rights Commission of Korea to the reporting process.

B. Positive aspects

4. The Committee notes with appreciation the positive efforts made by the State party in promoting the implementation of social, economic and cultural rights. The Committee welcomes in particular:

(a) The establishment of the national action plan for the protection and promotion of human rights 2007–2011 and of the National Human Rights Policy Council as a consultative body in charge of its implementation;

- (b) The coming into effect of the abolition of the *Hoju* system;
- (c) The ratification by the State party of the Convention on the Rights of Persons with Disabilities;
- (d) The ratification of ILO Conventions Nos. 187 and 155 on occupational safety and health;
- (e) The changes to the Immigration Control Act to grant humanitarian status holders the right to work and provide asylum-seekers with the possibility of applying for a work permit;
- (f) The expansion of free and compulsory education to include secondary education, in 2004;
- (g) The introduction of a pilot green mileage system as an alternative to corporal punishment in schools;
- (h) The use of cultural voucher programmes to facilitate access to cultural performances for low-income individuals and families.

C. Factors and difficulties impeding the implementation of the Covenant

5. The Committee notes the absence of any significant factors or difficulties preventing the effective implementation of the Covenant in the State party.

D. Principal subjects of concern and recommendations

6. The Committee is concerned that the Covenant has not yet been fully incorporated into domestic law despite the Committee's concluding observations in 2001 (E/C.12/1/Add.59). The Committee remains concerned that:

- (a) The scope of economic, social and cultural rights under the Constitution is narrower than in the Covenant;
- (b) The Constitution only applies to citizens (art. 3);
- (c) Covenant rights have seldom been invoked before, or directly enforced by, domestic courts, tribunals or administrative authorities.

The Committee reiterates its recommendation that the State party accord the Covenant a legal status that would enable it to be invoked directly within the domestic legal system. In this regard, the Committee refers to its general comment No. 9 (1998) on the domestic application of the Covenant. The Committee requests the State party to include detailed information on decisions of national courts, tribunals or administrative authorities giving effect to Covenant rights in its next periodic report.

7. The Committee is concerned that the target for official development assistance (ODA) of the State party for 2015 is well below the internationally agreed target of 0.7 per cent of GDP (art. 2.1) and that bilateral aid is still partially tied, while noting with appreciation the pace of economic development achieved in the State party that has enabled it to become an aid donor country, as well as the information that the State party plans to continue its steady increase in ODA.

The Committee recommends that the State party step up its efforts to increase its ODA target in line with the internationally agreed commitment of 0.7 per cent of GDP by 2015. In this respect, the Committee recommends that the State party take on board the recommendations made by the Development Assistance Committee of the

Organization for Economic Cooperation and Development (OECD) concerning the increase of the grant element of bilateral ODA commitments to least developed countries in the State party's aid portfolio.

8. The Committee is concerned about the limited jurisdiction of the National Human Rights Commission of Korea over Covenant rights and the lack of its investigative power. The Committee is deeply concerned about the downsizing of the Commission by 21 per cent, whereas for all other ministries, it has been of 2 per cent at the most. The Committee is particularly concerned about recent developments in the State party that have put the independence of the Commission under severe pressure.

The Committee reminds the State party of its responsibility to ensure that the National Human Rights Commission of Korea remains compliant with the Paris Principles. The Committee also recommends that the State party:

(a) **Strengthen and expand the mandate of the Commission to cover all Covenant rights;**

(b) **Allocate adequate human and financial resources, including human rights experts, in accordance with the National Human Rights Commission of Korea Act;**

(c) **Allow individuals to file complaints on violations of economic, cultural and social rights directly to the Commission.**

9. The Committee is concerned that a comprehensive anti-discrimination law has still not been adopted by the State party owing to the fact that the anti-discrimination bill submitted to the seventeenth National Assembly in December 2007 was discarded without consideration. The Committee is also concerned that the present version under assessment by the task force does not exclusively enumerate anti-discrimination grounds, but rather stipulates a list of typical anti-discrimination grounds as an example, and that it only contains certain grounds for discrimination, excluding others that had been indicated in the original bill, such as nationality and sexual orientation (art. 2).

The Committee urges the State party to adopt expeditiously a comprehensive anti-discrimination law that clearly spells out all the grounds for discrimination, as set out by article 2.2 of the Covenant and in line with the Committee's general comment No. 20 on non-discrimination in economic, social and cultural rights (art. 2, para. 2).

10. The Committee is concerned about the difficulties faced by applicants for refugee and asylum status because of the long waiting periods while their applications are processed. The Committee remains concerned about the extremely low rate of recognition of refugees and asylum-seekers by the State party, and by the still lengthy status recognition process.

The Committee recommends that the State party make more efforts to shorten waiting periods for the recognition of refugee and asylum-seeker status by:

(a) **Providing adequate resources for the implementation of the revised Immigration Control Act and relevant enforcement decree, including by increasing the number of immigration officers;**

(b) **Standardizing asylum procedures;**

(c) **Systematically collecting data on refugees and asylum-seekers.**

The Committee requests the State party to include information on the measures taken in this regard, including statistics on the granting of refugee and asylum status, in its next periodic report.

11. The Committee, while recognizing the positive steps taken by the State party, is concerned that changes in the competences of, and resource allocation for, the Ministry of Gender Equality have negatively affected women's substantive enjoyment of equality (art. 2).

The Committee reiterates its previous concluding recommendation that the State party provide an adequate institutional framework and allocate the necessary resources to enable the Ministry of Gender Equality to function effectively and to consistently apply a gender perspective to legislation and programmes. The Committee urges the State party to undertake, as a matter of priority, a comprehensive review of its legislation with a view to ensuring de jure and de facto equality between men and women in all fields of life, as provided for in article 2, paragraph 2, and article 3 of the Covenant. In this regard, the Committee draws the attention of the State party to its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights, and requests the State party to provide, in its next periodic report, detailed information on the progress made in this respect.

12. The Committee remains concerned that foreign spouses married to Korean nationals are still dependent on the latter for their residency status (F-2) (art. 2).

The Committee recommends that the State party make more efforts to overcome the discrimination faced by foreign women married to Korean nationals by allowing them to acquire residency status or naturalization without being dependent on their husbands.

13. The Committee remains concerned that, in spite of the amendments made to the Civil Law, in particular the abolition of the *Hoju* system, discrimination against women is still present in many fields of life. The Committee reiterates its concern over the persisting wage gap between men and women, the low percentage of women in high-ranking positions in political and public life, and occupational sex segregation. The Committee is also concerned by the low rate of labour market participation of women in the State party, which is lower than the OECD average, despite high female enrolment in tertiary education. The Committee also notes with concern that the decreasing fertility rate of women in the State party may be a reflection of the difficulties they face when they wish to reconcile professional and family life (art. 3).

The Committee recommends that the State party:

(a) **Take the necessary legislative and policy measures to ensure that the alternative family registry system guarantees gender equality, individual dignity, and privacy;**

(b) **Consider institutional arrangements, such as tax reductions and social security incentives, to allow men and women to reconcile professional and family life;**

(c) **Encourage men to participate in family care through, inter alia, policy incentives such as paternity and parental leave;**

(d) **Permit flexible work schedules that allow men and women to combine paid work with their family responsibilities;**

(e) **Expand the network of social services, including childcare facilities, such as public day-care centres and school lunches.**

14. The Committee is concerned at the lack of employment opportunities in the State party, in particular for young persons and women. The Committee regrets that information provided on national policies for youth employment was not sufficiently detailed (art. 6).

The Committee recommends that the State party promote greater employment of women and young persons, who are underrepresented in the labour force. It also recommends that the State party take all necessary measures to reach the target of 55 per cent participation of women in the labour market by 2010, stepping up its efforts to create sustainable jobs and to provide support, adequate training and retraining for women to re-enter the labour market after child-rearing and career breaks. The Committee also recommends that the State party create employment opportunities for young persons by strengthening vocational training activities that are adequate to market demand.

15. The Committee is concerned that 34.9 per cent of the total workforce is made up of non-regular workers, that 44.1 per cent of women workers are non-regular, and that most workers in the Special Economic Zones are non-regular. The Committee is also concerned:

- (a) That the monthly income of a non-regular worker is about half that of a regular worker;
- (b) That working conditions and social insurance of non-regular and dispatched workers are inadequate;
- (c) At the increase in the number of the above-mentioned workers, and the fact that they run the risk of being summarily dismissed before ending their two-year work contract, making it impossible for them to become regular workers;
- (d) That safeguards to protect non-regular workers from unfair dismissal are not effective (art. 7).

The Committee recommends that the State party conclude expeditiously its assessment of the situation of non-regular and dispatched workers. The Committee strongly recommends that non-regular workers be entitled to:

- (a) **Equal pay for work of equal value;**
- (b) **Adequate social insurance coverage;**
- (c) **Labour law protection, including severance pay, vacation and overtime;**
- (d) **Safeguards against unfair dismissal.**

16. The Committee remains concerned that an increasing number of workers are not entitled to the minimum wage and that the minimum wage legislation does not apply to all sectors, in spite of the amendment to the Minimum Wage Act in 2005, which expanded the application of the legal minimum wage (art. 7).

The Committee recommends that the State party take all appropriate measures to ensure that the minimum wage is effectively enforced and that it provide workers and their families with an adequate standard of living in accordance with article 7, paragraph (a) (ii), of the Covenant. The Committee also recommends that the State party extend the applicability of the minimum wage legislation to those sectors where it still does not apply and intensify its efforts to enforce legal minimum wages through increased labour inspections and fines or other appropriate sanctions for employers who fail to comply with the minimum wage legislation. The Committee further recommends that the State party ensure that changes in the calculation of the minimum wage to take into account deductions for meals and accommodation presently under consideration do not disproportionately affect migrant workers.

17. The Committee is concerned that:

- (a) There continues to be a lack of understanding on what constitutes sexual harassment at work;

- (b) Sexual harassment at work is not criminalized;
- (c) Victims rarely seek redress for fear of losing their job or their immigration status;
- (d) Sexual harassment is often covered up during case proceedings.

The Committee strongly recommends that the State party adopt and implement legislation that criminalizes sexual harassment in the workplace, and set up mechanisms to monitor such implementation. The Committee also recommends that the State party give sufficient authority to the public organizations dealing with sexual harassment in the workplace to impose punitive measures and compensate its victims. It also recommends that the State party continue to promote public awareness of the criminal nature of sexual harassment.

18. The Committee is concerned about the high number of industrial accidents in the State party and the insufficient number of labour inspectors. It is also concerned at allegations that labour inspections focus on the immigration status of workers rather than on occupational safety and working conditions (art. 7).

The Committee recommends that the State party increase the number of labour inspectors and provide adequate training on occupational safety and working conditions to labour inspectors, employers and employees.

19. The Committee reiterates its concern that, according to article 33 of the Constitution, only certain public officials as designated by law may enjoy trade union rights. The Committee takes note of the measures taken by the State party to ensure the rights of Government workers and professors. However, the Committee reiterates its concern that trade unions in public and private universities are prohibited by law and that the Korean Professor's Union, formed in 2001, has not been accepted, in direct contravention of article 8 of the Covenant (art. 8).

The Committee recommends that the legislation on civil service be amended with a view to lifting the restrictions imposed on the right of civil servants to join a trade union and to strike in conformity with the comments made by the Committee of Experts of the International Labour Organization (ILO) in 2001, on the Convention concerning Freedom of Association and Protection of the Right to Organise (Convention No. 87).

20. The Committee is greatly concerned about the frequent prosecution of workers with regard to labour management relations and the excessive use of force demonstrated against striking workers, mainly on the grounds of article 314 of the Penal Code regarding "obstruction of business". The Committee reiterates its concern that trade union rights are not adequately guaranteed in the State party (art. 8).

The Committee strongly recommends that the State party guarantee the right of all persons to form and join trade unions freely, the right to engage in collective bargaining through trade unions and the right to strike by refraining from the use of the "obstruction of business" clause as a systematic recourse to weaken the right to strike, and also from the use of force beyond that which is absolutely necessary to maintain public order. The Committee also recommends that the State party consider ratifying ILO Conventions concerning Freedom of Association and Protection of the Right to Organise (Convention No. 87) and the Application of the Principles of the Right to Organise and to Bargain Collectively (Convention No. 98).

21. The Committee is concerned that migrant workers are subject to exploitation, discrimination and unpaid wages.

The Committee recommends that the employment permit system that has already recognized migrant workers as workers entitled to labour law protection be further reviewed. It also recommends that particular attention be paid to the fact that the three-month period stipulated for a change in job is highly insufficient. This is especially true in the current economic situation, in which migrant workers often have little choice but to accept jobs with unfavourable work conditions just to retain a regular work status. The Committee further recommends that the State party uphold the High Court's decision to grant legal status to the Migrants' Trade Union.

22. The Committee is concerned that the rapid pace of economic growth — of unprecedented proportions in Asia — that has turned the country into the twelfth-largest economy has not been matched by greater fulfilment of economic, social and cultural rights, in particular for the most disadvantaged and marginalized individuals and groups. In this regard, the Committee is concerned that 8.2 per cent of the total population, and in particular some disadvantaged and marginalized individuals and groups, are excluded from the national basic livelihood security system, which, in principle, guarantees a “national minimum” to people living in the most disadvantaged conditions, in the absence of an established national social safety net. The Committee is therefore concerned at inadequate public social expenditure and the high level of privatization of social services, including health care, education, water and electricity supplies, which has led to greater difficulties in the access and use of such services by the most disadvantaged and marginalized individuals and groups.

The Committee, noting the information provided by the State party that the national basic livelihood security system is under review in relation to the “duty to support” standard or wealth standard and universal access to the system, urges the State party to conclude the review expeditiously and guarantee access to the system for persons that have not completed a minimum period of stable living, including the homeless and those living in shelters.

23. The Committee reiterates its concern regarding the large number of older persons who only benefit partially from the national pension system. This concern is enhanced by the fact that the State party has one of the highest levels of self-employment in the world and that it will take only 22 years for the share of the population aged over 60 to double from 7 to 14 per cent (art. 9).

The Committee recommends that the State party envisage alternative or complementary policies to the national pension system, such as a universal minimum pension or other social assistance benefits that would enable elderly persons to live a decent life.

24. The Committee remains concerned that there is still inadequate protection for victims of domestic violence. The Committee is also concerned that the rate of mandatory reporting of domestic violence is very low, that legal action against perpetrators is seldom taken and that a number of settled cases have resulted in non-prosecution (art. 10).

The Committee recommends that the State party take all necessary measures, legislative or otherwise, to address domestic violence adequately. In particular, it recommends that the State party continue to increase awareness of the criminal nature of domestic violence, bring perpetrators to trial and conviction, and strengthen counselling programmes. It also recommends that the State party increase shelters and psychosocial support services for victims.

25. The Committee is concerned that, notwithstanding the fact that State party legislation penalizes trafficking not only for prostitution or sexual exploitation but for any purpose of profit, a high number of women and children continue to be trafficked from, through and within the country for the purposes of sexual exploitation and forced labour,

especially women workers originally arriving on an E-6 visa (entertainment). The Committee is particularly concerned about the low rate of prosecution and conviction of traffickers (art. 10).

The Committee recommends that the State party intensify its efforts to combat trafficking in human beings, especially women and children, for any purpose, by, inter alia:

- (a) **Strengthening the monitoring of issuances of E-6 visas;**
- (b) **Supporting programmes and information campaigns to prevent trafficking;**
- (c) **Providing mandatory training for law enforcement officials, prosecutors and judges on anti-trafficking legislation;**
- (d) **Increasing the provision of medical, psychological and legal support to victims;**
- (e) **Ensuring an effective complaint mechanism for migrant workers, regardless of their immigration status;**
- (f) **Fully investigating cases of human trafficking and ensuring justice.**

26. The Committee notes with concern that, in spite of a high GDP growth rate, the extent and depth of poverty continue to increase (art. 11).

The Committee recommends that the State party allocate sufficient funds for the full implementation of its poverty eradication strategy. While noting the existence of a formal poverty line to determine the minimum cost of living, the Committee recommends that the State party monitor effectively the impact of its poverty eradication strategy on disadvantaged and marginalized individuals and groups. The Committee urges the State party to ensure the full integration of economic, social and cultural rights in the strategy, as recommended by the Committee in its statement on poverty and the International Covenant on Economic, Social and Cultural Rights (E/C.12/2001/10). The Committee requests the State party to include in its next periodic report detailed information on the results of the measures taken under the strategy, including updated statistical data, on an annual basis, on the percentage of the population living in poverty, disaggregated by gender, age, number of children per household, number of single parent households, rural/urban population and ethnic group.

27. The Committee is concerned that the State party has no strategy to address the problem of homelessness, to examine its extent and causes and to ensure an adequate standard of living for the homeless.

The Committee urges the State party to adopt a strategy to address the problem of homelessness, after examining its extent and causes and ensuring an adequate standard of living for the homeless. The Committee invites the State party to include in its next periodic reports data on the extent of homelessness in the State party, disaggregated by sex, age and rural/urban populations.

28. The Committee is deeply concerned that, according to the population and housing census of 2005, 2.06 million households (13 per cent of all households surveyed) were living below minimum housing standards. The Committee is also concerned about the system of public leasing houses (art. 11).

The Committee reiterates its recommendation that the State party establish a focal point in the Government to deal with complaints or appeals for assistance on housing matters. It also recommends that the State party allocate sufficient funds for the

realization of programmes aimed at providing security of tenure and affordable housing, particularly to the most disadvantaged and marginalized individuals and groups, in line with its general comment No. 4 (1991) on the right to adequate housing. The Committee strongly recommends in this regard that priority be given to those who are homeless or living in exceptionally substandard conditions. The Committee also recommends that the State party provide detailed information with data disaggregated on an annual basis by gender, age and households.

29. The Committee is deeply concerned at the lack of effective consultation of, and legal redress for, persons affected by or likely to be affected by forced removal or forced evictions and the lack of sufficient compensation or adequate relocation sites for individuals and families who have been forcibly removed. The Committee also regrets that the State party report did not contain sufficient information on the extent of forced evictions carried out in the State party, in particular as a result of the enormous scale of development projects (art. 11).

The Committee recommends that forced eviction be used only as a measure of last resort and that no project of development or urban renewal be carried out without prior notification and access to temporary housing for those affected so as to avoid recourse to violence, such as that seen in the *Yongsan* incident.

The Committee urges the State party, as a matter of priority, and in line with its general comment No. 7 on forced evictions:

(a) **To ensure that persons forcibly evicted from their homes be provided with adequate compensation and/or offered relocation;**

(b) **To undertake public debate and meaningful consultations with affected residents and communities prior to the implementation of development projects and residential environment clearance plans;**

(c) **To ensure that new housing sites are provided with basic services and utilities, such as drinking water, electricity, washing and sanitation facilities, and easy access to schools, health-care centres and transportation;**

(d) **To provide detailed information on forced evictions with data disaggregated on an annual basis by gender, age and households in its next periodic report.**

30. The Committee is concerned that, despite the medical benefit programme, disadvantaged and marginalized individuals do not have adequate access to medical services in privately run hospitals, which constitute 90 per cent of all hospitals. The Committee is also concerned that the national health insurance scheme only covers around 65 per cent of total medical expenses and that, as a result, out-of-pocket payments are substantial (art. 12).

The Committee urges the State party to increase expenditure for health care and to take all appropriate measures to ensure universal access to health care, at prices that are affordable to everyone, and draws the attention of the State party to its general comment No. 14 (2000) on the right to the highest attainable standard of physical and mental health.

31. The Committee is concerned that, despite mandatory sex education programmes, there is a lack of systematic and accurate education on sexual and reproductive health in schools. The Committee is also concerned that a number of pregnant teenagers drop out of the school system and turn to abortion owing to the stigma attached to unwed mothers.

The Committee recommends that the State party implement its mandatory sex education programme in schools in a systematic manner, and that it include

information on sexual and reproductive health and the use of contraceptive methods. The Committee also recommends that the State party provide financial and psychological support for unwed mothers and promote information campaigns to combat deep societal prejudice against them.

32. The Committee is concerned about reports on the contamination of village waterworks by radioactive agents, exceeding safety standards for drinking water. It is also concerned that companies commercializing bottled water are using groundwater resources that local communities need for farming and drinking. The Committee is further concerned at the failure to disclose the existence of carcinogenic substances in bottled drinking water.

The Committee recommends that the State party take effective measures to ensure that local communities are not deprived of groundwater resources needed for farming and drinking purposes. It also recommends that the State party ensure that adequate information on health hazards relating to the bottled drinking water that was found to contain carcinogenic substances is made available to the public. The Committee further recommends that the State party effectively implement adopted World Health Organization standards on drinking water quality and take into account the Committee's general comment No. 14 on the right to the highest attainable standard of physical and mental health, and general comment No. 15 on the right to water, in the information provided in its next periodic report (art. 11).

33. The Committee is concerned about the high associated costs of education required to be paid by parents. It is also concerned about information regarding the deepening inequality in education and the fact that the chances of entering a high-level university for students are often determined by their parents' ability to afford after-school tutoring or private education.

The Committee recommends that the State party accelerate its efforts to ensure that education is equally accessible to all and without discrimination, on the basis of ability, not financial capacity. It also recommends that the State party, having recognized that excessive expenditure on private education imposes great burdens on the household economy and has been the major cause of decline in quality of life for the middle class, strengthen the public education system and provide financial support to low income families to cover the associated costs of education (art. 13).

34. The Committee is concerned at the increase in clinical depression and attention deficit hyperactivity disorder cases among students caused by extreme competition and academic stress (arts. 12, 13).

The Committee recommends that the State party:

- (a) Implement the decision by the Constitutional Court on the limitation of functioning hours of privately run cram schools;**
- (b) Set up pilot alternative learning models;**
- (c) Educate parents and the general public about the long-term effects of the overburdening of children with school work;**
- (d) Curb the operation of private night schools and cram schools;**
- (e) Reassess the *Iljegosa* system, which creates unnecessary competition between schools and limits the choice of study paths in higher education.**

35. The Committee is concerned about the absence of self-regulation and diversity in university education in arts and culture, following the request of the Ministry of Culture, Sports and Tourism to the Korean National University of Arts to solely concentrate on "practical education".

The Committee, while noting the information provided by the State party on the need for general audits, recommends that universities be guaranteed the freedom to exercise fully their academic authority and control their curriculum and teaching methods.

36. The Committee encourages the State party to consider signing and ratifying the Optional Protocol to the Covenant.

37. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, in particular among State officials, the judiciary and civil society organizations, to translate and publicize them as far as possible, and to inform the Committee on the steps taken to implement them in its next periodic report. It also encourages the State party to continue engaging national human rights institutions, non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

38. The Committee encourages the State party to consider signing and ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

39. The Committee requests the State party to submit its fourth periodic report, prepared in accordance with the revised reporting guidelines of the Committee (E/C.12/2008/2), by 30 June 2014.
