



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT**

**Third periodic report**

**REPUBLIC OF KOREA\***

[10 February 2005]

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\* The report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

**CONTENTS**

	<i>Paragraphs</i>	<i>Page</i>
I. INTRODUCTION .....	1 - 3	4
II. GENERAL COMMENTS .....	4 - 20	4
III. INFORMATION RELATING TO EACH ARTICLE OF THE COVENANT .....	21 - 368	8
Article 1 .....	21 - 23	8
Article 2 .....	24 - 59	9
Article 3 .....	60 - 98	19
Article 4 .....	99	29
Article 5 .....	100	29
Article 6 .....	101 - 113	30
Article 7 .....	114 - 130	33
Article 8 .....	131 - 132	36
Article 9 .....	133 - 149	37
Article 10 .....	150 - 208	40
Article 11 .....	209	49
Article 12 .....	210 - 219	50
Article 13 .....	220 - 227	51
Article 14 .....	228 - 241	54
Article 15 .....	242	56
Article 16 .....	243	57
Article 17 .....	244 - 263	57
Article 18 .....	264 - 277	63
Article 19 .....	278 - 301	65
Article 20 .....	302 - 305	71

**CONTENTS (*continued*)**

	<i>Paragraphs</i>	<i>Page</i>
Article 21 .....	306 - 314	71
Article 22 .....	315 - 320	73
Article 23 .....	321 - 331	75
Article 24 .....	332 - 356	77
Article 25 .....	357 - 363	83
Article 26 .....	364 - 366	85
Article 27 .....	367 - 368	86

## I. INTRODUCTION

1. The Republic of Korea, as a State party to the International Covenant on Civil and Political Rights (hereinafter referred to as “the Covenant”), submits to the Secretary-General of the United Nations its third report pursuant to article 40, paragraph 1. Taking into account the “Consolidated guidelines for State reports under the International Covenant on Civil and Political Rights” of the Human Rights Committee (CCPR/C/66/GUI/Rev.2) and the observations and the recommendations made by the Committee on the second report (CCPR/C/114/Add.1), this third report describes measures taken to implement the Covenant since the submission of the second report in October 1997.

2. Since the submission of the second report (CCPR/C/114/Add.1), the Government of the Republic of Korea (hereinafter referred to as “the Government”) has committed itself to bringing about human rights related institutional and legislative reforms and creating a free, just and democratic society that respects human rights. The Government enacted the Act on Gender Discrimination and Relief on 8 February 1999 to prevent gender discrimination in employment, education, provision and use of goods, facilities, and services, and in the implementation of policies and laws, and established the Ministry of Gender Equality on 29 January 2001. On 12 January 2000, the Government enacted the Act on Restoration and Compensation of Persons Involved in the Democratisation Movement to restore honour to those who perished during their strife against the past authoritarian rule and for the promotion of human rights and democracy generally, and give compensation to their families. Furthermore, the Government enacted the Special Act on Inquiries into Suspicious Deaths on 15 January 2000 to verify the facts surrounding suspicious deaths in connection with the democratisation movement. From 13 to 15 June 2000, the first Inter-Korea Summit was held in Pyongyang, North Korea to promote reconciliation and consolidate peace in Korea. An assessment of this commitment towards promoting human rights, democracy, peace and reconciliation in Korea led the Norwegian Nobel Committee to award the Nobel Peace Prize to the Republic of Korea’s former President Kim Dae-jung in 2000. A National Human Rights Commission was set up in accordance with the Paris principles relating to the status of national institutions and began its operations on 26 November 2001.

3. In the presidential election of 19 December 2002, Roh Moo-hyun, a long-time human rights lawyer, was elected President. The current self-proclaimed “Participatory Government,” inaugurated in February 2003, works to realize visions of “democracy with the people, a society of balanced development, and an era of peace and prosperity in Northeast Asia,” and continues to fulfil its duty as a State party to international human rights treaties by building a democratic society where justice and human rights are respected.

## II. GENERAL COMMENTS

### **Establishment and independence of the National Human Rights Commission**

4. A National Human Rights Commission was established and began its charge by the National Human Rights Commission Act. The Act was promulgated in May 2001 and came into effect in November of the same year.

5. The National Human Rights Commission was established according to the standards set out in the Paris principles relating to the status of national institutions (A/52/469/Add.1), and executes its duty as an independent state organ (art. 3, National Human Rights Commission Act).

(a) In relation to its administration, the president of the Commission may attend the State Council, present his opinions and make recommendations to the Prime Minister on the submission of bills related to affairs under the mandate of the Commission;

(b) In relation to the legislature, the president of the Commission may attend the National Assembly and state opinions on affairs falling under the mandate of the Commission, and shall, if required by the National Assembly, attend thereat and make a report or reply;

(c) With respect to its relation to the judiciary, the National Human Rights Commission may transmit a comment pertaining to legal affairs to the undertaking judge of a court, when the court makes such a request over a case in session and when the case is deemed significant and influential to the protection and improvement of human rights, or when the Commission finds it necessary to do so.

6. The National Human Rights Commission is obliged to make and present an annual report on its activities, the national human rights situation and measures to improve human rights to the President and the National Assembly. It may make special reports to the President and the National Assembly when a case deemed necessary arises.

### **Responsibilities of the National Human Rights Commission**

7. In the National Human Rights Commission Act, the term “human rights” means any of human dignity, worth, liberties and rights which are guaranteed by the Constitution and laws of the Republic of Korea or recognized by international human rights treaties ratified and entered into force by the Republic of Korea or international customary laws (art. 2, para. 1, National Human Rights Commission Act).

8. The Commission is charged with the following:

(a) Investigation and research with respect to statutes, legal systems, policies and practices related to human rights, and recommendations for their improvement or presentation of opinions thereon;

(b) Investigation of and remedy with respect to human rights violations;

(c) Investigation of and remedy with respect to discriminatory acts;

(d) Survey on human rights conditions;

(e) Education and public awareness-raising on human rights;

(f) Presentation of and recommendations on guidelines for categories of human rights violations, standards for their identification and preventive measures thereof;

- (g) Research and recommendation or presentation of opinions with respect to the accession of any international treaty on human rights and the implementation of the treaty;
- (h) Cooperation with organizations and individuals engaged in any activity to protect and promote human rights;
- (i) Exchange and cooperation with international organizations related to human rights and human rights institutions of other countries;
- (j) Other matters deemed necessary to protect and improve human rights.

9. From its establishment to 31 December 2003, the Commission presented 54 opinions and recommendations in total in relation to revisions of laws and policies and improvements of institutions and customs, and received 7,408 petitions pertaining to human rights violations and discriminatory acts, of which 5,653 cases were processed, and 1,755 were under investigation. The rate of processing for received petitions is 76.3 percent.

#### **Authority of the Covenant in domestic law**

10. Upon examining the second report, the Human Rights Committee (hereinafter referred to as “the Committee”) raised concerns over the legal effect of the Covenant in the domestic laws of the Republic of Korea (CCPR/C/79/Add.114, para. 7).

11. Article 6, paragraph 1 of the Constitution provides that, “Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic law of the Republic of Korea.” Accordingly, in general, the Covenant is regarded as having the same effect as domestic law without requiring additional legislation. With regard to this, the Human Rights Committee expressed its concern over the possibility that legislation enacted after accession to the Covenant may have a superior status relative to Covenant rights. However, international treaties as multilateral agreement often serve as important criteria, along with the Constitution, for judicial decisions on the constitutionality of laws, thereby having de facto superior authority over domestic law. Furthermore, it is mandatory that, during examinations by the Office of Legislation and during parliamentary deliberations, all draft laws be reviewed for possible conflicts between new legislation and international treaties that the Republic of Korea has ratified. This leaves little possibility for any new legislation to come into conflict with the Covenant, thereby resolving the concerns of the Human Rights Committee.

#### **Court decisions invoking the Covenant**

12. The Covenant is not singularly invoked in court decisions, but along with relevant constitutional provisions and statutes. Court decisions invoking the Covenant are as follows.

13. On 26 January 1999, the Supreme Court ruled that, “The disposition of security surveillance is not to impose responsibility on the person in question for the crime that he or she has already committed, but is just a preventive administrative measure that essentially serves to educate, reform and return him/her to society, while endeavouring to maintain the security of the

State and the peace and order of society by diminishing in advance the risk of a recurrence of certain crimes. Therefore, this disposition is different in nature from criminal punishment, and the person in question is allowed to file a petition for administrative adjudications against illegal disposition of security surveillance. As the objective of the Security Surveillance Law lies in preventing a repetition of anti-State crimes such as espionage and maintaining the security of the State and the order of society through imposing security surveillance on ex-convicts deemed in need of education and reformation before returning to society, and in view of the particular security situation of the Republic of Korea, confronting belligerent forces in the North across the cease-fire line, the disposition of security surveillance does not violate article 10 (the right to pursue human dignity and happiness), article 12, paragraph 1 (the liberty of persons), article 13, paragraph 1 (prohibition of retroactive effect and double jeopardy), or article 37, paragraph 2 (prohibition of violation of essential content of basic rights) of the Constitution, nor does it contradict article 18, paragraph 1 (freedom of thought, conscience and religion) or article 19, paragraph 1 (right to have opinions) of the Covenant” (decision 1998 DU 16620).

14. On 16 July 1998, the Constitutional Court decided that punishing employees who collectively refused to provide labour with the charge of obstructing business by force in accordance with Article 113 of the old Criminal Act is constitutional, stating that, “Article 8, paragraph 3 of the International Covenant on Civil and Political Rights, providing that no one shall be required to perform forced or compulsory labour except as sentenced by a competent court, accords with the spirit of the second part of article 12, paragraph 1 of the Constitution stipulating that no person shall be punished, placed under preventive restrictions or subject to involuntary labour except as provided by law and through lawful procedures. Hence, it can be said that the provisions of prohibition of forced labour in the Covenant and in the Constitution are in effect stipulating the same content” (decision 1997 HEON-BA 23).

#### **Individual communications based on the First Optional Protocol to the Covenant**

15. There were 11 cases in which the individual communications procedure based on the First Optional Protocol to the Covenant were used from July 1990 to May 2004. Of these, the Committee recognised infringements of rights provided for in the Covenant in five cases, namely, the case of Sohn Jong-kyu (communication no. 518/1992), the case of Kim Keun-tae (communication no. 574/1994), the case of Park Tae-hoon (communication no. 628/1995), the case of Kang Yong-joo (communication no. 878/1999), and the case of Shin Hak-chul (communication no. 926/2000).

16. The Government promptly translated and promulgated the concluding observations of the Committee, in addition to sending them to relevant agencies to prevent recurrences of cases similar to those in question and making efforts to improve institutional weaknesses. One such example is the abolition of the law-abidance oath system in July 2003, about which the Committee expressed its concerns in relation to the case of Kang Yong-joo. Furthermore, since observations of the Committee on the cases of Kim Keun-tae and Park Tae-hoon have been adopted, the Government has deliberately acted to reduce the possibility of arbitrary interpretation and application of article 7 of the National Security Act, so that it cannot be abused to violate the human rights recognized in the Covenant.

17. It has already been observed in the initial report that a person whose rights have been infringed upon may seek compensation from the Government in various ways (CCPR/C/68/Add.1, para. 14). However, on the case in which Sohn Jong-kyu filed a petition seeking compensation from the State, using the observations of the Committee as grounds, the Supreme Court ruled on 26 March 1999 that, "It is interpreted that articles 2 and 3 of the International Covenant on Civil and Political Rights recognise only the legal obligation that each State party to the Covenant has to take the necessary steps to adopt such measures as may be necessary for individuals to receive effective remedial measures for a State's violation of the rights recognized in the Covenant, but they do not establish a special right of individuals to file a claim to the State party to the Covenant for remedial measures such as compensation. Therefore, individuals are allowed to request remedial measures including compensation from the State in accordance with domestic laws such as the State Compensation Act," and dismissed the case (decision 1996 DA 55877).

18. In December 2003, the National Human Rights Commission made a recommendation to the Government to formulate domestic remedial measures that effectuate the views issued by the Committee based on its individual communications procedure.

19. Following the recommendation, the Government is studying ways to revise domestic laws and institutions in order to effectuate the views issued by the Committee.

### **Reservations to the Covenant**

20. As stated in the initial report (CCPR/C/68/Add.1, paras. 218 and 276), the Government expressed reservations about article 14, paragraph 5 and article 22 of the Covenant in that some of its provisions clash with aspects of the domestic legal system. The Government's efforts in relation to article 22 will be explained in paragraphs 318-321 of this report.

## **III. INFORMATION RELATED TO EACH ARTICLE OF THE COVENANT**

### **Article 1**

21. As illustrated in the initial report (CCPR/C/68/Add.1, paras. 21-22) and in the second report (CCPR/C/114/Add.1, paras. 17-18), the Government places great importance on helping all peoples fully realize their right to self-determination.

22. At the international level, the Government has provided grants-in-aid of 5.5 million US dollars to the Palestine Authority in order to expedite the resolution of the Palestinian question in relation to the right of self-determination. In 1994, the Government announced a plan to provide 10 million US dollars in the form of a soft loan of the Korean Economic Development Cooperation Fund and 21 million US dollars in grants-in-aid to the Palestine Authority. However, the plan could not follow the set dates due to political instability in Palestine. Despite the continuing instability in Palestine, the Government continues to support the region by carrying out its pledge to provide grants of 2 million US dollars as announced at the Washington ministerial conference on Palestinian aid in November 1998.

23. To support the right to self-determination of East Timor, the Government dispatched 440 troops to East Timor in October 1999. The Korean troops in East Timor have been converted to and have been operating as peacekeeping forces since February 2002. The Government, in addition, provided East Timor grants-in-aid totalling 2.4 million US dollars from 1999 to 2003. In May 2003, the Government built the East Timor Independence Hall and donated it to the Government of East Timor.

## **Article 2**

### **Paragraph 1**

#### **Provision of the right to education to all children in need of special education**

24. With respect to equal rights to education, the Government carries special education programmes in accordance with the Basic Education Act, the Primary and Secondary Education Act, and the Special Education Promotion Act, which charge national and local governments with the responsibility of providing proper and equal education opportunity to those eligible for special education and helping them develop independent living capabilities by improving education methods and environments for them, with the goal of contributing to stable lives and normal participation in social activities for them.

25. The Special Education Promotion Act of 1977 was fully amended in January 1994 to incorporate improved selection and enrolment procedures of those eligible for special education, to diversify special education methods and to introduce integrative approaches in education. The amended Act charges the state with providing free and compulsory elementary and junior high school educations, and kindergarten and high school educations free of charge for those eligible for special education (art. 5, para. 1, amended Act). The amended Act prohibits discrimination based on disabilities including refusal of admission to schools, and prescribes necessary measures and facilities to be provided for the those eligible for special education in the admissions process and in school life commensurate with the levels and kinds of disabilities (art. 13, paras. 1-2, amended Act), thereby providing the right to education and learning to all children who need special education.

26. The Korea Institute for Special Education, which was set up in 1994 to assist the state in the field of special education, promotes qualitative improvements of special education by experiment and research on special education, development and provision of education materials, training of instructors, and dissemination of educational information in the field.

27. As of 2003, special education is provided to all children with visual disorders, auditory disorders, mental retardation, physical handicaps, emotional disorders, speech disorders, learning disorders, or other disabilities stipulated by the ordinance of the Ministry of Education and Human Resources Development. Those children are provided with special curricula-based education, therapeutic education or occupational training through educational programmes, methods, and media appropriate to their specific needs. In Korea, 24,338 children are enrolled in 138 special schools and 26,868 are attending integrated courses in 4,102 special classes and 19,399 general classes in general schools.

**Special schools**

(As of 31 December 2003)

Disability Targeted	Number of schools				No. of classes	No. of pupils	No. of teachers
	National	Public	Private	Total			
Visual disorder	1	2	9	12	194	1 455	383
Auditory disorder	1	4	13	18	345	2 099	623
Mental retardation	1	33	47	81	1 773	15 654	3 196
Physical handicaps	1	6	13	20	416	3 298	747
Mental handicaps	1	1	5	7	179	1 832	321
Total	5	46	87	138	2 907	24 338	5 270

**Special classes**

(As of 31 December 2003)

Type of schools	Number of schools	Number of classes	Number of pupils	Number of teachers
Kindergarten	72	84	339	85
Primary	2 430	3 119	20 288	3 217
Middle	601	712	4 630	723
High	187	187	1 611	187
Total	3 217	4 102	26 868	4 212

28. Those majoring in graduate programs for special education at universities accredited by the Minister of Education and Human Resources Development and others trained by supplemental education in the field are qualified as special education instructors. There are 40 graduate courses in five public universities and 22 private universities, which produce annually about 1,350 qualified instructors for special education.

29. The Government has implemented a comprehensive plan for special education development for the years 2003-2007, on account of which measures are being taken to provide balanced opportunities for special education in schools in every region, to improve social and physical environments for special education in general schools, and to build and expand in each local community a system of support for special education, with the policy objective of maximizing educational performance for those receiving special education as well as for regular students. It further plans to pursue, as a future goal, a high-quality educational system in which the various needs and rights of those eligible for special education are well respected, through such measures as providing school education opportunities for them in integrated educational environments, improving the quality of special education, including diversification and enhancement of educational methods, promoting specialization of instructors, and expanding the delivery and support system for special education.

30. At the end of 2003, out of 246,061 children aged 3-17 with disabilities, 150,712 (61%) were eligible for regular education, and 95,349 (39%) for special education. Among the children

eligible for special education, 51,060 (54%) were actually receiving it in special schools or special classes of regular schools, while 30,657 (32%) attended general classes and 13,632 children (14%) were postponing schooling. The data on the schooling of children with disabilities is as follows.

### Schooling of children with disabilities by type of school in 2003

(As of 1 December 2003)

School type	Age	Total population by age	Estimated total no. of children with disabilities	Children able to attend regular schools*	Children in need of special classes/schools	Pupils attending special classes/schools	Pupils with disabilities in regular schools**	Children with disabilities delaying schooling
Kindergarten***	3-5	2 000 955	30 814	18 873	11 941	1 789	8 445	1 707
Primary	6-11	4 089 429	110 632	67 763	42 870	29 964	6 777	6 129
Middle	12-14	1 819 655	49 230	30 153	19 077	10 685	5 665	2 727
High	15-17	2 047 594	55 385	33 923	21 461	8 622	9 770	3 069
Total	3-17	9 957 633	246 061	150 712	95 349	51 060	30 657	13 632

\* Pupils with minor handicaps who are able to attend regular schools without much difficulty.

\*\* Pupils with disabilities attending regular schools in spite of their need for special classes or schools.

\*\*\* The number of kindergarten pupils with disabilities is estimated with the rate of 1.54 percent, which is calculated by deducting the rate of later emergence of learning disability (1.17%) from the rate of emergence of disabilities of the age group (2.71%).

### Enactment of the Basic Employment Policy Act and guarantee of equal rights

31. On 27 December 1993, the Government enacted the Basic Employment Policy Act, aimed at allowing every citizen to make full use of his/her talents and abilities without fear of discrimination in recruitment and employment on the basis of gender, belief, social status, region of origin or educational affiliation, as stated in the second report (CCPR/C/114/Add.1, para. 25). The Act was amended on 30 December 2002 to install a new provision for prohibiting discrimination in employment, recruitment and dismissals against the elderly.

32. The Handicapped Employment Promotion Act, enacted on 13 January 1990 to promote employment of the handicapped, was replaced by the Act on Handicapped Employment Promotion and Occupational Rehabilitation Act on 12 January 2000. The new Act prohibits employment-related discrimination against the handicapped by providing that, "The employer shall not discriminate against workers in personnel decisions such as employment, promotion, transfers, educational training on the grounds that they are handicapped" (art. 4, para. 2, the new Act). To guarantee practical equality through employment of the handicapped, it mandates that a minimum of two out of every hundred openings for open-competition employment in national and local governments be filled by the handicapped (art. 23) and that

businesses with more than 300 employees be required to employ more than two handicapped workers for every hundred members of their full-time workforce (art. 24). Data on employment of the handicapped in 2003 by the Korean Employment Promotion Agency for the Disabled (KEPAD), local labour offices and occupational rehabilitation agencies is shown in the following table.

**Rates of job offers, matchmaking and employment  
of the disabled by type of job placement agency**

(As of 31 December 2003)

Type of job placement agency	No. of job offers*	No. of job seekers** with disabilities	No. of job match-makings	Rate of job match-makings (%)	No. of hires	Rate of hire (%)
Occupational rehabilitation agencies	5 921	9 211	3 189	34.6	1 652	17.9
KEPAD	8 709	20 786	11 081	53.3	5 789	27.9
Local labour agencies	818	9 777	11 448	117.1	1 303	13.3
Total	15 448	39 774	25 718	64.7	8 744	22.0

\* Job offers: the number of jobs that companies offered for the disabled.

\*\* Job seekers with disabilities: the number of the disabled persons seeking jobs.

### Foreign workers

33. To address the problem of irregularities in the process of recruitment, illegal immigrant status, and human rights violations in connection with the employment of foreign workers, the Republic of Korea enacted the Act on Employment of Foreign Workers on 16 August 2003, the main provisions of which deal with the work permit system for foreign workers.

34. By the Act, government and public agencies have taken charge of receiving and selecting foreign workers, thereby making the process fair and transparent; foreign workers employed legally are entitled to up to three years of employment with equal treatment relative to Korean workers, including coverage under labour laws like the Labour Standards Act and the four basic insurances (Industrial Accident Compensation Insurance, Employment Insurance, National Pension, and National Health Insurance).

35. The Government maintains the existing industrial trainee system along with the new work permit system for foreign workers as a way of cooperating with developing countries on the exchange of industrial technology, while committing itself to providing better working conditions for industrial trainees from abroad by strengthening the standards of training and through constant work supervision. As of the end of 2003, there were in total 388,816 foreign workers sojourning in the Republic of Korea, of which 138,056 had illegal status.

### **Measures to protect the temporary workforce**

36. Temporary workers are also entitled to all legal rights provided by labour laws such as the Labour Standards Act. However, as the number of temporary workers has increased since the 1997 Korean financial crisis and as concerns have been raised regarding discrimination in favour of so-called “regular” workers with long-term employment contracts, weaknesses in the social safety net and illegal activities of employers, the Government has taken various measures to address these concerns.

37. First of all, the Government conducted a statistical survey of the exact size of the temporary workforce by an additional survey attached to the national census of the economically active population conducted by the Korea National Statistical Office. Based on the deliberations of the Korea Tripartite Commission, included in the category of the temporary workers who are called “irregular workers” in Korea are workers with short-term contracts, part-time workers and atypical workers (dispatch workers, subcontract workers, daily workers, stay-at-home workers and independent contract workers). According to this categorisation, the proportion of workforce deemed to be temporary was found to be 27.3 percent in 2001 and 27.8 percent in 2002.

38. The Government has continuously improved employment environment supervision and built up a social safety net for temporary workers. On 1 July 2003, entitlement to the national pension and the national health insurance plans was extended to those with an employment period of one month or longer, from the previous three months or longer, and the same entitlement was newly given to part-time workers working 80 hours or more a month. Since 1 January 2004, employment insurance has been available to temporary workers employed for less than a month. With regard to daily non-contractual construction workers, the Government expanded eligibility for compulsory membership to mutual aid retirement programs, and with regard to dispatched workers and daily construction workers, increased assistance funds for job training.

39. The Korea Tripartite Commission set up a special committee for temporary employment in July 2001 and discussed legal and institutional improvement measures for two years. Unable to reach an agreement due to a large difference in views between labour and management, the Commission prepared and delivered a report of the discussion to the Government on 25 July 2003. Based on the report, the Government prepared legal and institutional measures to protect temporary workers, which were included in the announcement of reform measures on labour relations on 4 September 2003.

40. The key contents of the measures are as follows: first, prohibition of discrimination of working conditions such as arbitrary assessment of wages and the establishment of effective relief procedures including a discrimination correction body; second, restrictions on the application of a dismissal provision to periodic contract workers having worked longer than two years; third, an imposition of limits on repetitive use of dispatched workers for certain types of work, strict legal adherence on the part of employers, and crackdowns on illegal dispatch practices.

### **Free legal aid**

41. As explained in the initial (CCPR/C/68/Add.1, para. 49) and the second (CCPR/C/114/Add.1, paras. 31-32) reports, the Government is carrying out legal aid programmes in order to protect the rights of citizens who are unable to pursue legal means for personal damage due to unfamiliarity with the law or lack of financial resources to cover the cost of legal proceedings. At its 18 local branches and 37 sub-branch offices around the country, the Korea Legal Aid Corporation is now providing legal aid services for civil, family, administrative, constitutional, and criminal litigation to farmers, fishermen, workers and traders with a monthly income of 1.7 million Korean won (equivalent to about 1,600 US dollars) or less.

42. In the past five years, the Korea Legal Aid Corporation has given legal aid services on civil, family, administrative and constitutional matters to the following number of persons each year: 20,921 persons amounting to a total cost of 261.9 billion Korean won in 1999, 25,664 persons in 2000 amounting to 324.6 billion Korean won, 29,884 persons in 2001 amounting to 383.7 billion Korean won, 33,310 persons in 2002 amounting to 444.1 billion Korean won, and 44,437 persons in 2003 amounting to 639.8 billion Korean won. These figures include the ever increasing number of foreigners given free legal aid service: 23 persons amounting to 146 million Korean won in 2000, 48 persons amounting to 272 million Korean won in 2001, 351 persons amounting to 1.45 million Korean won in 2002, and 864 persons amounting to 3.85 billion Korean won in 2003. The number of persons who received legal aid in criminal cases is also ever increasing: 3,752 in 1999, 9,442 in 2000, 11,880 in 2001, 11,606 in 2002, and 16,705 in 2003.

43. With respect to legal aid services for foreigners, service has been available to foreign workers since 1 April 2000 on labour relations cases such as wage credit, and since 15 April 2003, legal aid service has been available to all foreigners on all civil and family matters as well as labour relations matters in an equal manner as is available to nationals. Equal legal aid service to foreigners was further extended to cover criminal cases on 1 January 2004.

44. At the end of 2003, the Government made plans to gradually enlarge the number of those eligible for legal aid services, which is currently 28.5 percent of the population, to 50 percent by 2008, in annual increments of 4.3 percent.

### **Expansion of the court-appointed defence counsel service**

45. The Government has greatly expanded court-appointed defence counsel services to those accused in criminal court and unable to appoint private defence counsel: in March 2003, the Supreme Court introduced improvements in court-appointed defence services with the goal of providing public defence counsel to all those who are accused and in custody and can not afford to hire private defence counsel. The Supreme Court introduced a measure by which the accused are allowed to choose their public defence counsel as a way to secure a more sincere defence by public counsels. Currently, the Government is conducting a study on ways to expand the court-appointed defence counsel service, which is so far available only to the accused on trial, to the accused under criminal investigation.

## **Paragraph 2**

### **Efforts to legislate the Discrimination Prohibition Act**

46. The current Government, inaugurated in February 2003, has identified, as major concerns, five main types of discrimination in society, based on gender, academic alumni affiliations, disability, temporary employment and foreign nationality, and established the Task Force for Correcting Discrimination with a mandate of drafting a law prohibiting discrimination in order to address the issue.

47. In response to criticisms related to the quota system (an employment targeting measure), including charges that it has produced reverse discrimination or that it lacks effective supportive measures, the Government is studying supplementary measures to it, including the introduction of Affirmative Action, a set of active correctional measures for discrimination.

### **Working to establish a national action plan to correct discrimination**

48. The National Human Rights Commission is preparing a recommendation on a National Action Plan for human rights policies in Korea, based on four months of workshops held in August 2002 to produce medium- and long-term visions for human rights policies in Korea and for the Plan.

## **Paragraph 3**

### **Investigation of individual petitions by the National Human Rights Commission**

49. Since the establishment of the National Human Rights Commission in November 2001, persons whose human rights have been violated, or any other person or organization that comes to know of a violation of human rights, may file a petition to the Commission in any circumstance included under the following provisions in article 30 of the National Human Rights Commission Act.

(a) A human rights violation by definition refers to an instance in which such human rights as guaranteed in articles 10 to 22 of the Constitution (excluding article 11) are violated by employees of state organs, local governments, and detention or custody facilities during their performance of official duties except for the legislation activities of the National Assembly and the trials of a court or the Constitutional Court.

(b) The term “discriminatory act” means discrimination on grounds of gender, religion, disability, age, social status, regional, national or ethnic origin, physical conditions such as looks, marital status, pregnancy, family status, race, skin colour, ideology or political opinion, record of crimes whose effective terms of punishment have expired, sexual orientation, or history of diseases, as identified by the following:

- (1) Any act of favourably or unfavourably treating, excluding or differentiating a particular person from others in employment (including recruitment, training, assignment of tasks, promotions, payment of wages and offering of commodities, loan benefits, retirement, and dismissal);

- (2) Any act of favourably or unfavourably treating, excluding or differentiating a particular person from others in the access to or use of goods, services, transportation, commercial facilities, land and residential facilities; and
- (3) Any act of favourably or unfavourably treating, excluding or differentiating a particular person from others in access to educational facilities or vocational training institutions.

50. The petitioner may file a petition to the Commission by telephone, mail, Internet, fax, or personal visit. The Commission guarantees petition rights to detainees in detention or custody facilities, who are deprived of liberty. In the event that a request is received from a detainee of such a facility, the Commission sends a commissioner or an official to the facility to conduct consultations with and receive petitions from the petitioner.

51. Among the 7,408 petitions reported to the Commission, 5,874 were petitions for reasons of human rights violations, 547 for reasons of discriminatory acts, and 987 for reasons of other violations, showing that a large proportion of the petitions were related to human rights violations.

### Handling of human rights violations petitions

(Period: 26 Nov. 2001-31 Dec. 2003, unit: number of cases)

	Cases filed	Cases carried over from previous period	Cases concluded	Cases pending	Rate of process (%) for each period
26 Nov. 2001-31 Dec. 2002	2 833	0	1 365	1 468*	48.2
2003	3 041	1 468*	3 137	1 372	69.6
Total	5 874		4 502	2 845	

\* 1,468 Cases pending during the period (Nov. 2001-Dec. 2002) were carried over to cases filed during the period of 2003.

52. With regard to the 4,502 petitions regarding human rights violations handled by the Commission throughout 2003, 12 cases (0.3%) were followed up with requests for indictments or criminal investigations; 19 cases (0.4%) elicited recommendations for official reprimands; 64 cases (1.4%) were recommended for settlement by agreement and/or for immediate relief; 23 cases (0.5%) were settled by agreement; 853 cases (18.9%) were dismissed as groundless; 3,384 cases (75.1%) were rejected as inadmissible; and 142 cases (3.1%) were transferred to other organs. The data is shown in the following table.

**Petition cases and results**

(Period: 26 Nov. 2001-31 Dec. 2003)

	Results by type of handling									
	Total cases concluded	Accusation/request for investigation	Disciplinary action recommended	Recommendation	Settlement recommended	Settlement	Dismissed	Rejected	Transferred	Immediate relief*
No. of cases	4 502	12	19	60	5	23	853	3 384	142	4
Percentage (%)	100	0.3	0.4	1.3	0.1	0.5	18.9	75.1	3.1	0.1-

\* The petition case given immediate relief and recommendation at the same time is counted as one recommendation case.

**Major recommendations regarding discrimination by the Commission**

53. From its establishment in November 2001 to the end of 2003, the Commission made the following investigations and recommendations related to petition cases of discrimination:

(a) Skin colour: the Commission found discriminatory the term “flesh colour,” appearing in the Korean industrial standards in designation of pale orange colour, as it derives from a certain ethnic group whose skin colour is such and, thus, discriminates other ethnic groups with different skin colour. From this recommendation, the term has been replaced by “pale orange colour.”

(b) Disability: the Commission conducted fact-finding surveys on discriminatory practices in employment, awarding promotions, and allotting private insurance provisions for the handicapped, and on double discrimination practices involving handicapped women; provided remedies to eight cases, among which six cases received recommendations for corrections and two cases were resolved by agreement; and ruled that denying a person a promotion only based on disability constituted a discriminatory act.

(c) Age: in four cases, age limits were imposed with regard to university entrance and employment of contract teachers, and the Commission successfully arranged remedies such as admission or employment of the victims in question.

(d) Foreign workers: the Commission conducted a comprehensive analysis of the human rights conditions of foreign workers in Korea and concluded that refusing foreign workers access to occupational rehabilitation training is discrimination based on foreign

nationality and that the current industrial trainee system has been misused to discriminate against foreign worker in terms of working conditions including wages and working hours; and made recommendations to the Prime Minister to work on measures to set up a new scheme to utilize a foreign workforce without discrimination. Most of those recommendations were later integrated in the legislation of the Act on the Employment of Foreign Workers.

(e) Discrimination by social status: in regard to non-student youth using public facilities, the Commission made a recommendation to amend relevant statutes that differentiated non-student youth from youth with student status in offering discount rates. The relevant ministries and agencies accommodated the recommended amendments.

### **The Constitutional Court's decisions on equal rights**

54. Since the submission of the second report (CCPR/C/114/Add.1), the Constitutional Court has ruled unconstitutional due to violations of the principle of equality some laws and administrative actions through the following key decisions.

55. Provision relating to limitations on donations in the Political Fund Act (decision 1995 HEON-MA 154 of 25 January 1999).

The provision includes labour organisations on the list of persons and organisation prohibited from donating funds to politically affiliated organisations for the purpose of preventing labour organisations from political attachment and budgetary drain. The court ruled this inclusion a violation of the principle of equality as well as an infringement of the freedom of expression and freedom of assembly on the grounds that it deviated from legitimate legislative purpose in light of political freedom guaranteed in the Constitution and that it brought few benefits to the public while it caused immense harm to those fundamental freedoms.

56. Provisions of the Act on Assistance to Discharged Servicemen relating to giving favourable points to veterans in state examinations for public service (decision 1998 HEON-BA 33 of 23 December 1999).

The court ruled unconstitutional the provision that provided discharged servicemen with additional points of 3-5 percent of the prefect score when they applied for the state examination for public service, on the grounds that it was in violation of the principle of equality and the right to public service of women and handicapped men who are exempted from military service.

57. Discriminatory provision in the Act on Immigration and Legal Status of Overseas Koreans (decision 1999 HEON-MA 494 of 29 November 2001).

The provision demanded ethnic Koreans who had emigrated before the establishment of the Republic of Korea such as ethnic Koreans living in China and the former Soviet Union to prove their former Korean nationality as a precondition for applying for a Korean resident visa, unlike ethnic Koreans who had permanently moved overseas after the foundation of the Republic of Korea. The court ruled this unconstitutional on the grounds that it constituted arbitrary discrimination violating equal rights of the claimant, an ethnic Korean living in China.

58. Provision of the Police Act relating to limitation of political party membership of the commissioner general of the National Policy Agency after retirement (decision 1999 HEON-MA 135 of 23 December 1999).

The court ruled that the provision prohibiting commissioner generals of the National Police Agency from political party membership for two years from their retirement was unconstitutional because it constituted a violation of the principle of equality as well as an excessive infringement of the freedom to form and join a political party.

59. Provision relating to prohibition of publishing political party support in the Act on the Election of Public Officials and the Prevention of Election Malpractices (decision 2001 HEON-GA 4 of 30 January 2003).

The court ruled that the provision prohibiting candidates for local councils from advertising endorsements by a political party was in violation of the principles of equality and prohibition of excessive restriction on fundamental freedom.

### **Article 3**

#### **Strengthened institutional foundation for promoting gender equality**

60. Upon deliberation of the second report, the Committee was deeply concerned about the laws and practices that encouraged and reinforced discriminatory attitudes towards women (CCPR/C/79/Add.114, para. 10). In the subsequent period, however, the Government carried out many institutional reforms to eradicate discrimination against women. One of the institutional changes exemplary of its efforts is the establishment of the Ministry of Gender Equality on 29 January 2001, charged to effectively formulate and implement policies on women. On 11 December 2003, the Basic Act for Women's Development was amended, providing a legal basis for the Women's Policy Coordination Meeting. The coordination meeting is chaired by the Prime Minister, vice-chaired by the Minister of Gender Equality, and composed of the deputy minister for planning and management or equivalent high-level officials of all government ministries.

61. On 7 March 2003, the National Assembly Act was amended to newly install the Committee on Women as one of the standing parliamentary committees. The Committee on Women exercises the rights to vote on and propose bills falling into the competency of the Ministry of Gender Equality: the right of preliminary examination of budget planning and settlements of the Ministry of Gender Equality and the management plans of the Women's Development Fund and the right to inspect the administration of the Ministry of Gender Equality.

62. The First Basic Plan for Policy on Women: 1998-2002, carried out by the Government with a goal of realising healthy families and a social system where men and women jointly participate in and share responsibility for social and national development, produced foundations for promoting policies on women in a more comprehensive and systematic way.

The accomplishments of policy objectives of the First Basic Plan has yielded some progress in creating a gender-equal society, in the areas of, inter alia, expanded social participation by women, revision of gender-discriminatory laws and institutions, and expanded public awareness of gender equality.

63. Based on the above achievements, the national and local governments have joined in formulating and implementing the Second Basic Plan for Policy on Women: 2003-2007. The Second Basic Plan is composed of ten key policy goals and 115 detailed policy projects. The ten key policy goals are 1) integration of gender-equality perspective into all policies, 2) increased representation of women in decision-making processes, 3) development and utilisation of women human resources, 4) equal employment for women and increased women's participation in economic activities, 5) expansion of women's participation in social and cultural activities, 6) increased contribution by women in the areas of peace, unification and international cooperation, 7) enhancement of the health and welfare of women, 8) prevention of violence against women and reinforced protection of human rights for women, 9) enhanced foundation for gender-equal family policy, and 10) spread of public awareness of gender equality.

64. Since 2001, the Government has been preparing to introduce "gender impact assessment" by which each ministry is to assess the gender impact of forthcoming policies and devise alternative measures to incorporate gender equality into the policies. Towards this end, a new provision was added into article 10 of the Basic Act on Women's Development on 11 December 2002, stating that, "State and local governments shall analyse and assess in advance the impact of policies on women's rights and interests, and social participation, in the process of formulating and implementing policies within their jurisdiction. The gender impact assessment started in 2004 with the four ministries that have the greatest potential to spread the principle of gender equality in policy formulation: the Ministry of Education and Human Resources Development, the Ministry of Agriculture and Fisheries, the Ministry of Health and Welfare and the Ministry of Labour.

#### **Amendment of gender-related laws including abolition of the Family Head System**

65. The Government views that the current Family Head System, by which the head of a family forms a household, fails to meet the requirement of gender equality and human dignity as prescribed by the Constitution and to fit in with the various types of families emerging in this time of change. In order to help realise an equal system for family registration that meets the ideals of the Constitution and the demands of actual family life, the Government prepared and submitted a revised bill of the Civil Code to the National Assembly in November 2003. The bill aims to abolish the concept of household and the Family Head System, while providing the following: a child shall take the father's surname and family origin as a general rule, but parents may confer to have the child take the mother's surname; and in cases where the court finds changing the surname and the family origin of a child to be advantageous to the child's welfare, such a change becomes possible, preventing unnecessary personal damage to the child.

### **Support for women's business and capacity-building**

66. Since 2000, the Government has established and run 14 business incubation centres for women and opened lecture courses for women's business foundation in order to develop the capacity of women to start new businesses. From 2000 to 2002, 380 courses were held, which some 20,000 women attended. Currently, there are 51 vocational training centres for women in operation around the country: 41,330 women completed vocational training in 2003, among whom 15,785 were employed.

67. In 2003, the Business Foundation Fund for Skilled Women was provided to 295 enterprises newly started by women with a skill or qualification recognised by the State or by women who have learned skills at the centre for women human resources development, which the Ministry of Gender Equality financially supports, with a maximum fund of 100 million Korean won per enterprise. In addition to this fund, the Government started a new scheme in 2004, Financial Assistance to Women Heads of Family in Founding Businesses, which provides a maximum of 50 million Korean won each to low-income women.

### **Measures for increased participation by women in public service and offices**

68. To encourage participation of women in public service, the provision of giving additional points in state examination for public service in the Discharged Servicemen Assistance Act was abolished after the Constitutional Court ruled it unconstitutional on 23 December 1999. Together with this measure, a newly introduced affirmative action targeting the rate of women's recruitment to public offices to a mandatory proportion remarkably increased the percentage of women passing in examinations, that is, from 32.2 percent in 2000 to 42.9 percent in 2002. Since 2003, the women's recruitment target scheme was replaced with the new gender-equal recruitment target scheme. The new scheme allows the recruitment of additional personnel of a gender, among applicants who get certain pass marks, when the recruitment rate of the gender group is below 30 percent in an examination for public service. A five-year plan was designed and measures are being taken to meet the established 10 percent goal for women's recruitment to public managerial offices by the year 2006. In order to assist women in acquiring professorships, the Government allotted 200 additional professorships for those national universities willing to recruit women professors, while introducing a woman professor recruitment quota scheme by a revision of the Public Educational Officials Act on 30 June 2003. As a result of continued efforts to increase the ratio of women's participation in governmental commissions, the ratio almost doubled to 31.6 percent in 2003 from mere 17.6 percent in 1999 and is expected to reach a target ratio of 40% by 2007.

69. With regard to the right to take part in conducting political affairs, the Political Parties Act was revised on 16 February 2000 to enlarge women's participation in politics by setting a quota system requiring that women make up more than 30 percent of the candidates for each political party in the proportional representation system of municipal, provincial and general elections. A further revision of the Act on 7 March 2005 increased the quota of proportional representation in municipal and provincial council elections to 50 percent and provided additional state subsidies to political parties that meet the newly introduced 30 percent quota of candidates in district representation constituencies in municipal and provincial council elections. As a result, in the 16th general election in April 2000, 16 women (5.86%) were elected to the National Assembly, in comparison with nine women (3%) elected to the National Assembly in

the previous 1996 election. As a result of the general election of 15 April 2004, conducted under the revised Political Parties Act, the number of female members of the National Assembly greatly increased to 39 or 13 percent. Likewise, the municipal and provincial elections of June 2002 put two women in the head of local governments and 63 women in the councils of municipal and provincial governments.

70. At the end of 2003, the ratio of women among senior public officials ranked 5<sup>th</sup>, 4<sup>th</sup>, 3<sup>rd</sup>, 2<sup>nd</sup>, and 1<sup>st</sup> grades in national civil services was a mere 6.4 percent. The Government is currently carrying out plans to increase this ratio to 10 percent by 2006. As for the judiciary, female judges numbered 226 (11.75%) among the total of 1,923 judges at the end of 2003.

### **Fostering female practitioners in agriculture, fisheries and science**

71. In October 2000, the Government set up the Five-year Basic Plan for Fostering Female Practitioners in Agriculture and Fisheries and implemented, through legislation of the Act on Fostering Female Practitioners in Agriculture and Fisheries, measures towards regular investigation of the living and working conditions of female practitioners in the industries of agriculture and fisheries, protection of their rights and interests, enhancement of their status, and assistance to their specialty building.

72. The Government enacted the Act on Fostering and Assisting Woman Scientists and Engineers on 18 December 2002, in order to actively develop women's potentials in science and technology sectors and secure their contributions to the knowledge-based society of the 21<sup>st</sup> century. The Basic Plan for Fostering and Assisting Woman Scientists and Engineers established by the Act introduced a recruitment quota scheme for woman scientists and engineers in national and public research institutes and government-funded research institutions, aiming to achieve 20 percent recruitment by the year 2007.

### **Improvement of the laws and practices that encourage discrimination against women**

73. The Government made in 2000 a Plan for Comprehensive Revision of the Gender-discriminatory National Statutes and Self-government Regulations. According to the plan, 29 state statutes and 728 local-governmental regulations having discriminatory provisions had been amended by the end of 2002.

74. The Nationality Act was amended on 13 December 1997 to adopt both patrilineal and matrilineal *jus sanguinis*, thereby enabling women to choose nationality. On 7 May 2001, the guidelines for handling of nationality affairs of ethnic Koreans in China were revised with the deletion of the provision that excluded married daughters, married granddaughters, and married great-granddaughters from those counted as lineal relatives of the persons who had given distinguished service to the independence or national interests of the state, so that previously excluded women descendants and their spouses are now treated as lineal relatives.

75. The Private International Act was amended in 2001, which changed applicable laws that govern the validity of marriage, the marital property system, divorce, and legal relations between parents and children and among children, from the previous father and husband-oriented standard to a parental and conjugal-based standard.

76. On 29 May 2003, the Act on Prohibition and Remedies of Gender Discrimination was revised to expand the spheres of prohibited indirect discrimination, which had been confined to the prohibition of discrimination in employment by the Equal Employment Act, to cover discrimination in public agencies, the implementation of laws and policies, and the provision and use of goods, facilities and services. From July 1999 to the end of 2003, the Gender Equality Promotion Committee, set up by the Act, handled 870 cases of gender discrimination including sexual harassment, provided consultation by telephone to the victims of gender discrimination in 7,685 cases, and conducted direct investigations on serious cases. The committee is composed of a chairperson (the Minister of Gender Equality), a permanent member (the Director of Gender Equality Promotion of the Ministry of Gender Equality) and 9 non-permanent members appointed by the President from a list of professors, judges, public prosecutors and defence lawyers with long experience in relevant fields. The committee keeps a gender balance by having no more than six persons from each gender group, excluding the chairperson.

77. The Act on Prohibition and Remedies of Gender Discrimination regards sexual harassment as a form of gender discrimination, prohibiting it among the personnel of public agencies, and employers and employees of private enterprises. The heads of public agencies and employers are charged with a duty to provide education on sexual harassment prevention. The Ministry of Gender Equality supervises education on sexual harassment prevention in public agencies (national and local governments, public organisations and schools), and the Ministry of Labour monitors that in private enterprises. The Ministry of Gender Equality produces education materials and materials for instructors every year, while maintaining a pool of instructors for sexual harassment prevention education. Currently, a pool of 283 instructors with experiences in counselling on sexual violence or remedying gender discrimination is engaged in educational courses on sexual harassment prevention.

78. Courses on women and human rights and lectures and discussions for awareness-raising of gender equality are administered in all the education curricula for public prosecutors and general employees of the prosecution. Publicity works are carried out through media and publication of materials on the protection of women's rights. Other measures to improve laws and practices to eradicate gender discrimination are stated in the relevant sections below.

### **Protection of women from domestic and sexual violence**

79. The Human Rights Committee has expressed its concern over instances of domestic and sexual violence in the Republic of Korea. The Government took various measures to prevent domestic violence and solve its consequential problems. In order to promptly deal with cases of domestic and sexual violence, the existing 1366 Hotline has been transformed into 16 regional one-stop service systems, which provide year-round consultation and emergency aid to victims. The Government has continuously expanded counselling centres and shelters for victims of domestic violence, and newly built a household-based shelter facility in the province of North Chung-cheong to meet the need for household-based protection for the victims of domestic violence as they often include children: there were 175 counselling centres and 37 shelters as of the end of 2003. The recent data of 1366 Hotline services and domestic violence counselling centres are as follows.

### Statistics of 1366 Hotline services by type of consultation contents

(Unit: number of cases and percentages)

Year	Total	Sexual violence	Domestic violence	Single mother	Runaway/pleasure-seeking	Prostitution-related	Low-income mother with children	Employment/job-training	Divorce	Others*
1999	84 542	4 248	16 908	1 728	1 660	632	3 129	2 981	12 171	41 085
	100.0	5.0	20.0	2.0	2.0	0.8	3.7	3.5	14.4	48.6
2000	81 355	3 666	17 164	1 461	1 268	1 142	1 070	908	12 047	42 629
	100.0	4.5	21.1	1.8	1.6	1.4	1.3	1.1	14.8	52.4
2001	91 978	4 188	20 090	1 038	1 401	342	1 584	1 695	12 033	49 607
	100.0	4.6	21.8	1.1	1.5	0.4	1.7	1.9	13.1	53.9
2002	116 664	5 171	25 863	829	2 361	1 010	381	446	16 538	64 065
	100.0	4.4	22.2	0.7	2.0	0.9	0.3	0.4	14.2	54.9

\* The category of 'others' includes counselling on marital disputes, family disputes, religious disputes, drug or alcohol related problems, health concerns, old-age security concerns, sex-related difficulties, and matters related with intimate relations.

### Number of counselling and protective facilities for victims of domestic violence

Year	1998	1999	2000	2001	2002	2003.11
Counselling centres	26	82	120	142	159	174
Protective facilities	8	23	27	29	31	37

\* In November 2003, 66 facilities were subsidized by the state, including comprehensive counselling centres.

80. On 20 January 2004, the Act on Punishment of Domestic Violence and Protection of Victims was revised to restrict the power of state and local governments to exercise the right to seek compensation for hospital expenses from victims of domestic violence and to develop and distribute a standardised programme of correctional treatment for domestic violence assailants to probation centres and counselling centres around the country. The Government took measures to protect child victims by crafting a system of video recording for the testimony of victims of sexual violence under the age of 13, and started to establish a pilot centre for child victims of sexual violence in 2004.

81. In June 2003, the Government formed the Task Force for the Prevention of Prostitution, composed of representatives of 12 administrative agencies and 12 civilian experts under the leadership of the Prime Minister, to elaborate Comprehensive Measures to Prevent Prostitution. On 3 February 2000, the Act on the Protection of Juveniles from Sexual Crimes was promulgated with provisions for protecting juveniles from prostitution and imposing heavy criminal punishments on anyone conducting, promoting or acting as intermediaries for the

prostitution of juveniles and on assailants of sexual violence against juveniles. The Act, in particular, has a strong regulatory mechanism that allows public exposure of the identities of assailants involved in prostitution of or sexual violence against juveniles. Moreover, the Act on Protection of Reporters of Certain Crimes came into force on 1 June 2000 to provide greater protection to those who notify the authorities of sexual violations: the Act provides that reporters of victims of sexual violence such as rape can receive the assistance of a counsellor for the protection of sexual victims (art. 6); that evidence can be preserved by photographic recording (art. 10); and that some exceptions regarding witness summons and examinations including closed witness examinations are allowed (art. 11). The new laws enforced in September 2004, titled the Act on the Prevention of Arrangement in Sex Trade and the Act on the Punishment of Sex Trade and Protection of Victims Thereof, punish heavily the acts of aiding and abetting in the arrangement of prostitution, including trafficking, and make it clear that women trafficked or lured into prostitution through violence, coercion or fraud are not criminals but victims who are entitled to protection.

### **Criminal punishment for domestic violence and violence against women**

82. On 31 December 1997, the Government enacted the Special Act on Punishment of Crimes of Domestic Violence for the purpose of restoring peace and safety to families shattered by crimes of domestic violence and protecting the human rights of victims and their families members, through interim measures such as isolation of the assailant from the victim(s), and the protective custody of the assailant for correction of the assailant's character and conduct. The Government has taken various measures to prevent crimes and protect victims of domestic violence, such as, inter alia, nominating more prosecutors charged exclusively with handling crimes of domestic violence, building an electronic database to house information on the assailants, conducting fact-finding studies on domestic violence, developing correctional programmes for the perpetrators, and holding seminars.

83. On 18 December 2002, the Act was amended to install sanctions for violators of the interim measures applied in accordance with the Act and the right of the victim to make a request for interim measures to an investigative agency.

84. As an effort to make punishment and prevention of crimes of sexual violence effective, the Government has conducted fact-finding studies on the crimes and new means of preventing sexual violence and prostitution and protecting victims in criminal proceedings, and with a view to promoting close cooperation between the investigative and the counselling agencies, has published and distributed to investigative agencies a handbook on counselling and shelter facilities related to domestic and sexual violence and prostitution.

85. In order to foster awareness of women's human rights among investigative agents and to protect human rights of women victims in criminal proceedings, the Government has produced educational handbooks compiling 1) guidelines for the investigation of domestic violence cases, 2) guidelines for the protection of victims during investigation and engagement with trial of sexual crimes, 3) matters of caution for investigation and trial of crimes related to prostitution, and 4) guidelines for the investigation of sexual violence victims under the age of 13, in addition

to annually educating working-level public officials ranked 9<sup>th</sup>, 8<sup>th</sup>, 7<sup>th</sup>, and 6<sup>th</sup> grades in the prosecution and narcotics investigation divisions on criminal investigations involving women at the Legal Research and Training Institute. The Task Force for protection of women's human rights in criminal proceedings was set up in July 2003, composed professors, defence lawyers and members of women's organisations, to identify problems and suggest reform measures in the criminal proceedings of women-related crimes, whose findings are to be reflected in formulating future policies.

### **Awareness-raising for gender equality**

86. Since 2001, the "campaign to reform five main lifestyle cultures considered to reflect gender inequality" (relating to traditional holidays, household management, raising of children, education of children, and dining parties among colleagues or members for introduction or friendship) has been continuously in action through publicity works of media and in cooperation with women's organisations.

87. Since 2001, national and public training institutes have offered a course on gender equality awareness as an elective specialised subject, and in 2002, the Government introduced the post of teaching staff specialising in gender equality awareness, by which 148 teaching staff have been commissioned so far.

88. The Women's Development Fund made a contribution of 2.2 billion Korean won in 2003 to establish the Korean Institute for Gender Equality Promotion and Education, which subsequently opened 13 courses for public officials including those on analyses of gender-perspective policies, enhancement of gender sensitivity, and enhancement of women's leadership. Currently, ten of the 13 courses are designated as elective specialised subjects for public officials of the central administrative agencies.

89. The Women's History Museum was opened by the Ministry of Gender Equality on 9 December 2002, with the purpose of exploring and exhibiting records and materials of women's roles, lives, and marks in history. The museum is expected to contribute to raising women's pride and public awareness of gender equality through various exhibitions and events elucidating previously under-evaluated achievements of women.

### **Improvement of women's status in the labour sector**

90. The Basic Plan for Working Women's Welfare was set up in accordance with the Equal Employment Act to promote employment of and to eradicate discrimination against women in the labour market. The second basic plan was set up and implemented for the years 1998-2002, laying foundations for equal opportunity in employment, improvement of working conditions, and enhancement of maternity protection, thereby encouraging the employment of women. In 2003, the second basic plan led to the formulation of the Basic Plan for Realisation of Gender Equal Employment, which aims to facilitate women's employment, to provide equal opportunity for and treatment of women and men, to secure equal wages for equal-value work,

to develop women's occupational capacity, to protect women from maternity-related discrimination, and to support women in sustaining both work and family lives through welfare facilities.

### **Measures of support for women's employment**

91. Maternity leave and childcare assistance have been strengthened to support women's capacity to maintain both work and family lives. Maternity leave was previously applied by female workers or their spouses in their places, but from 2001, the Government introduced paternal leave based on the principle of gender-equal responsibility for childcare, by which male workers can apply for childcare leave together with their wives. At the same time, a new childcare allowance was introduced (currently 300,000 Korean won), and measures prohibiting employers from dismissal and disadvantageous treatment of workers during childcare leave were strengthened. The incentive subsidy, mentioned in the second report (CCPR/C/114/Add.1, para. 43), currently applies to all enterprises, and an increasing amount of grant and loan support is provided to workplace nurseries.

92. In order to provide maternity protection during pregnancy and childbirth, to promote healthy reproduction and to resolve the problem of the career gap that women experience at childbirth, the Labour Standards Act was revised in August 2001 to provide an extension of childbirth leave to 90 days from 60 days and to install a new childbirth leave allowance. The revised law provides stricter regulations on night and holiday work by pregnant women or women less than a year from childbirth. The regulations now apply to all enterprises with one or more employee(s), extended from previously those employing five or more employees.

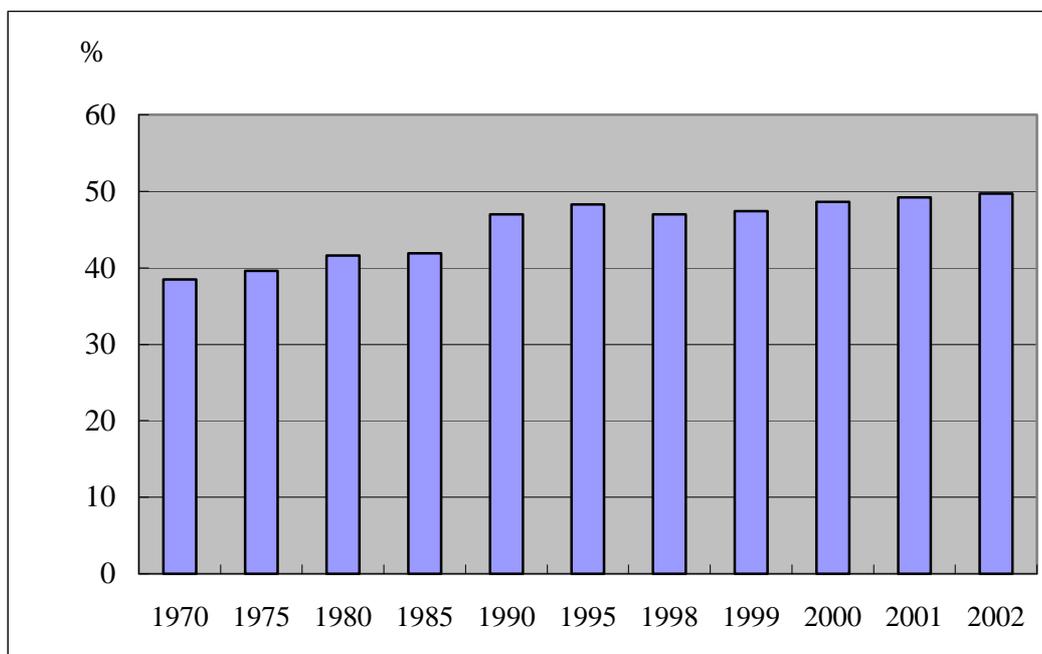
93. With a view to promoting women's employment, incentive subsidies for women's employment promotion have been provided since 1998 to an employer when the employer newly employs an unemployed woman head of a family or re-employs a woman worker who has previously left the employer for reasons of pregnancy, childbirth or childcare.

94. Occupational training for women has improved along with the general expansion of occupational training to workers, and the ratio of women participants has reached around 50 percent in various training courses. Unemployed women who underwent training to re-enter the labour market numbered 76,785 in 2000, 65,309 in 2001, 70,406 in 2002, and 50,117 in 2003.

95. As the result of the Government's efforts to expand opportunities for women's participation and to remove discrimination in employment, the percentage of economically active women has continuously increased to 48.6 percent in 2000, 49.2 percent in 2001 and 49.7 percent in 2002, from 39.3 percent in the 1970s, 42.8 percent in the 1980s,

and 48.3 percent in 1995. However, the rate is still 10 percent or so below the OECD average and the recent increase in the number of temporary and daily woman workers remains a challenge.

#### Economically active women by year (%)



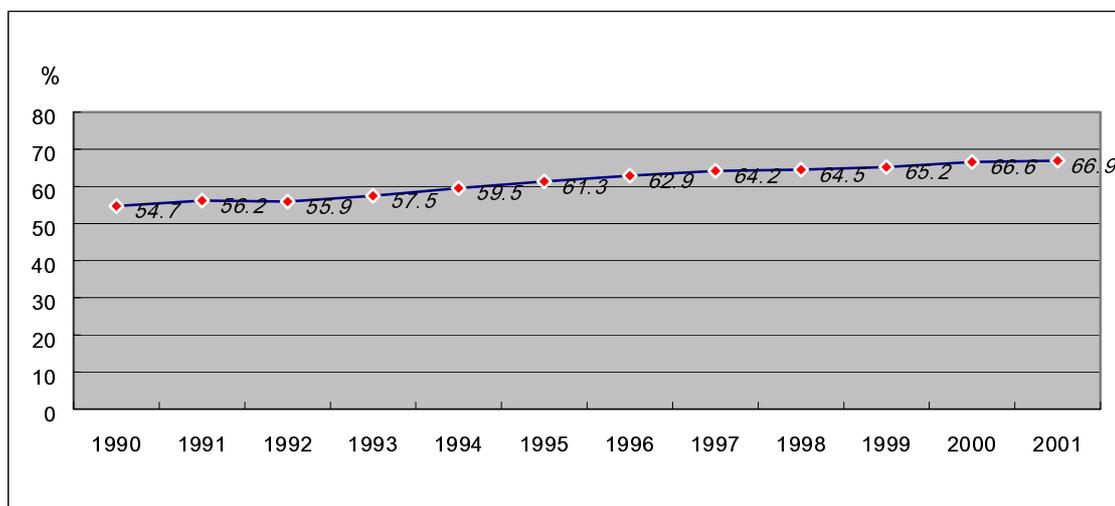
#### Measures for correcting discrimination against women in employment

96. The Committee expressed its concern over the extent of discrimination against women in employment and wages in its examination of the second report (CCPR/C/79/Add.114, para. 12). Since then, the Government has carried out various measures to realise gender equality in the areas of employment and wages. To protect working conditions of women workers and to promote their rights and interests, the Government is annually conducting guidance to and inspections of enterprises vulnerable in terms of gender equality: as a result of inspections of 801 enterprises in 2001, 698 violations were founded, of which 296 cases were put to correctional measures; 672 enterprises were inspected in 2000 and 613 violations were detected, of which two cases were put to judicial proceedings and 188 cases to correctional measures; and 1,066 enterprises were inspected and 1,082 unlawful cases were found in 2001, of which 37 cases were put to judicial proceedings and 496 to correctional measures.

97. The wage gap between men and women has been narrowed in the past ten years: the average wages of female workers increased to 66.9 percent of those paid to male workers in 2001 from 54.7 percent in 1990.

### Gender disparity in the fixed pay of female worker

(fixed pay of male workers = 100)



\* The ratio is of the average wages of all female workers to those of all male workers.

98. After the examination of the second report by the Committee, the Government ratified in December 1998 the Convention concerning Discrimination in Respect of Employment and Occupation (ILO Convention no.111), amended the Equal Employment Act in the manner consistent with that mentioned in the second report (CCPR/C/114/Add.1, paras. 47-49) so that the Act became applicable to all enterprises employing one or more employee(s) (previously five or more employees), heightened regulations prohibiting sexual harassment and strengthening preventive efforts in the workplace, and identified the concept and elements of indirect discrimination in addition to those of direct discrimination. Punishment for unlawful activities was reinforced and a greater role was given to conflict mediation agencies so that discrimination could be effectively corrected.

### Article 4

99. The matters concerning article 4 are as explained in the initial report (CCPR/C/68/Add.1, paras. 88-95) and the second report (CCPR/C/114/Add.1, paras. 67-70).

### Article 5

100. The matters concerning article 5 are as explained in the initial report (CCPR/C/68/Add.1, paras. 96-97) and the second report (CCPR/C/114/Add.1, paras. 71-72).

## **Article 6**

### **Paragraph 1**

101. The legislative and institutional measures taken by the Government to respect and protect the right to life are as explained in the initial report (CCPR/C/68/Add.1, paras. 98-100) and the second report (CCPR/C/114/Add.1, paras. 73-76).

### **Prohibition of the practice of identifying the sex of foetuses**

102. The Government strictly bans by law the practice of identifying the sex of foetus out of respect for human dignity and the right to life. The sex ratio at birth (number of male babies born for every 100 female babies born) was 110.0 in 2002, showing a significant disparity in favour of boys. Having determined that foetal sex identification, in the light of the traditional preference for boys, increases the danger of selective abortion of female foetuses, the Government strictly bans practices of identifying the sex of foetuses and applies criminal penalties to offenders.

103. Article 19, paragraph 2 of the Medical Treatment Act prescribes that medical personnel must not examine or inspect a pregnant woman for the purpose of sex identification of her foetus and must not inform the pregnant woman or her family of the sex of foetuses if identified incidentally during a medical examination or inspection. Violations of this law are punished by penal servitude not exceeding three years or by a fine not exceeding 10 million won.

### **Assistance to and emergency protection of families in crisis**

104. Along with the recent changes in social and economic environments such as an increasing divorce rate, a recent economic crisis and a change of values, the number of persons committing suicide is increasing, posing a social problem. The number of suicides per 100 thousand people increased from 14.6 in 2000 to 19.1 in 2002, often involving simultaneous suicide of all family members. In response to this problem, in January 2004, the Government defined a 'family in crisis' as a family in difficulty of providing appropriate support, childcare, protection and education to its members due to economic hardship, conflict, maltreatment or violence among the members, and therefore in need of immediate governmental intervention and assistance. The families in crisis can receive counselling and information services from SOS centres located in each city, county, and district, and benefit emergency living support and temporary shelter service for one to three months. When the authorities decide that the families need to receive continuous shelter service, they can provide further supports such as assistance to living, medical, educational and child-rearing expenses in accordance with the special regulation on the recipient of the basic sustenance security scheme. A consultant for healthy families is posted to each city, county and district office as of 2004 to provide professional counselling, education and information on rearing of children, support of elderly parents, conjugal relation, and other family life issues.

105. The Basic Act on Healthy Families was enacted in December 2003 with the objective of building an administrative and institutional framework for realising healthy families by preventing and resolving various family problems in a rapidly changing modern society and establishing a family-based and comprehensive welfare system.

## **Paragraph 2**

### **Death penalty system and crimes subject to the death penalty**

106. The Human Rights Committee expressed its interest in and concern over the death penalty system upon examination of the second report. As stated in the report (CCPR/C/114/Add.1, para. 77), the crimes subject to the death penalty are strictly restricted to flagrant crimes such as crimes endangering the existence of the State, crimes depriving other persons of their lives and crimes destroying families. Efforts to further limit the range of crimes subject to the death penalty have been under way.

107. In fact, the death penalty is rendered in exceptional cases in Korea. When a criminal commits a crime subject to the death penalty, the death penalty is rendered on him/her only in cases of flagrant crimes, while life imprisonment or penal servitude for a shorter definite term are the more common sentences on most occasions. In principle, the death penalty is executed by hanging, while the military criminal code prescribes execution by shooting.

108. As stated in the second report (CCPR/C/114/Add.1, para. 86), the death penalty is sentenced by an independent court in three-tiered trials under due process of law, including presumption of innocence until proven guilty, and provision of the right to legal defence, the right to appeal, and the right to a re-trial.

109. On the death penalty, the Constitutional Court stated on 28 November 1996 that “The right to life, too, is subject to general reservation of law stipulated by article 37, paragraph 2 of the Constitution, because despite the fact that the right to life possesses absolute values on ideological grounds, the laws of the country must establish criteria for prioritising protection of the life of other persons and the critical interest of the public with reference to the right to life, in such case as a person having deprived the life of another without legitimate reason, or violated a critical interest of the public. The penalty of depriving a human life can not be viewed in violation of article 37, paragraph 2 of the Constitution, to the extent that the death penalty is applied to exceptional cases that suffice to meet the need for protecting the public interest, at least equal to or exceeding the value of other human lives, in view of the principle of proportionality,” assenting to the constitutionality of the death penalty (decision 1995 HEON-BA 1).

110. Furthermore, the Supreme Court ruled on 6 July 2000 that extreme prudence is required in a death penalty ruling by stating that, “As the death penalty is an irrevocable punishment causing permanent deprivation of a human life, and can be pronounced only under absolutely inevitable circumstances in view of the severity and purpose of the punishment, all factors should be considered and found manifestly constituting inevitable circumstances in the ruling for the death penalty; namely, all the circumstantial facts such as the criminal’s age, occupation and career, personality and behaviour, intelligence, educational and upbringing background, family relations, previous convictions, relationship with victims, criminal motive and premeditation, the means and the degree of brutality of the criminal act, the gravity of its result, the number of victims, emotions and remorse after the crime, recovery of victims and damages, and the possibility of recommitting crimes should be taken into consideration” (decision 2000 DO 1507).

111. Between 1996 and 2003, the number of death sentences was fewer than ten each year. In 1997, 23 persons were executed and none thereafter. There have been no appeals for retrial against death sentences since 1996.

#### **Persons sentenced to death and executed**

Year	1996	1997	1998	1999	2000	2001	2002	2003
Persons sentenced to death penalty	7	8	3	4	9	8	2	5
Persons executed	0	23	0	0	0	0	0	0

#### **Persons sentenced to death by type of charges (1996-2003)**

Charge	Burglary and murder	Murder	Violations of ACAPSC*	Rape and murder	Total
No. of persons	22	18	3	3	46

\* The Act on Aggravated Punishment for Specific Crimes: violations such as kidnapping and inveigling.

#### **Fact-finding study on public view of the death penalty**

112. The National Human Rights Commission conducted a nation-wide survey of public attitudes on the death penalty for three months from October to December 2003. The survey was carried out with a systematically categorised group of 2,020 persons comprising National Assembly members responsible for the legislation on death penalty, opinion leaders in the media and civil society, representatives of non-governmental organisations, prosecutors, defence lawyers, and correctional, medical and other officials directly involved in death sentencing and executions as well as the general public. The survey included questions on various areas such as (a) the effect of the death penalty on preventing or curtailing crimes; (b) the need of maintaining the death penalty and the methods and procedures thereof; (c) substitutes for the death penalty, and (d) system of aid for victims of the crimes. The result of the survey showed that more than 50-60 percent of the opinion leaders like journalists, lawyers, and parliamentarians, and more than 80 percent of full-time representatives of non-governmental organisations supported the abolition of the death penalty. Among the general public, 34.1 percent supported likewise while 65.9 percent supported maintaining the penalty. There was, however, a general consensus among all groups towards the need for reducing the range of crimes subject to the death penalty.

#### **Paragraph 4**

##### **Right to request amnesty and commutation**

113. The Right to request amnesty and commutation is guaranteed to persons sentenced to death, as stated in the second report (CCPR/C/114/Add.1, para. 87). The number of persons sentenced to death but given amnesty or commutation later was two in 1998, five in 1999, two in 2000, and four in 2002, or thirteen in total.

## **Article 7**

### **Prohibition of torture and other inhumane treatment by investigative agencies**

114. As stated in the second report (CCPR/C/114/Add.1, para. 96), self-regulatory efforts have been made to prevent and monitor torture and other infringements of human rights with the appointment as a human rights protection officer of a public prosecutor in each prosecutors' office, and of a chief of investigation in each police station.

115. As a means of preventing potential human rights violations against the accused and other persons involved in cases under investigation, the Ministry of Justice instituted guidelines of investigation for the protection of human rights on 1 January 2003, which stipulate necessary measures to be taken for the protection of human rights by public prosecutors during investigations. Under these guidelines, late-night investigations of accused are prohibited in principle, and only allowed with the prior permission from the human rights protection officer for exceptional cases in which the accused has requested it for personal reasons, or in which there is highly probable obstruction to the investigation by destruction or manipulation of evidence, use of manipulated evidence, or fleeing of an accomplice.

116. Human rights protection takes priority in police investigations, prohibiting torture and late-night investigations. Article 167, paragraph 1 of the Regulations for the Investigation of Crimes (established by National Police Agency directive no.384) states that "Torture, violence, intimidation, unduly prolonged detention, deceit, or any other methods that may put the voluntary nature of a confession at risk shall not be used in investigations," reaffirming the provisions of the relevant laws with the same effect.

### **Expansion of civilian monitoring over investigative agencies**

117. On 1 July 2002, the civilian monitoring system was introduced in order to listen directly to and present opinions on the complaints about the prosecution made by civilians. In this system, a group of civilians are commissioned as prosecution monitors, who relay public opinions to the prosecution, or civilians are appointed as "civic ombudsmen." The civilian monitoring system is currently in place in three district public prosecutors' offices in the cities of Cheongju, Jeonju and Busan as pilot projects.

118. The police also appointed 182 ombudsman-style civilian human rights protection monitors in 30 police stations around the country, from 30 March to 31 August 2003, including lawyers, professors and members of non-governmental organisations. The civilian monitors made 288 monitoring visits to police detention centres, conducted 51 activities for protection of the socially vulnerable, and held 95 human rights education seminars for police officials, or 611 activities of human rights protection in total. Upon positive assessment of this experimental enterprise, the police are currently studying the possible expansion of this system on a national scale.

### **Remedy for persons who have suffered from torture or inhumane treatment**

119. As stated in the second report (CCPR/C/114/Add.1, para. 97), any person who has suffered from torture or inhumane treatment by the authorities may file a complaint with the

public prosecutors' office or demand compensation from the State, and in case the public prosecutor takes a disposition of non-indictment, the plaintiff may apply to the court to rule on the prosecutor's decision and to reopen the case.

120. The number of investigative agents who were punished due to violent or cruel treatment against criminal suspects during the performance of their official duties is five in 2000, four in 2001, and twenty-one in 2002. The recent rise in the number of cases of punishments for violent or cruel treatment owes a great deal to the fact that stricter inspections and punishments have been applied.

#### **Case of death by torture of a murder suspect**

121. On 26 October 2002, when a gang member suspected of committing a homicide died in the course of an investigation of murder charges, the family of the deceased raised suspicions of torture, and the Supreme Public Prosecutors' Office immediately organised a team of inspectors, who exposed that the suspect had died of beatings by investigative officers.

122. Taking responsibility for the incident, the Prosecutor General and the Minister of Justice resigned and the President made an apology to the nation. In addition, the prosecutor and investigative officers in charge of the case were arrested, indicted, and sentenced to penal servitude of three years in Seoul District Court on 5 November 2003. The case is currently before the appellate court.

123. The National Human Rights Commission has conducted an independent investigation of the incident. The Supreme Public Prosecutors' Office instructed its branches with measures to prevent torture in investigation on 16 November 2002, putting in place follow-up measures to prevent recurrence of similar incidents: namely, prohibition of cruel treatment, isolated investigation, and late-night investigation, and the nomination of human rights protection officers. Guidelines on defence counsel's attendance to the investigation of the suspects were issued by the Office on 27 December 2002. The Ministry of Justice instituted its own comprehensive measures for the prevention of torture in the course of investigations, including the introduction of the above-mentioned guidelines of investigation for the protection of human rights on 1 January 2003.

#### **Education to prevent torture**

124. Education on torture prevention for judicial officials has been strengthened, as stated in the second report (CCPR/C/114/Add.1, paras. 95 and 96). Under the guidance of the Supreme Public Prosecutors' Office, education on torture prevention was administered for 5,890 judicial and police officials in 2001, 5,686 in 2002, and 5,972 in 2003, through 114, 112, and 113 courses in total, respectively.

125. Emphasising the importance of human rights education and awareness-raising, the National Human Rights Commission organised, from its inception to the end of 2003, a total of 121 human rights education programmes for 13,460 law enforcement officials in police, prosecutorial and corrections agencies, and in particular, officials accused by petitions. Moreover, the Commission formed a pool of 101 human rights instructors, composed of human rights experts from legal and academic professions and non-governmental human rights

organisations and developed and distributed a series of human rights education materials for policemen, prosecutors, military servicemen, teachers, public servants, and the general public. The statistics on human rights education administered in 2003 by the Commission are as follows.

**Human rights education conducted by the National  
Human Rights Commission in 2003**

Sector	Police	Prosecution	Immigration	Correction	Military	Total
Number of education courses	80	1	3	5	2	91
Participants	8 223	124	210	330	153	9 040

**Restoration of honour and compensation for persons involved in the democratisation movement**

126. On 12 January 2000, the Act on Restoration of Honour and Compensation for Persons Involved in the Democratisation Movement was enacted, establishing the Review Committee for Restoration of Honour and Compensation for Persons Involved in the Democratisation Movement under the Office of Prime Minister. Accordingly, the Government gave compensation and/or restored honour to persons who had perished, disappeared, been convicted by the courts, dismissed by their employers, or disciplined by their university principals in the course of their fight for the promotion of human rights and democracy under past authoritarian rule, or to the families of such persons. Since the start of its work on 9 August 2000 to the end of 2003, the Review Committee made decisions to give compensation to 404 persons and restore honour to 5,204 persons.

**Inquiry into and restoration of honour for the victims of the 3 April 1948 Incident on Jeju Island**

127. On 12 January 2000, the Special Act on Inquiry into and Restoration of Honour for Victims of the 3 April 1948 Incident on Jeju Island was enacted, establishing the Committee for Inquiry into and Restoration of Honour for Victims of the 3 April 1948 Incident on Jeju Island under the Office of Prime Minister. The Committee worked to restore the honour of the victims and their families subject to the Act by carrying out investigations of the victims who had perished, gone missing, or suffered injury and ensuing disability as a result of popular uprisings and subsequent violent clashes with and repression by the authorities that started on 1 March 1947, culminated on 3 April 1948 and ended on 21 September 1954.

128. Since it began its work on 28 August 2000, the Committee received reports about a total of 14,028 victims and 28,561 family members of the victims involved in the 3 April 1948 Incident: the reports about victims comprised those on 10,715 dead persons, 3,171 missing persons, and 142 persons suffering from ensuing disabilities. Out of the reports, the Committee confirmed those on 6,292 victims and 13,893 family members of victims with four decisions through 9 March 2004. The Government is developing consolation projects for the victims such as the construction of the April Third Peace Park as a way of restoring honour of the victims and their families, and on 31 October 2003, President Roh Moo-hyun expressed an official apology for the 3 April 1948 incident. Furthermore, the Government is providing medical and life-subsistence subsidy to those among the victims in need of sustained medical treatment or care.

**Efforts to find the truth of suspicious deaths**

129. Furthermore, the Government enacted the Special Act on Inquiry into Suspicious Deaths on 15 January 2000, and established the Committee for Inquiry into Suspicious Deaths to verify the facts surrounding suspicious deaths that had occurred in connection with the democratisation movement.

130. The Committee investigated 83 cases of suspicious deaths through October 2003 and recognised 19 cases of those, including that of Choi Jong-gil, as having been caused by unlawful exercise of force by law enforcement authorities in connection with the victims' participation in the democratisation movement. The Committee sent the 19 cases to the Review Committee for Restoration of Honour and Compensation for Persons Involved in the Democratisation Movement for decisions on specific remedies (including compensation for the acknowledged victims) and filed complaints to the prosecutors' office on some illegal cases. On 14 October 2002, the Committee concluded the first phase of its investigations, and presented to the President a 51-point recommendation for the prevention of suspicious deaths based on its findings. The Committee was given an extension of authority to 30 June 2004 to conduct additional investigations on inconclusive cases.

**Article 8**

131. No slavery and servitude are permitted in the Republic of Korea. The rights provided for in article 8 of the Covenant are guaranteed by article 10 of the Constitution, which assures all citizens of human worth and dignity and the right to pursue happiness, and by article 12, paragraph 1 of the Constitution, which states that no person shall be placed under preventive restrictions or subject to forced labour except as provided for by law and through lawful procedures, as affirmed by the initial report (CCPR/C/68/Add.1, paras. 140-146).

**Efforts for preventing human trafficking and prostitution**

132. A shocking incident occurred in Gunsan city in September 2002: when fire broke out in a building, a number of prostitutes died locked in and unable to escape from their room, where they had lived as a group. After the incident, the Government improved the mechanism for issuing entertainment and artistic activities (E-6) visas to foreign females, took measures to prevent trafficking of foreign females by criminal organisations, and actively promoted measures to protect foreign women victims of trafficking together with non-governmental organisations. With regard to forced prostitution of foreign females, the Inter-agencies Meeting for the Prevention of Human Trafficking was held in September 2001, chaired by the Vice-Minister of Justice and included participants from the Ministry of Gender Equality, the Ministry of Labour, the National Police Agency, the Ministry of Foreign Affairs and Trade, and the Ministry of Justice, who decided to set up a joint trafficking crackdown team in each district prosecutors' office. The joint team has since carried out intense investigations on trafficking cases in order to eradicate human trafficking. The number of cases of human trafficking brought to criminal punishment was 114 for 2000, 152 for 2001, 95 for 2002, and 135 for 2003.

## **Article 9**

### **Paragraph 1**

#### **The principle of issuing a warrant for arrest or detention**

133. The Constitution and the Penal Procedure Code provide for firm adherence to the principle of issuing a warrant for arrest or detention as a way to assure everyone of the right to liberty and security of person and to prevent arbitrary arrest and detention. The principle is strictly applied to prevent possible violations of human rights arising from investigations of suspects who voluntarily present themselves for questioning, as stated in the second report (CCPR/C/114/Add.1, paras. 108-109).

#### **Expansion of non-contact investigation procedures**

134. As a means of reducing inconveniences to the accused caused by investigations conducted in his/her presence, the methods of non-contact investigations including e-mail, fax, and post have been widely employed since September 2000: as a result of non-contact investigations, 17,044 investigations were made by e-mail, 24,269 by post, and 13,163 by fax transmission from September 2000 to the end of 2003. These measures are actively publicised to the public, for instance, by sending non-contact investigation procedures along with summons documents, so that more citizens can make use of them.

#### **Application of due legal process in relation to arrest or detention of an accused**

135. To guarantee the liberty and security of persons, a warrant of arrest is required from the very first stage of entering a suspect's name to the list of wanted persons, so that a search for a wanted suspect is always authorised by a judge, in accordance with the guidelines on investigation for the protection of human rights issued by the Ministry of Justice on 16 June 2003.

136. Stringent rules are applied when a field police officer carries out an arrest or detention according to the Penal Procedure Code: the practice of investigation without detention has become more widely employed. If the police fail to secure criminal evidence on the accused, they should permit him/her to go home and later, if necessary, call him/her in for further investigation, thereby promoting more convenience on the part of the accused and flexibility in investigating procedures.

137. In recognition of the need for caution and professional judgement in carrying out an arrest or detention in the course of an investigation, public prosecutors' offices have exercised strict supervision and control in applying for warrants of arrest and detention, and provided specialised education for officials at the level of senior police inspector or higher on practical matters concerning warrants, thereby guaranteeing expertise and procedural transparency in applying for arrest warrants.

## **Paragraph 2**

### **Notification of the reasons for arrest and related charges**

138. The Constitution and the Penal Procedure Code guarantee not only that persons being arrested or detained be notified of the reasons for the arrest or detention and of the right to be represented by defence counsel, but also that their family members be notified without delay of the reasons for, and the time and place of the arrest or detention, as stated in the second report (CCPR/C/114/Add.1, para. 111).

### **The Supreme Court's decision with regard to notification of the reasons for arrest and related charges**

139. On 4 July 2000, the Supreme Court decided: "In the case of a law enforcement officer arresting a person on the spot when the person is committing a crime, the police shall notify the person of the reason for the arrest and the right to be represented by defence counsel, and give the person an opportunity to excuse himself/herself for the criminal act. Such notification must be made, in principle, prior to the arrest, and when it is not possible, must be made immediately after the person has been brought under control. Attempts by the police to arrest a person without such notification are not viewed as legitimate executions of official duty, and the use of violence by the criminal with the aim of resisting such an arrest is viewed as an act of self-defence which makes the resistance legal" (decision 1999 DO 4341).

## **Paragraph 3**

### **Restriction on detention of prisoners awaiting trials**

140. The Constitution and the Penal Procedure Code restrict the use of pre-trial detention to exceptional cases prescribed by law and to the minimum extent necessary, as stated in the second report (CCPR/C/114/Add.1, para. 115).

141. The efforts of the Government to reduce the time of detention of the accused awaiting trials have resulted in a decreasing rate of arrests in criminal cases, i.e. from 6.8 percent in 1996 to 5.4 percent in 1997, 5.8 percent in 1998, 4.5 percent in 1999, 4.4 percent in 2000, 4.2 percent in 2001, 4.0 percent in 2002, and 3.7 percent in 2003.

142. With respect to the special provision of the National Security Act stipulating an extended detention period for charges, the Constitutional Court assented to the constitutionality of the provision, by ruling on 26 June 1997 that, "With respect to the investigation of crimes subject to articles 3, 5, 8, and 9 of the National Security Act at the time of its revision on 31 May 1991, there was substantial reason to extend the period of detention of the suspects to the minimum possible extent, and as the extension is to be approved by a judge, thereby securing a legal mechanism for preventing unjustly prolonged detentions, article 19 of the National Security Act stipulating extension of a detention period for the crimes identified in the preceding articles is not unconstitutional with regard to the principle of equality, the right to personal liberty, the principle of presumption of innocence, and the right to speedy trial provided in the Constitution" (decisions 1996 HEON-GA 8, 9, and 10).

### **Improvement in the court hearings of suspects before detention**

143. The Penal Procedure Code revised on 13 December 1997 stipulates that when a warrant of arrest is issued against a suspect, the legality of the arrest can be examined in the court when a petition is filed by the suspect, his/her family member(s), persons living with the suspect, or his/her employer.

144. The Committee raised a concern over the incompatibility of the Covenant with the system which permits the court to examine the legality of an arrest warrant only when a petition is filed. Recognising the concern, the Government is now pursuing a revision of the Penal Procedure Code so as to make mandatory a court examination of the legality of an arrest warrant, regardless of a petition having or not having been filed.

### **Paragraph 4**

#### **Review of the legality of arrest or detention**

145. The Constitution and the Penal Procedure Code stipulate that any person who is arrested or detained shall have the right to request the court to review the legality of the arrest or the detention, and that he/she may be released on bail or without bail in case a review of the legality of detention has been requested before indictment, as stated in the second report (CCPR/C/114/Add.1, para. 118).

#### **Statistics of reviews of detention legality**

(Unit: number of persons)

Year	Numbers of requests	Results of reviews		
		Released	Rejected	Dropped
1998	10 301	4 494	5 278	529
1999	8 311	3 682	4 319	310
2000	9 104	4 042	4 722	340
2001	9 265	3 995	4 881	387
2002	8 515	3 970	4 155	390
2003	8 794	4 631	3 804	359

### **Bail system**

146. The second report explained the Korean bail system, by which a suspect or an accused person in detention may be released on bail before or after the indictment on the condition of payment of the bail (CCPR/C/114/Add.1, para. 118).

147. With the aim of securing the court appearance of the accused while upholding the principle of a non-detention trial, the Government introduced a system of release without bail, by which the accused may be released on specific conditions after pledging to appear before the court and presenting a written guarantee of a guarantor in that regard, instead of paying the bail. The Government is also pursuing a revision of the Penal Procedure Code to set up an integrated

release system, by which an accused in detention may be released if he/she files a request, invoking one of release arrangements and if the reasons that he/she provides along with the release request meet the criteria of the other release arrangements.

### Data on the bail system

(Unit: number of persons)

Year	Requests for bail release	Results		
		Requests permitted	Requests not permitted	Bailed ex officio
1998	36 234	18 328	17 906	392
1999	31 293	16 275	15 018	306
2000	27 344	13 971	13 373	284
2001	28 713	15 298	13 415	240
2002	30 094	17 001	13 093	312
2003	25 796	14 160	11 636	412

### Paragraph 5

#### Criminal compensation

148. The second report mentioned that under the Constitution and the Penal Compensation Act, if an accused person or a suspect who was once placed under detention is not indicted by the prosecution or acquitted by the court, he/she shall be entitled to claim proper compensation from the State (CCPR/C/114/Add.1, para. 119).

149. The upper limit for criminal compensation was prescribed at five times the sum of minimum per diem under the Minimum Wage Act of the year when the cause of the compensation claim arose, as stated in the second report (CCPR/C/114/Add.1, para. 119), and was raised to 100,400 Korean won per day as of 1 September 2003.

#### Data on the annual amount of criminal compensation granted

(Unit: 1,000 won)

Year	1996	1997	1998	1999	2000	2001	2002	2003
Number of cases	211	154	215	317	274	275	226	270
Total cost	1 216 385	946 721	1 439 181	30 178 533	24 504 282	2 421 634	1 944 226	2 195 457

### Article 10

#### Paragraph 2 (a)

#### Improvement of treatment of unconvicted prisoners

150. The right to private communication with legal counsel and the right to receive legal aid of unconvicted prisoners have been further strengthened. Correspondence between an unconvicted

prisoner and defence counsel is not censored in principle, unless there are reasonable grounds to believe that the correspondences by post contains items prohibited from possession, such as narcotics, or that the prisoner is highly likely to attempt to escape or destruct criminal evidence. Even when the unconvicted prisoner is the subject of disciplinary measures for misconduct, meetings and correspondences with his/her defence counsel are not restrained (art. 66, Penal Administration Act and art. 145, Enforcement Decree of Penal Administration Act).

151. The principle of presumed innocence is maintained by allowing unconvicted prisoners to acquire and wear their private clothes and footwear at their own cost when they appear at legally required occasions such as investigation, trial or parliamentary inspections or investigations of state affairs (art. 22, Penal Administration Act).

152. On 27 May 1998, the Constitutional Court ruled that, "Requiring an unconvicted prisoner to wear a prison uniform during the period of investigation and trial inflicts shame or insult on the unconvicted, which may result in his/her psychological passivity leading to insufficient exercise of the right to defence. As this, therefore, may impede the discovery of the whole truth about the case in question, imposing the prison uniform on the unconvicted can not be justified, regardless of any justification for the imposition including prevention of possible escape attempt" (decision 1997 HEON-MA 137).

### **Improvement of treatment of detainees at police detention facilities**

153. Detention facilities at police stations have undergone many improvements to be more human rights-friendly: (a) more facilities have been equipped with wheelchairs and other equipment for the handicapped and elderly people; (b) a state budget of 231 million Korean won was allocated in 2004 for medical treatment of detainees and; (c) more female police officers are posted as on-site protectors for detainees every year.

154. Since April 2003, virtual visits to detainees by their families have been offered through the Internet in order to ease difficulties of visits by long-distance travellers and the handicapped. This system is in place in 231 of the total 233 police stations, and had been used by 10,991 persons through the end of 2003. Its use is increasing and will be soon available in every police station.

### **Paragraph 2 (b)**

#### **Improved treatment and separate accommodations for juvenile delinquents**

155. Juvenile delinquents under 20 years of age are prosecuted under ordinary criminal procedures only in felony cases. Otherwise, their cases are classified as cases in need of protective measures and the juvenile division of the court examines the cases and makes decisions on various protection measures such as accommodations in juvenile reformatories, placement under protective surveillance, transfer to juvenile protection facilities, and hand-overs to their parent(s) or guardian(s) to assure protection from other criminals and prevention of recommitting crimes.

156. Juvenile delinquents brought to trial under ordinary criminal procedures are accommodated at detention rooms in a detention facility, segregated from unconvicted adult prisoners until they are sentenced to specific terms of punishment. Afterwards, they are accommodated in a juvenile correction centre, completely segregated from adult convicts. At the same time, juvenile offenders are protected from possible human rights abuses and criminal behaviours among themselves, in accordance with article 8 of the Juvenile Reformatory Act, which provides that “Persons under the age of 16 shall be accommodated separately from those at the age of 16 or above.”

157. Juvenile delinquents held in detention, whose cases are classified as protective ones, are examined by the court’s juvenile division. Before the ruling of the juvenile division, a background history check, intelligence quotient test, and aptitude test are compiled for four weeks while the juvenile delinquents are in custody at the Juvenile Delinquents Classification Institute. The compiled information is used not only for identifying the causes of their delinquent behaviours and deciding the direction of reformation guidance for them, but also as reference material that judges of the judicial division take into consideration in deciding specific protective measures for them such as accommodations in a juvenile reformatory or placement under protective surveillance.

158. Normally, the court’s examination of protective juvenile cases is conducted in a simpler and speedier manner than that of general criminal cases. On criminal cases of juvenile offenders, article 57 of the Juvenile Act stipulates that, “Examination of a criminal case of a juvenile offender that is connected with another case of (an) accused adult(s) shall be conducted separately from the latter unless it causes an impediment to the examination of the case,” so that juvenile offenders receive special treatment different from their adult counterparts.

159. In case the court’s juvenile division sentences a juvenile offender to being placed under protective surveillance, it can order, at the same time, a juvenile offender to do social service or attend educational course (art. 32, para. 3, Juvenile Act).

### **Strengthened diagnosis on juvenile delinquents not being held in detention**

160. In the past, the above-mentioned juvenile delinquents classification system was applied to only juvenile delinquents held in detention. On 1 July 2003, the system started to cover all juvenile delinquents including those who are not held in detention. Under the change, the court’s juvenile division is authorised to order juvenile delinquents not being held in detention to appear at the Juvenile Delinquents Classification Institute on four to six weekdays for the cause of his or her misconduct to be diagnosed. The change also introduced a counselling and examination session for protected juvenile delinquents, in which the institute gives a comprehensive diagnosis on the causes of their misconduct and organises special education programs for them to address those causes before returning them to their homes. The judgement proceedings on juvenile criminal cases were reformed so that the institute’s consultants involved in the diagnosis of the juvenile in question may appear in court to give statements on the case.

161. It is expected that the above change will contribute to the protection of human rights of undetained juvenile delinquents by enhancing accuracy in the judgment of the courts through the compilation of information regarding juvenile delinquents’ personalities and the causes of their

crimes. In particular, scientific diagnosis on juvenile crimes and follow-up systemic guidance and education for juvenile delinquents are expected to contribute to the prevention of recurrence of crimes (art. 12, Juvenile Act).

### **Enhancement of the human rights of inmates by revising the Penal Administration Act**

162. The Penal Administration Act was revised on 28 December 1999 in order to reflect the ideal of respect for human rights set out in article 10 of the Constitution and the requirements for the prevention of discrimination in the treatment of prison inmates provided for in article 6 of the Standard Minimum Rules of the Treatment of Prisoners of the United Nations.

163. The amended Penal Administration Act reaffirms the principle of respect for human rights of the Constitution by providing full respect for the fundamental human rights of inmates and prohibiting discrimination based on nationality, sex, religion, and social status. Based on the amended law, treatment of inmates has been further improved in relation to punishments and the use of restraints.

164. On 28 January 2000, the Act on the Establishment and Management of a Private Prison System was enacted to introduce private-run correctional facilities from 2005. The private-run correctional wards will be regulated to provide equal or better treatment to inmates, compared to state-run prisons, and to transmit all the revenues from inmates' work to the national treasury to prevent the private facilities from exploiting inmates.

### **Improvement of remedy procedures including petitions**

165. The law provides that when an inmate files a petition to the Minister of Justice, the petition is written by the inmate and sent in a sealed envelop, which the warden of the prison or detention facility is prohibited from opening and which cannot be used as a reason for giving disadvantageous treatment to the inmate. The same law provides that in case an inmate files a petition through a circuit inspection officer, a copy of the summarised petition is given to the inmate as a receipt (art. 6, Penal Administration Act). These measures are expected to strengthen the right of inmates to make appeals against maltreatment in prisons.

166. The amended Penal Administration Act has promoted the right to know of new inmates by obliging prison wardens to inform them of petition procedures as well as regulations on interviews and disciplinary punishments (art. 8 (2), Penal Administration Act).

167. In accordance with the National Human Rights Commission Act of 25 November 2001, inmates of prisons and other detention facilities can file a petition to the National Human Rights Commission in case of a human rights violation including discrimination, in addition to the existing remedy procedures such as filing a petition or suit for administrative adjudication or administrative litigation to the Minister of Justice or circuit inspection officers as provided for by the Penal Administration Act.

168. The human rights of inmates are further protected as prisons are required to provide better access to petition procedures by installing petition boxes at easily accessible places and

to promptly report to the National Human Rights Commission in case an inmate wants to file a petition in the presence of a commission officer, therefore preventing any disturbing or limiting interventions.

169. From 16 June 2003 on, lawyers belonging to the Korea Legal Aid Corporation or public advocates have been mandated to pay regular visits to prisons and other detention centres to provide free legal counselling and assistance to persons deprived of liberty.

### **Improvement in disciplinary punishment and use of restraints**

170. In case restraint is prescribed to maintain the order of a detention facility, the use of restraint is strictly limited to the minimum. For example, the use of restraint is allowed only in the cases deemed necessary for the prevention of escape, violence, riots or suicide by inmates, and strictly prohibited as a means of disciplinary punishment, reflecting article 33 of the Standard Minimum Rules of the Treatment of Prisoners of the United Nations (art. 14, Penal Administration Act). On 20 January 1998, the Supreme Court ruled that “The use of restraints is only allowed to the minimum level necessary to achieve the projected objective of the use and in such case that there is sufficient reason for the necessity in view of various conditions such as the objective of the use, the level of infringement of fundamental human rights caused by the use, the presence or absence of alternative means” (decision 1996 DA 18922).

171. The Government is preparing rules regarding specifications and methods of use of restraints in order to protect the fundamental rights of inmates and to strengthen supervision and control of their use.

172. The rules of behaviour in detention facilities which inmates should follow and whose violations lead to disciplinary punishments are strictly controlled: the general contents of the rules are required to be prescribed by the Penal Administration Act and the detailed contents are to be incorporated in the Rules of Disciplines and Punishments of Inmates and be limited to cases deemed necessary for maintaining the safety and order of the facilities (art. 45, Penal Administration Act).

173. The Penal Administration Act stipulates criteria for carrying out disciplinary punishments so that such punishment is justified only in cases prescribed by law such as when an inmate violates the Penal Code and the Act on the Punishment of Violent Acts or produces, possesses, uses, transfers or conceals prohibited items such as weapons or liquor (art. 46).

174. The Act also stipulates that an inmate shall not be placed in double jeopardy for the same offence, and the disciplinary punishment shall be at the minimum necessary to achieve its objective in view of the motivation and gravity of the offence as well as the circumstances following the offence (art. 46).

175. The Act promotes flexibility in disciplinary punishment by establishing a new procedure by which the disciplinary commission can decide to suspend punishment when the inmate in question shows remorse for his/her violation of the rules. When there is no further violation until the end of a prescribed suspension period, the punishment is considered to be fully executed (art. 48 (2)).

176. The Government is seeking an amendment of the Rules of Discipline and Punishment of Prisoners in order to prevent the abuse of disciplinary punishment, such as reducing the maximum period of disciplinary punishment to one month from the current two months, prohibiting a consecutive prescription of disciplinary punishment, promoting fairness in investigations of inmates' rule infractions and in the decision-making and execution of disciplinary punishments, and stipulating more clearly the criteria for prescribing punishments.

177. When an inmate is placed under prohibition of visits and communications with his/her family members as a disciplinary measure, the warden of a detention facility has an obligation to inform the family of the inmate of the prohibition to minimise their inconvenience, except when the inmate wishes otherwise (art. 145, Enforcement Decree of Penal Administration Act).

### **Extended right to visitation for inmates**

178. In the past, inmates of detention facilities were not able to have telephone communications with their family members, but since October 1998, the right of inmates to telephone communications has been protected on condition that the communications are monitored (art.18 (3), Penal Administration Act). The number of calls is, however, limited due to the needs of prison management: inmates are allowed to make from three to five calls per month.

179. Since July 2001, virtual visits via the Internet to inmates by their family members have been progressively introduced in order to ease difficulties of visits by family members travelling long-distance, in sync with the trend of the information age.

180. In parallel with the above improvement, measures to provide inmates with wider access to printed media have been taken to help inmates stabilize emotionally and adjust socially: reading newspapers and books is not restricted unless there is a sufficient reason to believe that the printed media contain contents deemed disturbing to the safety and order of detention facilities or inappropriate for correctional activities (art. 33, Penal Administration Act).

181. The number of visits by family members or others per inmate is limited to a certain degree due to prison management needs: it is one visit per day for unconvicted inmates, four to six visits per day for convicted inmates (according to assessment based on their past performances in detention facilities) and, in particular, an unlimited number of visits for well-behaved inmates. At the same time, the Government has promoted the right to visitation by allowing the blockage or termination of visits only when the safety and order of a detention facility are endangered by an inmate's attempt to instigate a criminal act, destroy criminal evidence or escape during a visit (arts. 56 and 58, Enforcement Decree of Penal Administration Act).

182. Since May 1999, a family visit system has been in place: eight prisons have so far installed conjugal visitation houses where an inmate may meet and stay with his/her family member(s) for a maximum duration of three days. This is to help inmates restore family relationships and regain emotional stability.

183. There are no limits on inmates' correspondences with the outside. Letters from and to inmates are restricted only when contents prohibited by law or obviously false statements, causing reasonable concerns over their harmful effects on the safety and order of a detention facility, are contained therein (art. 62, Enforcement Decree of Penal Administration Act).

### **Improvement of the treatment of inmates**

184. The Penal Administration Act stipulates that inmates should, in principle, be accommodated in solitary rooms of the detention facility, but some inmates are allowed to share their rooms under extraordinary circumstances in which an inmate may suffer side-effects mentally or physically from solitary accommodation or where group accommodation is inevitable due to limited room availability (art. 31, Enforcement Decree of Penal Administration Act).

185. Since 1999, all detention facilities have installed a television in a living room, which most inmates can watch except those under disciplinary punishment. Reading newspapers, once reserved to a minority of inmates, is allowed to all inmates. There is, however, censorship of removing any content deemed inappropriate for correctional purposes. The Constitutional Court decided on 29 October 1998 that "Inmates are allowed to subscribe to a newspaper as an exercise of the right to know generally accessible information, and that it is not an excessive infringement of inmates' right to know that certain contents of the newspapers are deleted for safeguarding safety and order in view of each facility's given conditions and any shortage of its correctional manpower" (decision 1998 HEON-MA 4).

186. The eligibility of inmates for leave has been expanded in order to enhance their social adaptability and to help restore once broken family relationships: those having served more than one third of their prison terms are granted a leave of no longer than ten days per year, and others who fall short of meeting this criteria are also granted leave in the cases of the death or marriage of an immediate family member for humanitarian considerations (art. 44, Penal Administration Act).

187. The Government is undertaking to renovate outdated detention facilities by installing or upgrading air conditioning and heating systems and to address the over-population problem by building and expanding detention facilities: by 2011, it plans to build nine new facilities including the Chungju Detention Centre and to renovate eight existing facilities including the Suncheon Correction Centre. To improve medical treatment for inmates, the Government mandated a task team in September 2003 to draft a plan for the improvement of medical treatment for inmates and, since 2004, has installed clinics solely for woman inmates, trained corrections officers as nurses and recruited more public health practitioners with a goal of recruiting 174 in total by 2008.

### **Renovation of education curricula of juvenile reformatories**

188. The goal of education in juvenile reformatories is to cultivate positive attitudes in their inmates so as to lead stable lives and not to repeat misdemeanours.

189. With this goal, the education curricula of juvenile reformatories, once rigidly modelled after the uniform curricula of ordinary schools, have been renovated so that they suit students' diverse interests and needs.

190. Since September 1999, 13 juvenile reformatories across the country have installed general information processing centres equipped with up-to-date multi-media language programs and personal computers. To help enhance inmates' employment prospects, the centres focus on practical foreign language courses and computer education programmes that are useful in an information society.

191. The Government is putting in place personalised special needs education programmes, taking into consideration individual characteristics and intelligence levels of juvenile inmates: for instance, the medical juvenile reformatory accommodates and treats inmates that need medical treatment, and the artistic and athletic juvenile reformatory gives specialised training to inmates who have talents in arts or sports.

### **Implementation of open human development education based on learning by experience**

192. Along with executing the above specialised education, the Government has reformed human development education programmes in juvenile reformatories to be more open and experience-oriented, so that inmates can cultivate honest minds and improve social adaptability that are indispensable to democratic citizens.

193. Departing from implementing the previous human development education programs confined to the compound, the reformatories have introduced open-door programs mainly based on learning by experience such as ski camps, cultural and artistic programs, and camping.

194. A reformatory inmates corps for social service was inaugurated and social service was incorporated as a part of regular education programmes: thus, all reformatory inmates are encouraged to cultivate a disposition for social service and love for their neighbours through participation in various service activities such as visits to welfare facilities for the vulnerable and handicapped and rural communities and repair of automobiles and farming machines.

195. An information technology education initiative for the community has been set up by reformatory inmates: under the initiative, inmates who have learned computer techniques give training on computers to housewives, industrial workers, and other residents in the community. For the handicapped, the inmates even visit their residences to give computer education or to repair computers.

### **Supporting the successful rehabilitation of juvenile inmates**

196. Having undergone a total renovation of their education programmes, juvenile reformatories do their utmost to ensure that inmates graduating from the reformatories are at minimal risk of repeating misconduct, able to successfully re-adapt to society and ready to be fully self-reliant.

197. To restore once-severed dialogue with families, juvenile reformatories have set up "family houses" where juvenile detainees can stay for two to three days with their visiting family

members in a relaxed environment and enjoy an opportunity to restore trust and dialogue within the family. Reformatories have set up laser operation rooms in order to help remove tattoos that may act as obstacles to a smooth return to social life after being released from reformatories.

198. Juvenile reformatories support inmates in finding jobs or starting businesses. Inmates having no relatives or guardians are allowed to stay for six to twelve months after their releases in a dormitory-style support house that helps them build up self-reliance and lead a stable life during their transition to independence and social integration.

### **Reduction of the accommodation and education period at reformatories**

199. In view of the declining rate of second offences committed by reformatory inmates as more reformatory graduates receiving specialised and diverse education find stable jobs, the Government has reduced the accommodation term of reformatories to no longer than 19 months from the previous maximum 25 months, so that juvenile inmates can go back to their families and society in good time and realise their precious dreams.

### **Enhancement of social rehabilitation capabilities of inmates**

200. As a measure of providing specialized treatment for handicapped inmates, the Gunsan Correction Centre was renovated in October 2003 to host a specialised job-training facility for the handicapped. Inmates who commit violations of traffic laws and regulations, mostly on short prison terms, are accommodated in open correction centres, where they receive social rehabilitation programs based on an inmate self-regulatory system.

201. New diverse opportunities for education are now provided to inmates: the Penal Administration Act incorporates a commute system that allows inmates to commute to outside educational agencies or companies when deemed necessary for the education or job training of inmates. For those having difficulty commuting to outside study facilities, an agreement between a correctional centre and a specialised college is made, by which undergraduate specialised courses are organized within the centre by the specialised college (art. 44, Penal Administration Act).

202. In particular, information technology and foreign language job training are reinforced in order to help inmates cope successfully with the challenges of the information and globalisation era. Those who wish to get a bachelor's degree are allowed to apply for university or take undergraduate courses organised within correctional centres.

203. An employment support system is in operation in every correctional centre to help inmates re-adapt to society with new skills or qualifications learnt in the centres. Correctional centres are cooperating with local governments by supplying them with lists of inmates who have no relatives or guardians or few means to support themselves so that they can receive basic subsistence support allowances from the local governments from the day of their release.

204. The Criminal Administration Act amended on 28 December 1999 incorporates new provisions for respecting the fundamental rights of inmates and prohibiting gender discrimination among inmates, by which female inmates enjoy labour exemption previously applied only to male inmates.

### Monitoring of conditions in detention facilities

205. Upon examination of the second report, the Human Rights Committee made a recommendation concerning independent monitoring of conditions in detention centres (CCPR/C/79/Add.114, para. 14). As stated in the initial and the second reports (CCPR/C/68/Add.1 para. 133, CCPR/C/114/Add.1, para. 92), the Penal Administration Act obligates prosecutors to inspect regularly the detention facilities of police stations and enables judges and prosecutors to make on-site inspections of prisons at any time (art. 5). The table below shows the data of on-site inspections by judges and prosecutors.

#### Results of on-site inspections by judges and prosecutors

	Total		1999		2000		2001		2002		2003	
	A	B	A	B	A	B	A	B	A	B	A	B
Total	333	1 466	47	139	79	465	71	340	69	242	67	280
Judges	53	643	6	60	15	187	12	198	10	99	10	99
Prosecutors	280	823	41	79	64	278	59	142	59	143	57	181

\* A: the number of inspection visits, B: the number of inspecting judges and prosecutors.

206. According to article 24 of the National Human Rights Commission Act, the National Human Rights Commission, an independent agency, can visit and inspect conditions of any detention facility at any time.

207. The categories of detention facilities that the National Human Rights Commission can visit and inspect are as follows: (a) prisons, juvenile prisons, detention centres, probation facilities, forensic psychiatry institutes, juvenile reformatories, and juvenile delinquents classification institutes; (b) detention and protective custody facilities of police stations; (c) military prisons including detention houses for unconvicted soldiers and military police jails; (d) protective custody facilities for foreigners; and (e) other protective custody facilities for a large number of persons (art. 2 (2), National Human Rights Commission Act).

### The Constitutional Court's decision on the treatment of inmates in detention facilities

208. With regard to the inmate who was arrested in violation of the Psychotropic Substances Control Act, escaped during the trial along with the two accomplices after stabbing an officer on duty in the court in 2000 and was subsequently captured and detained, the Constitutional Court ruled on 18 December 2003 that the correction officers' act of applying both metal and leather handcuffs at the same time to the inmate for 392 days on the grounds of the inmate's previous history of escape and possible self-injury was unconstitutional, upholding that the act constituted a violation of the liberty and human dignity of inmates (decision 2001 HEON-MA 163).

### Article 11

209. Under the legal system of the Republic of Korea, no person may be arrested or detained merely on the grounds that he/she has failed to fulfil a contractual obligation, as stated in the second report (CCPR/C/114/Add.1, para. 145).

## Article 12

210. Everyone's freedom to choose his/her residence and the right to liberty of movement are guaranteed under article 14 of the Constitution. It further states that these rights may be restricted by law only for the protection of national security, the maintenance of public order or the promotion of public welfare, as observed in the first report (CCPR/C/68/Add.1, paras. 192-193) and the second report (CCPR/C/114/Add.1, para. 146).

211. The Government has signed visa exemption agreements with 61 states, nationals of which may enter and stay for up to 90 days in the Republic of Korea without visas. Nationals of 41 other states that are designated by the Minister of Justice may also enter the Republic of Korea without visas.

212. When a foreign national wishes to stay in Korea for more than 90 days, he/she must register at the competent immigration office determined by the area of the applicant's stay (art. 31, Immigration Control Act). Until the amendment of the Immigration Control Act on 31 December 2003, all foreign nationals aged 20 years or older wishing to stay longer than one year were obliged to be fingerprinted when registering with the immigration office. However, the amended Immigration Control Act limits the fingerprinting requirement to only those under investigation on charges of violating the Immigration Control Act or other laws and to unidentified persons (art. 38).

213. The number of illegal foreign nationals, who enter the Republic of Korea with tourist visas and engage in long-term work without registering, or who change their place of work without reporting to the immigration office, has significantly increased in recent years. The Government took action to legalise their status by offering an amnesty for unregistered foreign nationals who would report to the immigration office from 1 September to 30 November 2003, during which period 184,199 persons, or 80.9 percent of the estimated total, acquired legal status by reporting.

214. Korean citizens and foreigners sojourning in the Republic of Korea are generally guaranteed the freedom to leave the country. However, when deemed necessary for national security or maintenance of public order, certain minimum restrictions may be applied to the freedom. As for Korean citizens, article 4 of the Immigration Control Act prescribes prohibition of departure of a person whose leaving the country is deemed to be particularly detrimental to the interests of the Republic of Korea. The Enforcement Decree of the above Act enumerates in detail the following reasons for which a Korean may be prohibited from departure: if that individual is under criminal investigation, on trial accused of a criminal charge, or serving a term of an imprisonment or confinement sentence; if the person is charged with non-payment of more than a certain amount of national taxes, customs duties, local taxes, fines or forfeits without justifiable reason; or if he/she is considered detrimental to national interests, public safety, or economic order by law (art. 4, para. 1, Immigration Control Act).

215. As for foreigners sojourning in Korea, the Immigration Control Act specifies in article 29, paragraph 1, reasons for which they may be temporarily prohibited from departure. The Minister of Justice must notify prohibition or suspension of departure to the person in

question within three days of making the decision. Foreigners wishing to protest such a decision may file an objection with the Minister of Justice, and as a separate procedure, initiate administrative adjudication or administrative litigation.

### **Introduction of a permanent resident status visa (F-5)**

216. On 18 April 2002, the Enforcement Decree of the Immigration Control Act was amended to newly establish a permanent resident status visa (F-5): persons eligible for this visa are foreigners having stayed for five or more years with a resident status visa (F-2) and their children who are less than 20 years old. Persons with the F-5 visa may reside in the Republic of Korea permanently with significantly enhanced immigration-related rights such as exemption from re-entry permission and limitations on expulsion.

### **The right to liberty of movement of the handicapped**

217. Legislated on 10 April 1997, the Act on the Promotion and Provision of Convenience of the Disabled, the Aged, and the Pregnant, makes it mandatory that ramps, lift facilities, and toilets and Braille pavement blocks for the handicapped are installed in public buildings and facilities so that the handicapped, elderly people, and pregnant women may use them easily. As for buildings and facilities built prior to the enactment of the law, the Act requires the aforementioned access facilities to be installed in public buildings within two years and in subways and railway stations within seven years of the first day of the enforcement of the law (no later than April 2005).

218. Along with recently growing social interest in the provision of the right to movement of the handicapped, the Seoul Metropolitan Government has constructed one or more lift facilities in every subway station in order to enable handicapped persons to get access to public transportation without difficulty. It also plans to introduce low-mount buses into the public bus transportation system so that wheel-chaired handicapped persons may use public buses easily.

### **Repatriation of non-converted leftist former prisoners to North Korea**

219. On 2 September 2000, due to humanitarian considerations, the Government repatriated 63 non-converted former prisoners to their hometowns in North Korea at their will. They had been released from prison after serving long-term imprisonments of life sentences on charges of espionage.

## **Article 13**

220. Expulsion of foreigners is limited to the reasons specified in article 46 of the Immigration Control Act. Reasons for deporting foreigners under the above article are as follows: entry without an appropriate visa; entry of persons prohibited from admission to the country; violation of the conditions set forth in the terms granting entry permission; landing without permission; violation of the conditions set forth in granting landing permission; illegal sojourn or unauthorized employment; violation of scope of activity authorized by terms of entry; attempt of illegal departure; violation of foreigner registration obligation; and commission of crimes subject

to more than the term of imprisonment. In these cases, a foreigner may be expelled, only if his/her violation is serious or if he/she may cause harm to the security or public order of the Republic of Korea.

221. In 2003, 5,861 foreigners were expelled because of illegal statuses or the commission of a crime. The procedure for expulsion and the method of instituting complaints against expulsion have already been described in the initial report (CCPR/C/68/Add.1, para. 197). Recent dates of decisions of expulsions and complaints against the decisions are as shown in the following table. At the end of 2003, there were a total of 678,687 foreign sojourners, of which 138,056 had invalid status of sojourn.

#### Data of complaints on expulsion decisions

Year	1998	1999	2000	2001	2002	2003
Total	0	1	0	0	17	10
Admissible	0	1	0	0	3	1
Inadmissible	0	0	0	0	6	8
Dropped	0	0	0	0	8	1

#### Expulsions

Year	1998	1999	2000	2001	2002	2003
Persons	5 435	6 412	6 890	10 301	5 670	5 861

222. When it is impossible to immediately repatriate foreigners ordered expelled, heads of immigration offices or their branches may temporarily place them in foreigner protection houses or other places designated by the Minister of Justice (art. 63, Immigration Control Act). At present, there are 14 offices and seven branches such as Hwa-seong Foreigner Protection House as special facilities for the custody of foreigners. When it is clear that a person ordered expelled can not be repatriated due to reasons such as refusal of entry by his/her home country, heads of immigration offices or their branches may release him/her with certain conditions deemed necessary, such as residence restrictions.

223. As of the end of 2003, the number of foreigners with invalid status of sojourn reached 138,056, raising social concern over the issue of immigration control. With the enactment of the Employment Permit Act on 16 August 2003, which permits non-permanent residential status to illegal foreigners who meet certain conditions, the Government set a period of voluntary reporting for illegal foreigners from 1 September until 30 November 2003, during which some 180 thousand illegal foreigners, about 80 percent of the total, received a legal sojourn status with work permit. Since the end of the registration period, the Government has been cracking down on and expelling foreigners who continue to stay as illegal sojourners without having voluntarily reported themselves.

224. There have been concerns of human rights violations raised by a number of non-government organisations over the expulsion of illegal foreigners. In response to the

concerns, the Government held a meeting of the Committee for the Protection of Human Rights of Foreign Workers on 25 November 2003, with the participation of representatives from the Ministry of Justice, the Ministry of Labour, the Ministry of Foreign Affairs and Trade and other relevant ministries, to discuss measures to prevent deliberate delay of wage payment for workers subjected to expulsion as well as human rights violations in the process of cracking down on illegal sojourners. As a result, the Government has strengthened its supervision of the enterprises having hired foreign workers subjected to expulsion, made it possible for expelled workers to receive their wages even after departure, and intensified its crackdown on enterprise owners purposely delaying payment of wages. In addition, the Government has put in operation various measures to protect the human rights of foreign workers, such as expanded legal aid and increased guidance and supervision of immigration agencies, with the aim of eliminating human rights infringements in the process of cracking down on illegal foreigners.

### **Expulsion of permanent residents**

225. On 5 December 2002, article 46, paragraph 2 of the Immigration Control Act was amended to strictly limit the reasons for which persons with permanent resident status may be expelled. Thus, they may be expelled if they commit crimes of treason or crimes concerning foreign currencies as specified in the criminal law.

### **Improvement in refugee recognition system**

226. On 30 March 2002, the Immigration Control Act was amended to extend the deadline for applying for refugee status from the previous 60 days to one year from the day of entry. Furthermore, on 27 April 2002, the Enforcement Decree of the Immigration Control Act was amended to enlarge the number of members in the Refugee Recognition Council from eight to eleven, and the number of members in its working committee from nine to twelve. In addition, civilian participation in the council was expanded in order to elevate the level of expertise of the council: newly appointed to the council and its working committee are two from the Korea Bar Association, two from the Korea Association of International Law, and two from the Korea Women Associations United.

227. Persons recognised as refugees are granted resident status (F-2) and the right to work. Among them, persons who are not capable of economic independence are provided with living and medical supports, according to the Nationals Basic Subsistence Support Act.

### **Recent data on refugee recognition reviews**

(Period: 1998-2003, unit: number of persons)

Total No. of applicants	Recognised	Not recognised	Withdrawn by applicants	In review
249	14	56	40	139

### **Application for refuge status by region**

(Period: 1998-2003, unit: number of persons)

Total No. of applicants	15 countries in Africa	2 countries in Middle East	7 countries in South-east Asia	2 countries in Europe
249	104	26	116	3

#### **Article 14**

228. The efforts and institutional measures taken by the Government to guarantee the right to a fair trial were stated in the first report (CCPR/C/68/Add.1, paras. 198-214) and the second report (CCPR/C/114/Add.1, para. 153). With regard to article 2 of the Covenant, improvements in the court-appointed defence counsel service as a measure to secure a fair trial are described in paragraph 45 of this report.

#### **Participation of defence counsels in the investigation of suspects**

229. A new system has been introduced as a way to fully guarantee suspects' right to legal assistance: under the system, defence counsel is allowed to be present to observe the interrogation of the suspects by investigative agencies. The police and the prosecution have made relevant guidelines and permitted in principle defence counsel's presence and observation during the interrogation since June 1999 and December 2002, respectively.

230. On 11 November 2003, the Supreme Court ruled, on the second appeal case concerning denial by the prosecution of the request of the defence counsel of Mr. Song Doo-yul for presence at his interrogation, that "Despite no explicit inclusion of provisions related to the request in the Penal Administration Act, the presence request can be recognised as a legal right in view of the spirit of the Constitution and by inference from the right to visitation of counsel in article 89 of the Penal Administration Act" (decision 2003 MO 402). In order to guarantee the participation of counsel in the examination of the suspects as a legal right, the Government has arranged to make a revision in the Penal Administration Act.

#### **The judicial appointment system and guarantee of judges' status**

231. Upon examination of the second report, the Committee requested details on the extent of judicial independence and the system and actual practice of judicial appointments (CCPR/C/79/Add.114, para. 16).

232. Judges' independence is fully guaranteed by the Constitution: no judge is removed from office except by impeachment or by a sentence heavier than imprisonment, and at the same time, no judge is given disadvantageous treatment such as suspension from office or a reduction of salary except by due disciplinary measures (article 106, the Constitution). As for the rulings of judges, the Constitution provides that "Judges shall rule independently according to their conscience in conformity with the Constitution and law" (art. 103).

233. The judicature is made of the Chief Justice of the Supreme Court, Justices of the Supreme Court, and other judges. The Chief Justice is appointed by the President with the consent of the National Assembly, to a single six-year term of office. Justices of the Supreme Court are appointed by the President on the recommendation of the Chief Justice and with the consent of the National Assembly, to a six-year term of office, and can be reappointed. Other judges are appointed by the Chief Justice with the consent of the Conference of Supreme Court Justices to a ten-year term of office, and can be reappointed under the conditions as prescribed by law.

234. Only those who have passed the bar examination and completed the training programmes at the Judicial Research and Training Institute, and bearers of the lawyer's licence are considered qualified for judgeship. In particular, appointment of the Chief Justice and Justices of the Supreme Court is limited to judges who are 40 years old or older and have a career in related areas of 15 years or more. A person may not be appointed to judgeship if any of the following applies: he/she has been disqualified for appointment to public officialdom by law; he/she has been convicted of a crime and sentenced to a punishment no less severe than imprisonment: or fewer than five years have passed since he/she has been removed from office by impeachment. To be appointed as a judge, a candidate is first appointed and given duty as a reserve judge for two years, after which time he/she may be appointed a Supreme Court judge by the Chief Justice, with due consideration of his/her performance of duties.

235. A judge is reappointed after the first ten-year term by the Chief Justice with the consent of the Conference of Supreme Court Justices as in the first appointment. In other words, the Chief Justice reappoints a qualified judge after submitting the case to the Conference of Supreme Court Justices and obtaining the conference's consent, and as for a judge whose qualifications are disputed, submits the case to the Judges Personnel Committee for review of the qualifications. If the committee finds the applicant unqualified, the Chief Justice makes a final decision on whether to submit the case to the Conference of Supreme Court Justices for consent. If the Chief Justice decides not to submit the case, it means that the candidate is not reappointed.

236. Since 1983, when the term of office and reappointment system was introduced, there have been no more than three judges who failed to obtain reappointment: all others were re-appointed. The main purpose of the system is to enhance the functioning of the judiciary by fully guaranteeing judges' independent status and, at the same time, making it possible to exclude those who are not properly performing their duties.

### **Procedures to appeal for court adjudication**

237. For certain crimes such as abuse of authority committed by a civil servant, when the public prosecutor takes a disposition of non-indictment, the plaintiff or accuser may appeal to the court for an adjudication of the prosecutor's dismissal (art. 260, Penal Procedure Act). The procedure allows a case to be reviewed by the court without a public prosecutor's indictment, thereby counterbalancing the possibility of unfair non-indictment decisions by a prosecutor. The number of non-indictments on authority abuse charges, which were brought to the court by plaintiffs' appeals for adjudication, was nine in 1997, one in 1998, one in 1999, eight in 2000, and eleven in 2001. Crimes subject to adjudication appeals are limited to crimes of authority

abuses by civil servants as stipulated in articles 123 and 125 of the Penal Code, crimes of destruction of the Constitutional order, and offences to the Act on the Election of Public Officials and Prevention of Election Malpractices. Recently, discussion is underway to expand the crimes whose cases are subject to adjudication appeals to all crimes committed by public officials.

### **Retrial system**

238. A retrial system is in place for correcting unfair court rulings for the benefit of an accused, in such cases as when evidence or testimony leading to the original ruling is proved false or when new evidence indicating significant factual error, erroneous or questionable assumption of facts supporting the original ruling becomes known, after the final ruling on his/her conviction (art. 420, Penal Procedure Act).

239. For instance, on 29 January 2004, the Seoul District High Court gave a verdict of “not guilty” to 18 persons who were given heavy penalties as principal offenders in the first trial of the conspiracy and rebellion case of Kim Dae-jung at the time of the military coup d’état in 1980, by ruling that “As the military coup d’état has been historically evaluated as a rebellion, the acts of the accused in resisting it were justifiable” (decision 2003 JAE-NO 19).

### **Judicial Reform Promotion Commission**

240. On May 1999, a Judicial Reform Promotion Commission was established as a presidential advisory body in order to create the framework of a judicial system that could be trusted by the people. After six months of research and debate, the commission, composed of representatives of various sectors of society, provided a sound basis for judicial reform by proposing a set of institutional reform measures in December 1999 in the fields of fair and speedy trials in criminal cases, education for legal professionals, and court-appointed defence counsel service.

241. Based on the research result of the Judicial Reform Promotion Commission, the court and the prosecution have continued to make reform efforts in relevant laws and institutions. The Ministry of Justice and the Supreme Public Prosecutors’ Office jointly set up a Planning Team for the Reform of the Ministry of Justice and Public Prosecutors’ Offices in May 2003 to promote internal structural reforms, to eliminate corruption in politics and to enhance the rights and interests of the socially weak. In October 2003, the Supreme Court established a Judicial Reform Commission comprised of representatives of various sectors of society in order to study and promote institutional reform measures in selection and education of legal professionals, the judge appointment system, and the functions and composition of the Supreme Court.

### **Article 15**

242. Article 13, paragraph 1 of the Constitution strictly prohibits *ex post facto* laws by providing that “No citizen shall be prosecuted for an act which does not constitute a crime under the law in force at the time it was committed,” as stated in the first report (CCPR/C/68/Add.1, paras. 215 and 216) and the second report (CCPR/C/114/Add.1, paras. 175 and 176).

## Article 16

243. The right to recognition everywhere as a person before the law provided for in article 16 of the Covenant are guaranteed by the Constitution and laws as observed in the first report (CCPR/C/68/Add.1, paras. 217-222) and the second report (CCPR/C/114/Add.1, paras. 177 and 178).

## Article 17

### Paragraph 1

244. Regarding legal provisions of the Republic of Korea related to article 17 of the Covenant, articles 17 and 18 of the Constitution stipulate protection of privacy and freedom of correspondence, which are further elaborated in the Penal Code, the Civil Code, the Minor Offence Punishment Act, the Postal Services Act, and the Korea Telecom Act, as observed in the first report (CCPR/C/68/Add.1, paras. 223-228) and the second report (CCPR/C/114/Add.1, paras. 179-184). Changes to these provisions made since August 1996 are as subsequently indicated.

### Enhanced protection of personal information in the private sector

245. In order to strengthen protection of personal information in the private sector, the Act on the Expansion of Supply and Promotion of Use of Computer Networks was changed to the Act on the Promotion of Use of Computer Networks and Protection of Information, through amendments in February 1999, January 2000, and January 2001. The revised law lays legal and institutional frameworks for protecting personal information, reflecting the general principles for the protection of personal information recommended in the OECD's eight principles and the EU's directives on the subject.

246. In case a supplier of information and communication services collects users' personal information, the Act on the Promotion of Use of Computer Networks and Protection of Information requires the supplier to obtain a user's consent after notifying or specifying the following in advance in a relevant contract on use of information and communication service: the name, post, position, telephone number and other contact information of the person in charge of handling personal information; the purposes of collecting and using personal information; the identity of recipients; and the purpose and content of transmission if the supplier is to supply the information to a third party (art. 22). The Act also prohibits collection of personal information such as thoughts, beliefs, and medical history deemed to greatly violate individual rights and privacy (art. 23).

247. No supplier of service may use or leak personal information other than for the purpose stated in the contract without a user's consent (art. 24), or fail to notify a user in case the supplier in question subcontracts the work of collection and management of personal information to another party (art. 25), or fail to notify the user in case the supply enterprise is to be transferred, annexed or merged with another enterprise (art. 26). The Act also requires, *inter alia*, the supplier to designate the person in charge of personal information management (art. 27), to put

in place technical and managerial measures necessary for securing safety of the personal information collected (art. 28), and to destroy the collected personal information when its purpose is exhausted (art. 29). When collecting personal information of persons younger than 14 years old, the supplier of service must obtain the consent of the minor's parents or legal representative (art. 31).

248. A user of the service has the right to revoke previously given consent over collection and use of his/her personal information and the right to demand reading and correcting the information (art. 30). In case the user suffers damage due to supplier's violation of any of the above articles, the user may demand compensation from the supplier (art. 32). The act of using or leaking personal information beyond the stated purpose, or the act of obtaining personal information for profitable or other illegal ends is subject to an imprisonment not exceeding five years or a fine not exceeding 50 million Korean won (arts. 62 and 67).

249. As a means to mediate speedily and conveniently disputes between a user and a supplier of service over infringements of a privacy agreement, the Personal Information Dispute Mediation Committee was established and is in operation (arts. 33 and 40), which, meeting monthly, handled 1,891 disputes from December 2001 to December 2003. In addition, the Korea Information Security Agency has been operating the Personal Information Protection Centre since April 2000, to consult on and settle complaints on infringements of personal information security agreements. At the same time, a system of identifying good service providers that practice personal information protection with designated insignia was introduced in February 2002, in order to promote voluntary regulation of privacy protection compliance in the private sector: by this arrangement, an exemplary site of personal information security receives an e-Privacy mark. Efforts are now underway to have the system mutually recognised with the equivalent marking systems of other countries such as the United States of America.

250. A further revision of the Act on the Promotion of the Use of Computer Networks and Protection of Information is recently being pursued in order to protect individual privacy in view of the rapid growth of Internet use. The revision is intended to place stringent duties on the person commissioned to process individual information, to regulate collection and use of personal information through cookies (text-only strings that get entered into the memory of a user's browser), and to strengthen the function of the Personal Information Dispute Mediation Committee.

### **Regulation of illegal wiretaps**

251. With a growing row over allegedly illegal wiretapping by intelligence or investigation agencies, the Minister of Justice and the Prosecutor General ordered crackdowns on illegal wiretapping on 27 August 1999 and on 27 September 1999 respectively.

252. Operations by special crackdown teams organised in each prosecutors' office from 1998 to the end of 2003 found a total of 1,178 persons in violation of the Communications Privacy Protection Act for illegal use or possession of wiretapping equipment, of which 282 were detained. The details of the data are as indicated in the following table.

**Indictments of persons engaged in illegal wiretappings and other violations of the Communications Privacy Protection Act**

(Unit: number of persons)

Year	Total	Indictment with detention	Indictment without detention
1998	144	39	105
1999	445	149	296
2000	197	30	167
2001	149	31	118
2002	107	11	96
2003	136	22	114

253. To protect individuals from crime while providing maximum privacy of communications from the scrutiny of investigating agencies, measures are taken to minimise legal wiretappings, which firmly restrict the use of wiretapping to investigation of such crimes as those that may endanger national security, involve the abduction of women or children, or robberies, if the use is indispensable for investigations. As a result, requests for warrants to conduct wiretappings by prosecutors have continuously decreased.

**Number of warrants requested and issued for wiretappings**

(Unit: number of warrants)

Year	Requested	Issued
1998	3 515	3 470
1999	1 960	1 920
2000	1 622	1 590
2001	1 388	1 359
2002	559	531
2003	519	510

**Enhanced protection of correspondence privacy**

254. The Communications Privacy Act was revised on 29 December 2001 to protect correspondence privacy more effectively. The major content of the revision is as follows. First, restrictions on correspondence shall not be imposed except for criminal investigations or for the needs of national security, while infringement of citizens' privacy in communications shall be limited to the minimum extent. There are 133 crimes, including the crime of interference with official duties and the crime of inducing women into sexual relations under the pretext of marriage, which are excluded from those crimes subject to communications restrictions. Second, the period of time allowed for communications restrictions has been shortened, from three to two months for criminal investigations and from six to four months for national security purposes, and when the intended objective is met, the restriction shall be immediately lifted so as to minimise violations of the freedom of communications. Third, an institutional mechanism has been set up to prevent agents of communication agencies from cooperating with illegal wiretapping. Any person requesting communications restriction or cooperation with it shall

present a photocopy of the cover of the communications restriction permit or urgent wiretapping permit and the person receiving it shall preserve it. Fourth, to protect the right to know communications restriction, the authorities are obliged to notify the person in question of the restriction as a measure of preventing abuse of such restriction. Specifically, in case of communications restriction for investigations of crimes, a prosecutor or law enforcement officer shall, in principle, notify any person subject to those measures of the related information such as description of the restriction, the name of the executing agency and the period of the restriction within 30 days, if a final decision on the case, including indictment, non-indictment or no charge was made by the authorities. In case of a communications restriction for the protection of national security, the chief of the intelligence investigation agency in question shall notify the person of the same information. Fifth, controls over an inventory of wiretapping devices possessed by state organs as a measure to prevent illegal import of unauthorised wiretapping devices are in place: when a state organ acquires a wiretapping device, it shall notify the Minister of Information and Communication of the specifications and functions of the device, and when an intelligence agency does so, its chief shall notify the Information Committee of the National Assembly of the same information. Sixth, privacy protection obligations are specified by type of agency in order to effectively prevent leakage of private information and secrets of an investigation: types of agents are officials of investigative agencies, agents of communication agencies, and others. No one shall leak or disclose any content of dialogues in case he/she records or listens to dialogues among persons in question. Punishments for violation of these obligations are also differentiated by type of agent. Seventh, when requesting factual details of communications of a subscriber from a telecommunications company, such as dates, times, lengths and numbers of communications sent and received, the prosecutor, the police or the chief of the intelligence agency shall present the request in writing and both the provider and receiver of the requested information shall keep a record of the transaction and the information itself in the register. Eighth, the National Assembly now has greater oversight of communications restrictions: the standing committees and the committees for investigating and auditing state affairs may decide by vote to conduct on-the-spot inspections and investigations of an agency that has cooperated with wiretapping, the switch-board room of the wiretapping agency or other places deemed necessary. When requested by the National Assembly, the chief of the agency that has exercised a communications restriction shall submit a report about the restriction to the National Assembly.

### **Strict control over investigation documents**

255. The Act on Lapse of Sentences was revised on 5 December 2002 so that (1) the scope of criminal record keeping is limited to crimes subject to no less than a monetary penalty; (2) the investigation records of 4.31 million persons are, accordingly, excluded from the criminal record; (3) electronic investigation records are permanently deleted after the records has been kept for five years, when non-indictment, suspension of indictment, acquittal, dismissal or rejection of prosecution is handed down on criminal cases; and (4) inquiries into and dissemination of investigation documents are strictly restricted: they are allowed only when they are necessary for criminal investigation, trial, execution of sentence, protective probation, when they are required by law, or when the investigated person requests them. Anyone leaking any content of investigation documents is now punished by a more severe punishment, that is, imprisonment of no longer than three years or a fine of no more than 30 million Korean won.

### **Protection of the right to communication by the Telecommunication Business Act**

256. Previously, article 53 of the Telecommunications Business Act banned telecommunications having contents detrimental to public order or morals among those open to the public through Internet bulletins, and authorised the Minister of Information and Communications to order telecommunications enterprises to refuse or limit the process of such telecommunications. However, the Constitutional Court decided on 27 June 2002 that the above article was unconstitutional for it violated the principles of clarity and prohibition of excessive restrictions (decision 1999 HEON-MA 480).

257. Following the decision, the Telecommunication Business Act was revised on 26 December 2002 so that banned telecommunications are specified by law and limited to those disclosing state secrets or having a criminal objective, and that before the Minister of Information and Communications orders a telecommunication enterprise to refuse or limit the process of such telecommunications, the order shall be reviewed by the Information and Communication Ethics Committee, a neutral body composed of private experts including legal experts and representatives of users' organisations. The protection of users' rights is further reinforced as both users and telecommunication enterprise are given an opportunity to present their opinions before an order is decided.

### **Paragraph 2**

258. Legislation of the Act on Protection and Use of Location Information is in preparation in order to prevent violations of the right to privacy by misuse and abuse of personal location information, as users of mobile phones have multiplied and positioning technologies have developed rapidly. At the same time, the Act provides that personal location information can be used in exceptional cases such as emergency rescues, and makes it compulsory for service providers to build a system for preventing the misuse and abuse, abstain from sub-contracting the service, and ensure the immediate destruction of personal location information once its intended purpose has been accomplished.

### **Management of the National Education Information System (NEIS) and violation of the right to privacy**

259. The Government put into operation the National Education Information System (NEIS) in November 2002. The new information system connects the Ministry of Education and Human Resources Development and 16 metropolitan and provincial educational agencies with all primary and secondary schools through the Internet, and allows electronic processing of all information on educational administration including information on school affairs, personnel affairs, and financial affairs through the network. However, concerns were raised over the introduction of the NEIS in relation to infringements on the right to privacy, and in May 2003, the National Human Rights Commission made a recommendation calling for reform of the system.

260. The NEIS has been introduced to enhance teachers' work efficiency and therefore to create an environment where teachers can concentrate on education. It was expected to enhance

the rights of parents to know, as they are provided with information on their children's educational performance through the Internet, and to raise national living standards by providing electronic services to citizens.

261. To protect safely the information processed in the NEIS, the Government has installed up-to-date security devices such as firewalls against hacking and server security systems, and has arranged various security means to prevent leakage of private information to unauthorised persons such as installing an intrusion detection system, managing log-ins to the database and the system, and using a system of selective access based on user authorization level.

262. The Informatisation Promotion Committee was established under the Prime Minister, which has reviewed all relevant matters of the NEIS such as those of education, information technology and human rights and formulated rational management policy of the system through open public forums and hearings. That is, data on school affairs, educational affairs, schools' admissions and transfers, and health matters, indicated as requiring privacy in accordance with human rights by the National Human Rights Commission, have been excluded from the revised NEIS and are to be managed by a separate system. Independent supervisory bodies have been put into operation at the national, provincial and municipal levels, supervising and guaranteeing the authority of school principals in information management. The regulations on the recording and management of educational officials' personnel information were revised on 5 December 2003 so that out of the 26 entries in six fields found likely to cause encroachment of human rights by the National Human Rights Commission, 21 entries be deleted from the database leaving the minimum information necessary for personnel management such as an educational official's blood type, family relations, his/her family members' names, birthdates, and occupations. As a way of strengthening students' right to privacy, the information on students has been categorised into the following three classes and the scope of their sharing is decided based on the class of information: class A information is managed by the teacher in charge, class B information is managed by the school in question, and class C information is accessible by other schools, higher schools or related public agencies as prescribed by law. The Government has set a short-term goal of revising education related statutes to supplement the legal bases for informationalisation of education as well as a long-term goal of legislating the Basic Act on the Protection of Private Information and other related laws to strengthen peoples' right to privacy.

### **The Supreme Court's decision on the protection of the right to privacy and correspondence**

263. On 8 October 2002, the Supreme Court expressed its opinion that "If one party to a telephone conversation, one type of telecommunication, records the contents of the communication without the knowledge of the other party, the act is not that of wiretapping defined by a violation of the Communications Privacy Protection Act and therefore does not constitute a violation of the law, but that when a third party records the contents of a telecommunication without knowledge of one party involved, even with the consent of the other party, the act violates the Communications Privacy Act in view of the Constitution's stipulation of the right to privacy and communications as fundamental human rights of citizens and the spirit of the Communications Privacy Act enacted to protect privacy of communications and promote freedom of communications" (decision 2002 DO 123).

## Article 18

### Paragraph 1

#### Guarantee of the right to freedom of conscience and religion

264. The first report (CCPR/C/68/Add.1, paras. 229-231) and the second report (CCPR/C/114/Add.1, paras. 186-191) stated that the Constitution sets forth the freedom of conscience and the freedom of religion, and described institutional provisions to guarantee these rights.

#### Guarantee of the activities of religious organisations

265. In addition to the provision of freedom of religion in its article 20, paragraph 1, the Constitution states in article 20, paragraph 2, that “No state religion shall be recognized, and religion and politics shall be separated,” explicitly denying state religions and upholding the principle of separation of church and state, as stated in the second report (CCPR/C/114/Add.1, paras. 192 and 193).

266. Recently, religious organisations show an increasing degree of engagement with key political and social issues: religious leaders and representatives of religious organisations participate and give the views in the decision-making process as members of committees that promote national policies and projects. In resolving political and social problems, religious leaders and representatives of religious organisations play an increasingly important role.

267. In the Republic of Korea, a variety of religions such as Christianity, Buddhism, Catholicism, Won Buddhism, and Chondogyo (a religion of the cosmos developed in Korea) coexist peacefully. The inter-religious associations including the Korean Council of Religious Leaders and the Korean Conference on Religion and Peace have promoted inter-religious reconciliation and peace. Annually, a pan-religious arts event called Korea Religious Arts Festival is held by the seven major religious orders, with its seventh gathering held in 2003. Painting, film and music: the three arts genres of the pan-religious event, serve to promote the spirit of reconciliation and co-existence.

268. The Constitution states in article 20 that “every citizen has right to freedom of religion,” by which freedom of religion is provided to prison inmates. The Penal Administration Act stipulates in article 31 that if a prison inmate requests a special religious gathering according to the doctrines of his/her religion, the head of the prison may commission the religion’s church to organise the gathering in the compound.

269. In the past, religious gatherings were not permitted to believers of minority denominations such as the Jehovah’s Witnesses due to limited space in detention centres. On 14 October 2002, the National Human Rights Commission found that the prohibition on religious gatherings of detained Jehovah’s Witness followers was a violation of their right to equality and freedom of religion and made a recommendation that they be permitted to have religious gatherings. The recommendation was accepted by the Government and since 3 July 2003, all inmate believers of minority religions have been granted the freedom of religion.

**Paragraph 2****Abolition of ideology conversion oath and law-abidance oath**

270. Upon examination of the second report, the Committee expressed its concern over the ideology conversion oath and the law-abidance oath (CCPR/C/79/Add.114, para. 15). The ideology conversion oath sworn by offenders of public security or related laws to be used as a reference for the judgement of their release on parole was replaced by a law-abidance oath in August 1998. The law-abidance oath itself, merely a way of confirming offenders' will to respect laws, was abolished in July 2003.

**Paragraph 3****Conscientious objectors to military service**

271. The Republic of Korea suffered a three-year war from a surprise invasion from North Korea in June 1950, and the development of nuclear weapons by North Korea poses a serious threat to the existence and security of the Republic of Korea. Therefore, the Government does not recognise alternative forms of service for conscientious objectors to military service, for it may result in a rapid decline in its defence capability.

272. In considering a system of alternative forms of service for conscientious objectors, the Government has taken into account the following problems: (a) conscientious objectors may become quite numerous due to the abstract and voluntary nature of religious and personal beliefs, which would make it impossible to maintain the current conscription system essential for the national security and defence; (b) in the context of current universal conscription system, exempting recipients of alternative service from basic military training, training for reserve forces and wartime mobilisation, which the normal conscripts bear as part of their military service, may create a violation of the principle of equality; and (c) as military human resources are ever declining due to a decreasing birth-rate, the introduction of alternative service may prompt a national security crisis.

273. The recent data below show the number of persons refusing to enlist based on conscience.

**Data on refusals to enlist by conscientious objectors**

Total/year	2000	2001	2002	2003
1 765	1	380	825	559

\* Total number of persons having refused to enlist and charged for violating the Military Service Act

274. The table below shows the data on criminal punishments of persons who refused to enlist based on conscience.

**Data on criminal punishments for refusal to enlist  
based on conscience**

(Period: 2000-2003)

Total	Two or more years of imprisonment	From one and a half to less than two years of imprisonment	Suspended sentence	Halt of indictment	Acquittal	Suspension of indictment	Pending in court
1 765	17	1 142	3	2	41	2	558

**The Constitutional Court's decisions with regard to conscientious objection**

275. Major rulings of the Constitutional Court on the freedom of conscience, since the examination of the second report (CCPR/C/114/Add.1) are as described below.

276. The Constitutional Court made a decision on 19 July 1999 on whether the provision of the National Security Act criminalising non-reporting of violators may infringe on freedom of conscience. The Court ruled that "In light of all circumstances including our current national situation and the importance of the provision's legal benefits, the provision of criminalising non-reporting of violators is not considered to violate the principle of prohibition of excessive restriction or the essence of the freedom of conscience, to infringe on the right to refuse to confess - because what is to be reported is not one's own crime but another's crime, -nor to deviate from the principle of *nulla poena sine lege* (decision 1996 HEON-BA 35).

277. On 27 September 2001, the Constitutional Court decided that fixing the date of state legal bar examinations to Sundays is considered an inevitable limitation compelled by public interest and not an infringement on an essential part of the freedom of religion of Christians" (decision 2000 HEON-MA 159).

**Article 19**

**Paragraph 1**

**Abolition of the law-abidance oath**

278. As described in paragraph 270 of this report, the law-abidance oath system was abolished on 30 July 2003, in accordance with the recommendation by the Committee. As the result, offenders of public security-related offences such as those convicted of violating the National Security Act are now subject to the same review process applied to other general convicts, instead of being required to give a law-abidance oath during their parole reviews.

## Paragraph 2

### Presentation of periodicals to the authorities and the freedom of expression

279 Article 10 of the Act on the Registration of Periodicals prescribes that when a periodical is published, two copies shall be submitted to the Minister of Public Information. As stated in the second report (CCPR/C/114/Add.1, para. 197), the Constitutional Court decided that the periodicals submission system does not infringe freedom of expression nor freedom of press.

280. Freedom of expression and freedom of press are fully guaranteed by the Constitution, but, as stipulated in the Covenant, can be restricted in certain circumstances: practices of the media and the press shall not infringe the dignity or rights of others, nor on public morals or social ethics, and in case that such an infringement occurs, the victim can seek appropriate compensation for damages (art. 21, para. 4, the Constitution). Furthermore, anyone damaged by the content of a periodical can make a claim to have a corrected and an additional report published in the same periodical (art. 16, para. 20, Act on the Registration of Periodicals).

### Statistics of periodicals

281. As of the end of 2003, there were in total 6,686 registered periodicals including 556 daily, 2,340 weekly, 2,443 monthly, 358 bi-monthly, 740 quarterly and 249 bi-annual publications.

### Abolition of review on works of expression and pre-censorship of works of performance

282. Pre-censorship of works of performance, which had been controversial in relation to the freedom of expression, was abolished in February 1999 with the amendment of the Performance Act. Since 1999, motion pictures and video works are no longer subject to pre-review of the Performance Ethics Committee, but have been rated only by the Korea Media Rating Board. The Board is a voluntary and independent body, composed of civilians who do not work in the administrative or legislative bodies, and was established by the Act on Phonographic Records, Video Works and Computer Games, which replaced the Performance Act in 2001.

283. The media rating specifies age groups that may view certain media product, and is usually given one of the four ratings: for all age groups, persons 12 years or over, 15 years or over, and 18 years or over. In case of motion pictures, unlike video works, the amendment of the Motion Pictures Promotion Act of 26 January 2002 abolished the system of *suspension of rating*, the constitutionality of which had been debated, and introduced a five-level rating system by adding a *limited showing for adults* rating to the above four ratings. This has helped to expand the scope of freedom of expression in the relevant field.

284. In the case of video works, the system of *suspension of rating* is maintained in consideration of juveniles' relatively easy access to video works. However, the suspension of rating is applied to a highly limited number of cases such as when the restriction is necessary for the protection of national security, public order or public morals as stipulated in the Covenant.

285. The following data show the results of rating motion pictures and video works from February 2002, when a new rating of limited showing for adults was fully operated for motion pictures, to the end of 2003.

### Results of rating motion pictures

(Unit: number of pictures)

	No. of motion pictures	Rated 12+ years	Rated 15+ years	Rated 18+ years	Rated limited showing	Total
Korean pictures	44	37	117	44	1	243
Foreign pictures	87	98	189	91	1	466
Total	131	135	306	135	2	709

### Results of rating video works

(Unit: number of pictures)

Rating	No. of works			No. of works subject to suspended rating					
	Korean	Foreign	Total	Korean		Foreign		Total	
				No.	Ratio	No.	Ratio	Total	Ratio
No. and ratio	2 517	4 828	7 345	1 333	84%	254	16%	1 587	100%

286. In case of phonographic recordings, the review system stipulated by the previous Act on Phonographic Recordings, Video Works and Computer Games, prescribing review on demand only, as stated in the second report (CCPR/C/114/Add.1, para. 200), has been abolished. The Media Rating Board, since then, has had the right to rate phonographic recordings as improper to be used by juveniles in case the recording is deemed to be harmful for juveniles' sound formation of personality due to content involving gambling, violence or sexual contact.

### Statistics of broadcasting companies

287. As of the end of 2003, there were 43 ground wave broadcasting companies, 119 comprehensive cable television broadcasting companies, one satellite broadcasting company, and 157 channel-sharing broadcasting companies.

### Guarantee of independence and neutrality of broadcasts

288. To guarantee the freedom and independence of broadcast programming, the Broadcast Act provides that a broadcasting company shall elaborate and announce its regulations on broadcast programming reflecting the opinions of reporters and production personnel (art. 4). The Act further states that "Broadcasters shall present programmes without discrimination as to sex, age, occupation, religion, belief, social class, regional origin, and race. Programmes shall be broadcasted such that they provide equal opportunities to groups with differing views when

announcing policies of the government or a particular group, and maintain a balance when producing programmes regarding a political interest group” (art. 6). As such, fairness, public interest and neutrality of broadcasts are guaranteed.

289. The Act stipulates that “A broadcasting commission shall be established to realise the public accountability, fairness and public interest of broadcasts, to improve the quality of the contents of broadcasts, and to promote fair competition among broadcasting enterprises” (art. 20), authorising the rights of regulating, mediating and overseeing broadcasting enterprises to the Broadcasting Commission, which decides all issues under its mandate by consensus of the commissioners, independent of any direction or interference from the outside. The Broadcasting Commission shall be composed of three experts from civil society recommended by the Speaker of the National Assembly after consultations with representatives of major parties in the National Assembly, three broadcast-related experts representing broadcast audiences recommended by the Speaker of the National Assembly at the initiative of the Standing Committee on Culture and Tourism of the National Assembly, and three persons picked by the President. The President formally appoints the nine commissioners.

### **Paragraph 3**

#### **Criteria of interpretation of the National Security Act presented by the Constitutional Court**

290. Concerning the National Security Act, the Constitutional Court has presented strict criteria for interpreting the law so as to prevent abuse and arbitrary interpretations of the law and to ascertain constitutionality in applications of the law. The court has decided certain provisions of the law unconstitutional or constitutionally non-conforming.

291. On 28 November 2002, the Constitutional Court ruled unconstitutional article 13 of the National Security Act, which prescribes a maximum penalty of death to a repeated offender of crimes against the state when a second commission of a crime occurs within five years of the end of the previous sentence’s term or the time of decision to suspend the sentence of the same crime. It states in its ruling that “As legislative discretion is not unlimited, even though it is basically within the authority of the legislature to decide the kind and the scope of legal prescription of punishment, the decision of the kind and the scope of punishment must conform with article 10 of the Constitution that demands that the human dignity and value of all citizens shall be respected and protected from threat of punishment. At the same time, the decision must be taken so as to realise the rule of law substantially by defining legitimate punishment in conformity with the principle of individualisation of punishment, and to maintain appropriate proportionality between the severity of a crime and the punishment for the crime. When a person who has committed a crime against the state and received a punishment for it commits another crime against the state, the accusation against him/her is likely to be higher and the corresponding punishment needs to be more severe. However, the provision allowing a maximum death penalty even for relatively minor offences such as the violation of article 7, paragraphs 1 and 5, for the mere reason that the offence constitutes a repetition of a crime against the state, loses its legitimacy because such an imbalanced punishment cannot be justified

by the legislative purpose of protecting the state and citizens from anti-state crimes” (decision 2002 HEON-GA 5). The decision took immediate effect and application of article 13 of the National Security Act has been suspended.

### **Debates on the amendment or abolition of the National Security Act**

292. The National Assembly has prudently discussed the possible amendment or abolition of the National Security Act, as bills to amend or abolish it have been presented in the National Assembly, reflecting criticisms that the law excessively restricts the fundamental human rights of citizens such as freedom of expression provided by the Constitution.

293. As the National Security Act is an important law directly linked with safeguarding the liberal democratic system of the Republic of Korea, which is the basis of citizens’ freedoms and rights, a final position on legislative amendment or abolition has not been reached. However, a wide range of discussions and deliberations have been made to the issue, including due consideration of the points brought up by the international community, all of which further strengthen the principle of prudent application of the law.

### **Strict application of the National Security Act**

294. Fully aware of the concerns raised by the Committee and in view of the purpose of the law which is to protect the lives and liberties of citizens and to preserve the democratic system of the country from the threats of those within and outside the country seeking to overthrow the liberal democratic system of the country, the Government is doing its utmost to minimise the possibility of arbitrary interpretation and abuse of the law by investigative agencies as in the following paragraphs.

295. Responsible for investigating and indicting offences against the National Security Act, the prosecution is interpreting the law in a strict manner in accordance with the interpretation criteria and the spirit of the law elaborated by the decisions of the Constitutional Court and other courts, and is ensuring that the police and the National Intelligence Service handle offences of the National Security Act in the same strict manner as the prosecution does.

296. In particular, the Government is strictly forbidding law enforcement officials to interpret loosely the notions of “crimes of praising, inciting, propagating the activities of or acting in concert with an anti-government organisation or instigating a rebellion against the state” as stated in article 7 of the law.

297. As the result, the number of persons booked or arrested on charges of violating the National Security Act has manifestly dropped, from 2,605 between 1994 and 1998 to 1,433 between 1999 and 2003, marking a 45 percent decrease.

### **Offences of the National Security Act, 1999-2003**

(Unit: No. of persons)

Year	1999	2000	2001	2002	2003
Booked on charges	506	286	247	231	163
Arrested	312	130	126	131	84

### **Freedom of expression on the Internet**

298. The Youth Protection Act makes it possible to review media works including those on the Internet and to prohibit distribution of media works that are found harmful to youth. By introducing the notion of *media works harmful to youth* as a way of creating a buffer zone in media production areas, the law seeks to strike a balance between the two public interests, that is, the protection of youth and freedom of expression, without compromising the latter.

299. In other words, the introduction of the notion of media works harmful to youth makes it possible to distribute media works that are recognised as damaging to the mind and body of the youth to adults only, thereby serving the public interest of protecting youth while not infringing on freedom of creation, an essential to the freedom of expression.

300. The question of harm to youth is not determined by the Government, but by non-governmental, autonomous, expert bodies that review works of each category of media, that is, publications, visual media, information and communication works, and broadcast programmes.

### **Freedom of expression concerning homosexuality**

301. On 2 April 2003, the National Human Rights Commission made a recommendation that article 7 of the Enforcement Decree of the Youth Protection Act classifying the promotion of homosexuality as one of the criteria for determining media works harmful to youth could constitute discrimination against homosexuals and that this criterion be omitted. Accommodating the recommendation, on 30 April 2004, the Government removed homosexuality from the criteria for identifying media works as harmful to youth.

#### **Key criteria for determining media works as harmful to youth**

- |   |
|---|
| <ul style="list-style-type: none"><li>(a) Excessively portraying obscene poses;</li><li>(b) Excessively depicting methods, emotions, and voices related to sexual intercourse;</li><li>(c) Depicting bestiality or promoting group sex, incest, sadomasochism, prostitution, and other sexual relations not commonly accepted in society;</li><li>(d) Distorting sex ethics by promoting sexual activities involving a juvenile or describing a woman as an object of sex;</li><li>(e) Inflicting injury or violence to, or murder of one's lineal ascendants likely damaging to traditional family ethics;</li><li>(f) Sensationalising or promoting scenes of cruel murder, violence, or torture;</li><li>(g) Beautifying or promoting physical or mental abuse such as sexual violence, suicide or self-inflicted cruelty;</li><li>(h) Instigating criminal acts by beautifying crimes or depicting details of criminal methods.</li></ul> |
|---|

## **Article 20**

### **Paragraph 1**

#### **Ratification of the Rome Statute of the International Criminal Court**

302. Mindful that during the last century millions of people were victims of atrocities and affirming the Rome Statute of the International Criminal Court in that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation, the Government signed in March 2000 and ratified in November 2002 the Rome Statute of the International Criminal Court.

303. Accordingly, the Government is preparing a bill that enables punishment of crimes within the jurisdiction of the International Criminal Court for the purpose of protecting the dignity and value of human beings, and determines the scope and procedures of cooperation between the Republic of Korea and the Court.

### **Paragraph 2**

#### **Efforts towards a peaceful unification of Korea**

304. Korea remains divided into North and South Korea. Therefore, the Government has set the unification of two Koreas as the biggest ultimate goal of the Korean nation and has consistently pursued the principle of peaceful unification founded upon the fundamental tenets of liberal democracy.

305. The Government has continuously worked to realise the resolve towards a peaceful unification. In particular, the first summit between two Koreas, held on 13-15 June 2000, adopted the 5-point Joint Statement of North and South Korea which states that "North and South Korea shall pursue balanced development of national economy through North-South cooperation and solidify mutual trust by boosting cooperation and exchanges in social, cultural, athletic, health, and environmental areas. Since the summit, multi-level talks have continued and various economic cooperation projects are underway such as reconnecting the railways and roadways between the two Koreas, constructing a South Korean industrial complex in North Korea, and offering South Koreans an opportunity to North Korea. Human exchanges between the two Koreas have been growing and reunions of family members divided by the North-South division have been held regularly, which indicate that cooperation between two Koreas is reaching the level of institutionalisation.

## **Article 21**

306. Upon examination of the second report, the Committee expressed its concern that the prohibition of all assemblies on major roads of major cities might be excessively prohibitive (CCPR/C/79/Add.114, para. 18).

307. However, the Constitution guarantees freedom of assembly and the Act on Assembly and Demonstration specifies guarantee of it. The law provides that a person who intends to hold an

assembly does not need to get permission from the authorities, but in case of open-air assemblies or demonstrations, reporting to the chief of a police station having jurisdiction over the area in question is required for administrative purposes (art. 6). Upon receiving the report, the chief of the police station cannot prohibit an assembly unless it happens to be one of the assemblies or demonstrations prohibited by law.

308. The law guarantees peaceful assemblies and demonstrations, but prohibits assemblies or demonstrations which present a clear and direct threat to public safety and order through mass violence, intimidation, destruction and arson, or which intend to achieve the objective of a political party that was dissolved by a decision of the Constitutional Court for the protection of citizens from illegal and violent demonstrations (art. 5). Organising open-air assemblies or demonstrations before sunrise or after sunset (art. 10), unless it is inevitable in light of the nature of such an assembly or a demonstration, and in public places such as the National Assembly building and courthouses, is also prohibited.

309. An assembly or a demonstration on main roads of major cities designated by presidential decree can be prohibited to ensure the flow of traffic or restricted with conditions of observance of traffic order, but cannot be prohibited when the sponsors of the assembly or demonstration duly designate persons in charge of maintaining order and discipline and march on the roads (art. 12). However, an assembly or a demonstration can be prohibited when a severe obstruction to the flow of traffic may occur, thereby causing a serious inconvenience to the public.

310. A comparison of the number of applications for assembly with the number of cases prohibited for reasons of traffic flow from the beginning of 2000 to the end of 2003 reveals that assemblies on main roads are not prohibited without reason.

311. In 2000, 81 cases (0.4%) were prohibited out of a total 18,355 applications, of which only seven were prohibited for reasons of traffic flow on main roads of major cities. In 2001, 169 cases (0.6%) were prohibited out of a total 85,860 applications, of which twenty-four were prohibited for reasons of traffic flow on main roads. In 2002, 193 cases (0.6%) were prohibited out of a total 32,040 applications, of which sixteen were prohibited for reasons of traffic flow on main roads. In 2003, 149 cases (0.8%) were prohibited out of a total 18,682 applications, of which just four were prohibited for reasons of traffic flow on main roads.

312. The above statistics clearly show that to guarantee freedom of assembly to its maximum, the Government has prohibited or restricted assemblies or demonstrations to the minimum required for the maintenance of the public safety and order.

### **The Constitutional Court's ruling with regard to freedom of assembly**

313. The Constitutional Court ruled on 30 October 2003 that article 11, paragraph 1 of the Act on Assembly and Demonstration, which prohibits outdoor assemblies held within 100 meters from the boundary of a foreign diplomatic mission's office building, is unconstitutional for reasons of its excessive infringement on freedom of assembly (decisions 2000 HEON-BA 67 and 83).

## **Revision of the Act on Assembly and Demonstration**

314. On 29 January 2004, the Government revised the Act on Assembly and Demonstration so as to more effectively guarantee freedom of assembly and demonstration, and continues to make efforts to change the culture of violent assemblies and demonstrations into peaceful and sound ones and to minimise inconveniences to the public caused by noise and ensuing traffic congestion. The key amendments are as follows: a person intending to hold an open-air assembly or demonstration must submit an application to the authorities between 720 and 48 hours prior to the assembly or demonstration; assemblies or demonstrations that include a march, which may cause a severe traffic obstruction, can be restricted; in case assemblies or demonstrations are held near an educational or a military facility and may infringe the right of learning or damage the facility, they can be restricted at the request of the manager of the facility; in case a reported assembly or demonstration incurs a direct threat to public safety and order by such means as mob violence, intimidation or arson, the authorities can forbid the organiser to continue the assembly or demonstration for its remaining period; assemblies held near a diplomatic mission are allowed if they are not likely to develop into large-scale demonstrations or are held on holidays: and to give advice on prohibitions or notifications of restrictions on assemblies and demonstrations, an advisory committee composed of defence lawyers, university professors and persons recommended by civil society is commissioned by each police station.

## **Article 22**

### **Paragraph 1**

315. Upon examination of the second report, the Committee expressed its concern over restrictions on the right to freedom of association of teachers and other public servants (CCPR/C/79/Add.114, para. 19).

316. The Government has made efforts to guarantee freedom of association for teachers and public officials. On 29 January 1999, the Act on Teachers' Organisation and Management of Labour Unions was enacted to provide to teachers the right to organise, the right to collective bargaining and the right to collective agreement from 1 July 1999. The act provides teachers with the right to organise trade unions at national, provincial and municipal levels and the right to negotiate with the Minister of Education and Human Resources Development on teachers' working conditions. However, the right to collective action is restricted in light of the special status of teachers as educators and to prevent it from infringing on pupils' right to learn: this does not constitute an excessive restriction in view of the fact that the same legislative measures exist in many countries. With the Act, the Korea Teachers' Union, outlawed from its inauguration in 1989, acquired legal status, and reached the first collective agreement with the Minister of Education and Human Resources Development on 3 July 2000. Up to the present, two educational workers' unions, the Korea Teachers' Union and the Korea Union of Teaching and Educational Workers, have been active.

317. Concerning the right of public officials to organise labour unions, the Act on Establishment and Operation of Public Officials' Workplace Associations was enacted on 20 February 1998 based on the agreement reached by the Tripartite Commission.

Since 1999, a Public Official's Workplace Association has been organised in each administrative unit, in which working-level public officials (at ranks of grade 6th, 7th, 8th, and 9th) are allowed to participate. The Tripartite Commission held a discussion on public officials' unionisation, based on which the Government introduced to the National Assembly a draft Act on Public Officials' Organisation and Management of Labour Unions. The bill is pending in the National Assembly, and the current Government plans to revise the draft bill, reflecting some provisions of the Act on Teachers' Organisation and Management of Labour Unions and introduce it to the National Assembly. The revised draft bill's key provisions are to guarantee public officials' right to unionise and their right to bargain collectively with governmental authorities, but to restrict the right to collective action in light of the public nature of their work and their special status as public officials.

### **Improvement of labour-management relations**

318. Labour-management relations and practices in the Republic of Korea, with its model dating back to 1953 when Korean society was in its initial stages of industrialisation, have increasingly shown many limitations in dealing with the variety and complexity of labour-management issues that arise from the current globalised and information-based society. Therefore, improving both the competitiveness of companies and the employment and living standards of workers by reforming fundamentally general attitudes and institutions with regard to hostile labour-management relations has become a national task geared towards finding rational resolutions for current labour-management issues and actively preparing for the 21<sup>st</sup> century. To these ends, the Government has set three objectives for reform in labour-management relations: to minimise the social cost of labour-management conflicts, to bring about a flexible and stable labour market, and to strengthen social protection of vulnerable workers. A comprehensive reform involving legal, institutional, attitudinal, and practical changes is now being pursued. In particular, the Government set up the Committee for Studying Advancement of Labour-Management Relations on 10 May 2003, composed of 15 neutral academics, to examine options for institutional reform; their recommendations for legal revisions have been deliberated by the Tripartite Commission, a social consultation body representing labour, management and the Government.

### **Limitation on seizure of wage credit**

319. Based on the judgement that the livelihoods of the employees and their families may be threatened by the seizure of employees' wage credit by the owner of enterprise as a measure of balancing the loss born by the employees' illegal actions during disputes, the Government is preparing a revision of the Civil Affairs Execution Act to protect low-wage employees in such a situation by limiting the amount of wage credit subject to seizure such that actual wages received by employees are, at the minimum, equal to their minimum living costs.

### **Paragraph 2**

#### **The courts' rulings on teachers' labour rights**

320. Concerning prohibition of teachers' collective action, the Supreme Court ruled on 30 July 1999 that, "Collective action by teachers obstructs normal activities of educational establishments such as organisation of school classes, guidance for pupils, and administration of

schools” (decision 1996 NU 587). On 22 July 1991, the Constitutional Court also decided that, “International declarations, covenants or recommendations concerning education do not provide that teachers shall exercise labour rights without any restrictions even as to impede the functioning of educational institutions that is the most appropriate to our society, or that teachers shall organise themselves into a union of the same sort applicable to general workers, rather than forming an association of teachers reflecting fully their special occupational status as educators” (decision 1989 HEON-GA 106).

## **Article 23**

### **Paragraph 1**

#### **Welfare policies for households in need of protection**

321. The Mother-Child Welfare Act, enacted in 1 April 1989, was revised as the Parent-Child Welfare Act on 18 December 2002, to promote the welfare of economically vulnerable single-parent households, including families afflicted by the death of a parent, divorce, or the loss of capacity to work by a parent due to a physical or mental disorder.

322. Support to low-income single-parent households includes subsidies for raising and educating children in secondary schools, priority access to permanent rental houses, welfare loans, and reduced fees for childcare. The Act protects single-parent households in need by giving support to facilities providing livelihood protection and stable accommodations to homeless or single-parent families without housing, facilities protecting single-parent family members from physical and mental abuse of an estranged spouse, and facilities supporting the health of single mothers and their infants.

#### **Creating family-friendly working environments for working women**

323. The Labour Standards Act and the Employment Insurance Act were revised on 14 August 2001 so that employment insurance provides an additional 30 days of paid maternity leave, resulting in the extension of the paid maternity leave for working women from 60 to 90 days.

324. The Government enacted the Infants Nurturing Act on 14 January 1991 to support women’s employment and create a basis for compatible life in both the household and the workplace. The law provides expansion of childcare facilities, development and distribution of nurturing programmes that guarantee quality service in childcare facilities and nutritional subsidies for infants and children of low-income families under the age of five.

325. In the past, the person eligible to apply for a childcare leave was a female worker or a male worker on her behalf, but the Equal Employment Act revised on 14 August 2001 provides that all workers are entitled to childcare leave, prohibits dismissals during the leave, guarantees reinstatement after the leave, and grants payment from the employment insurance fund during the leave. For public officials, the State Government Officials Act and the Local Government Officials Act were revised on 19 January 2002 and 18 December 2002 respectively, so as to

expand entitlement for childcare leave to those with a child under the age of three from those with a child under the age of one, and to reflect the full period of a leave, rather than a half of their period as done previously, into the calculation of the total length of the service period.

326. The Government is expanding childcare services for women to facilitate their participation in social activities. The number of childcare facilities increased to 24,142 at the end of 2003 from 18,768 in 1999, and the budget for childcare service rose to 312 billion won in 2003 from 125.3 billion won in 1999, while every year increasing amount of subsidies is given for establishing special needs childcare facilities such as infants-only, handicapped children-only, part-time only, holidays-only, and 24-hour childcare facilities.

327. To obtain basic data necessary for seeking desirable family relations, the Government conducted a national family survey in 2003 of about 10,000 persons in households across the country.

## **Paragraph 2**

328. The right to marry and found a family is guaranteed to all men and women of marriageable age, as stated in the initial and the second reports.

## **Paragraph 3**

329. It has already been confirmed in the initial and the second reports that no marriage shall be legal unless the intending spouses marry of their own free and full consent.

## **Paragraph 4**

### **Prevention of discrimination and violence in households**

330. Upon examination of the second report, the Committee expressed its concern over the serious notion of preferring boys to girls and the family head system (CCPR/C/79/Add.114, para. 10). On 16 October 2000, the Government made efforts to reform such gender-discriminatory institutions; notably, presenting to the National Assembly draft bills on the amendments to the Civil Act to replace a prohibition of marriage between persons sharing the same surname and family origin with that of marriage among immediate relatives, to abolish the mandatory waiting period of six months for women to remarry, and to allow adopted children to use legitimately the family name of their step father. As for the family headship system, noted with concern by the Committee, the Government has submitted a bill of revision of the Civil Act, as explained in paragraph 65 of this report with regard to article 3 of the Covenant.

331. On 1 October 1999, the guidelines for changing sojourn status were revised to give the same rights with regard to immigration to foreign men who are married to Korean women as those foreign women married to Korean men, when they or their spouses have a means of earning a living.

## Article 24

### Paragraph 1

#### Promoting policies for the protection of children

332. The continuous efforts made by the Government for the protection of children have been stated in the initial and the second reports (CCPR/C/68/Add.1, paras. 285-295, CCPR/C/114/Add.1, paras. 237-245). Violence in schools is on the decrease overall, while sometimes serious incidents still occur. The Government is promoting policies to create a stable and lively culture and raise the quality of education at schools.

#### Number of students punished for violence at school by year

1999	2000	2001	2002	2003
10 182	11 562	11 310	7 318	7 769

333. The Government has established every year a plan for the prevention and eradication of violence at school, and in 2003, undertook a project to create a safety zone around schools to prevent traffic accidents involving students and violence among students, and to clean up harmful environments. Consultative bodies have been set up among the government ministries including the National Police Agency and the Ministry of Education and Human Resources Development as well as among 16 provincial and municipal offices of education and 180 local offices of education and have conducted bi-annual surveys on violence in schools. Each school is assigned a prosecutor and a policeman in charge, to strengthen cooperation among relevant agencies.

334. Each school has set up a committee for the expulsion of violence from school, and is seeking a new paradigm of guidance for pupils as part of its preventive action to reduce violence and the student drop-out rate. Under the Government's guidance and encouragement, each school has established or upgraded its regulations on school life through democratic consensus-building processes among all school constituents. The Government has also induced schools to provide active counselling services for students by organising training programmes to enhance teachers' counselling skills, helping open diverse counselling channels at school, and awarding letters of appreciation to the nation's best volunteers for their counselling and other school enhancement activities.

335. While each provincial and municipal office of education develops and provides character development education programmes to schools, the Government conducts research on policies towards strengthening character development education in schools, and identifies and propagates best practices for preventing or eradicating violence in schools.

336. On 29 January 2004, the Act on Prevention and Eradication of Violence in Schools was legislated to prescribe protective measures for victims of school violence and special education programmes for student assailants.

337. With respect to physical punishment of pupils by teachers, article 31, paragraph 7 of the Enforcement Decree of the Elementary and Middle School Education Act stipulates that “When the chief of school educates pupils in accordance with the regulations specified in article 18, paragraph 1 of the Act, he/she shall employ such disciplinary or admonitory methods as not causing physical pain to pupils except in cases unavoidable for the purpose of education,” in principle prohibiting physical punishment in schools. The law provides that even for the cases of unavoidable use of physical punishment, its specific methods are to be stipulated in the school regulations through a democratic process of all school constituents by consensus and within the range of reasonably acceptable social norms.

338. The Government plans to maintain supervision of providing guidelines to schools so that neither pupils’ human dignity nor human rights is violated even in cases where physical punishment is unavoidable for the purpose of education.

### **Provision of meals at school**

339. The Government enacted the School Meals Service Act on 29 January 1981, and has gradually built meals service facilities in primary and secondary schools. At the end of 2003, meals service was being provided to 4,181,000 primary school pupils in 5,488 schools and to 1,856,000 middle school pupils in 2,853 schools, and 1,755,000 high school pupils in 2,030 schools.

340. At the end of 2003, 98.4 percent of all primary and secondary schools, or 10,509 schools, were providing meals every day to 7.04 million pupils. The policy of expanding meals service at schools has helped to not only raise the welfare of pupils but also reduce parents’ burden of preparing meals and contributed to increased social participation by women.

### **Status of meals service at school in December 2003**

School type	No. of schools			No. of pupils (in thousands)			Management	
	Total	Schools providing meals	%	Total	Pupils having school meals	%	School’s direct service	Contracted service
Primary	5 488	5 479	99.8	4 181	3 857	92.3	5 446	33
Middle	2 853	2 736	95.9	1 856	1 720	92.7	1 883	853
High	2 030	1 998	98.4	1 755	1 436	83.8	957	1 041
Special needs	138	130	94.2	24	22	94.0	127	3
Total	10 509	10 343	98.4	7 816	7 035	90.0	8 413	1 930

### **Protection for and decrease in number of working children**

341. The number of economically active juveniles has gradually decreased from the 1977’s peak of 1,602,000 to 415,000 in 2001. Analyses show that this has been caused by a general rise in the economically passive population as a result of a decrease in the juvenile population and a

rise in the rate of juvenile enrolment in higher educational establishments. As the recent working pattern of children shows a change from the previous type of working for survival to that of working for professional experience for resume building or consumption, as shown by the increasing number of young part-time workers, the Government is making efforts to devise new measures to protect working children by investigating the situation and providing job training.

### **Protection of juveniles from harmful environments and activities**

342. The constitutional provisions and institutions dealing with the protection of working children are as described in the second report (CCPR/C/114/Add.1, para. 239), and parents' responsibility for protecting children is also as stated in the second report (CCPR/C/114/Add.1, para. 241).

### **Protective custody of children in need of protection**

343. Children who are abandoned or whose guardians are not qualified to raise them and therefore require social protection are accommodated in child welfare facilities (art. 10, Minor Welfare Act): there were 18,818 children accommodated in 279 facilities at the end of 2003.

344. Article 29 of the Child Welfare Act stipulates punishment for the following offences consisting a crime: maltreating a child such that it causes physical harm; sexual harassment of a child causing humiliation; abusing a child including sexual violence; emotionally maltreating a child such as to cause harm to the child's mental health and development; abandoning or neglecting to provide adequate medical treatment or basic protection and rearing such as food, clothing, and accommodation to a child who is under his or her guardianship or supervision; selling a child to another person; forcing a child to perform obscene acts or mediating such activity, making a public exhibit of a disabled child, making a child beg or begging by using a child, or making a child perform acrobatics that are harmful to the child's health or safety for the purpose of entertainment or profit making; mediating child fostering by an unauthorised person to acquire money or other valuables; and using money and other valuables designated for a child for a purpose other than the one originally intended.

345. The Juveniles Protection Act designates media works, medicinal substances, entertainment enterprises, services and activities harmful to juveniles as "anti-juvenile" environments, and prescribes the following obligations. The person dealing with media works or medicinal substances harmful to juveniles shall indicate them as harmful object to juveniles and shall avoid selling or distributing them to juveniles through identifying recipients' ages. The owner of an "anti-juvenile" enterprise shall verify the ages of its employees and visitors and prohibit any juveniles from being employed at or entering the site. No one shall participate in an activity with or against a juvenile that is harmful to juveniles as provided for in the law.

346. Any violation of the above obligations is subject to both criminal punishment and administrative measures such as fines. The Juveniles Protection Act prescribes punishment for adult violators of the law such as the owner of an enterprise providing a harmful environment for juveniles, while calling for non-punishment and protection of juvenile subjects.

347. On 29 January 2004, the Juveniles Protection Act was revised to provide that any debt owed by a juvenile to the owner of an enterprise in relation to an activity harmful to juveniles is not binding regardless of the format or name of the contract (art. 26, para. 3). This is believed to provide juveniles with stronger protection against sexual exploitation and wage extortion.

#### **Environments harmful to juveniles stipulated in the Juveniles Protection Act**

Media works		Publications, image products, broadcasting, telecommunications, and other media works deemed harmful by related review bodies and notified as such by the Juveniles Protection Committee
Substances		Liquor, tobacco, narcotics, and hallucinogens
Enterprises	Juveniles barred from entry and employment	Host/hostess bars, karaoke houses, video houses
	Juveniles barred from employment	Lodging houses, liquor bars, beer bars. (Entry is allowed.)
Activities		<p>(a) Forcing, or arranging or facilitating a juvenile to sexually serve a guest by physical contact or exposing a private part of the body for the purpose of profit making</p> <p>(b) Forcing, or arranging or facilitating a juvenile to making, or arranging or mediating in making a juvenile drink liquor with a guest or entertain a guest by singing or dancing for the purpose of profit making</p> <p>(c) Forcing a juvenile to perform obscene acts for the purpose of profit making or entertainment</p> <p>(d) Allowing juveniles of different sexes to sleep in the same room as part of business or providing a venue for such business activity</p>

348. The Juveniles Protection Committee was established under the Prime Minister to strengthen protection of juveniles. The Committee promotes a variety of policies and activities such as (a) promoting juvenile protection polices with the participation of all relevant

governmental agencies, (b) seeking rational policies to regulate media works harmful to juveniles, (c) pursuing policies to protect juveniles from harmful medicinal substances, (d) formulating measures to protect juveniles against harmful enterprises, and (e) elaborating measures to prevent activities harmful to juveniles.

### **Protection of juveniles from sexual crime**

349. It was understood that the Juveniles Protection Act regulating environments harmful to juveniles is not sufficient to counter sexual crimes committed against juveniles. Thus, on 3 February 2000, the Act on Protection of Juveniles from Sexual Abuse was enacted to provide, among other things, disclosure of the identities of offenders of sexual crimes against juveniles.

350. The law was legislated with the purpose of protecting and providing help to juvenile victims (under the age of 19) of sex trade, prostitution, assault, or exploitation for the production or distribution of obscene materials. In particular, the law aims to realise the basic spirit and provisions of the Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

351. The Act prescribes aggravated punishments for crimes of child sex trade including child prostitution, child pornography, and child trafficking, but applies the principle of non-punishment to juveniles victimised by sex trade.

352. The law allows the disclosure of the identities of offenders of sexual crimes against children as an extraordinary measure to prevent such crimes. This purports to eradicate sexual offences against juveniles committed by mostly male adults by disclosing to the public the personal information of sex offenders, *inter alia*, name, age, part of residential address, and an outline of the crime.

353. With respect to the introduction of the sex offenders identity disclosure system, concerns were raised over the potential infringement on the human rights of offenders and some legal experts opposed the system, insisting that it could violate the principle of prohibiting double jeopardy. The law, however, was enacted with overwhelming public support. The Constitutional Court decided on 26 June 2003 that the identity disclosure system is constitutional, for “It has been established, not to punish the offender, but to make adults refrain from committing such sexual offences against juveniles, as well as to raise public awareness of the need to protect society from the threat of sexual violence against children. Its purpose of protecting juveniles from sexual abuse is one of the most important public interests of Korean society. Whereas article 20, paragraph 2 of the law stipulating that sexual offenders’ personal data including name, age, and occupation, and the outline of the crime are to be published, the information is part of the official records of criminal decisions of the court made in criminal proceedings already open to the public, the extent of the limitations imposed on the offenders’ right to dignity and right to privacy by the disclosure does not exceed the public interest in protecting juveniles from sexual crime” (decision 2002 HEOGA 14).

### Outline of the sex offenders identity disclosure system

Persons subject to disclosure	Offenders of sexual crimes against juveniles under the age of 19
Disclosed information	Name (in Korean and Chinese for Koreans, in English for foreigners), age, birth date, occupation, address (city and district only), outline of the crime
Method of disclosure	Published in the Official Gazette, and posted on the bulletin boards of 16 cities and provinces for one month, and on the homepage <a href="http://www.youth.go.kr">www.youth.go.kr</a> of the Juveniles Protection Committee for six months
Frequency	Twice a year (every six months)
Review process for disclosure	The Juveniles Protection Committee's reception of information on sex offenders whose sentences have been finalised → first review → notice to the offenders of the anticipated decision and an opportunity for them to express an opinion thereon → second review → decision-making during public proceedings → notice of the decision to apply the disclosure measure to the offenders and provide them with a 90 days waiting period for appeals including administrative lawsuits against the decision → public disclosure of sex offenders' information.

354. A review is underway to raise the crime prevention effects of the information disclosure system through exploring the possibility of disclosing more detailed information on a certain category of high-risk offenders, following the precedent of the Megan Act of the United States, such as their photographs and criminal records, while organising just educational programmes for a group of low-risk offenders.

### Operational results of the sex offenders identity disclosure system

Order	Date of disclosure	No. of offenders whose information was disclosed
First	30 August 2001	169
Second	19 March 2002	443
Third	24 September 2002	671
Fourth	9 April 2003	643
Fifth	18 December 2003	545
Total	-	2 471

## Paragraph 2

### Registration and surname of the child

355. The Republic of Korea's system with regard to the registration and surname designation of children is as described in the second report (CCPR/C/114/Add.1, paras. 246 and 247).

### **Paragraph 3**

#### **Nationality of the child**

356. Korea's institution concerning the determination of nationality of children is as illustrated in the second report (CCPR/C/114/Add.1, para. 248). Before the revision of the Nationality Act on 13 December 1997, which was based on a paternal lineage system, a child could be a Korean only if his/her father was a national of the Republic of Korea at the time of his/her birth. Since the revision, however, a child shall be a Korean national if either his father or mother is a national of the Republic of Korea at the time of his/her birth. Therefore, a person whose father is an illegal foreigner and whose mother is a national of the Republic of Korea at the time of his/her birth shall be a Korean national and thus may be registered to the family register of his/her mother concurrently with the birth.

#### **Article 25**

357. Every citizen has the right to take part in the conduct of public affairs according to article 25 of the Constitution that stipulates that "All citizens are entitled to exercise their right to hold public office under the conditions as prescribed by law," as stated in the initial report (CCPR/C/68/Add.1).

#### **Amendment of the Act on the Election of Public Officials and the Prevention of Election Malpractices**

358. Since the examination of the second report, the Act on the Election of Public Officials and the Prevention of Election Malpractices that governs elections of the president, national assembly members, local council members and heads of local governments, were revised several times up to 22 January 2003. First, the Constitutional Court decided on 19 July 2001 that "Article 56, paragraph 1, subparagraph 4 of the Act before the revision of 8 October 2001, prescribing a deposit of 20 million won for candidates for membership in the National Assembly, is unconstitutional as the deposit is an excessive amount that overly limits the right to equality and the right to hold public office, and at the same time, infringes on voters' right of selection. Article 57, paragraphs 1 and 2 of the same law also infringes on citizens' right to office, which stipulates that the deposit shall not be returned to the candidate but reverted to the state treasury except when the number of votes obtained by the candidate exceeds either the total number of valid votes divided by the number of candidates or 20/100 of the total valid votes; for the criteria for return of the deposit is so high as to discourage candidate-contenders from candidacy as well as to unjustly sanction candidates who have made all efforts to get elected" (decisions HEON-MA 91, 112, 134). Accordingly, the Act on the Election of Public Officials and the Prevention of Election Malpractices was revised on 8 October 2001 to reduce the election deposit to 15 million won from the previous 20 million won and revise the criteria for return of the deposit so that the deposit shall be returned to the candidate when the number of votes obtained by the candidate exceeds either the total number of valid votes divided by the number of candidates or 15/100 of the total valid votes.

359. Second, on 19 July 2001, the Constitutional Court also decided that "The current distribution of part of the National Assembly membership by proportional representation based

on the exercise of a single vote per person is unconstitutional for the following reasons: the current system of allowing a voter to cast only one vote for candidates in district-level constituencies without allowing him/her to vote directly on the nation-level candidates lists of political parties does not help citizens properly show their opinions towards political parties in elections, because voters' opinion expressed in their vote for candidates in district constituency can not be considered identical with their opinion on the nation-level candidate lists of political parties; the system does not conform with the democratic principle demanding citizen's right to select all their representatives freely; and the absence of separate voting on the national-level candidates lists of political parties makes it impossible for citizens to directly and decisively affect the election of national-level proportional representatives by voting, in violation of the principle of direct voting, because the current system, under which each party lists its national-level candidates itself has unduly final and decisive influence on the result of proportional representation" (decisions 2000 HEON-MA 91, 112, and 134).

360. Third, the Act on the Election of Public Officials and the Prevention of Election Malpractices was again amended on 9 March 2004. The revised law newly establishes and improves a wide range of institutional arrangements in order to guarantee that elections are fairly conducted based on the free will of citizens and democratic procedures. The law specifically provides for the following: reform of the existing high-cost election structure by abolishing public oratorical gatherings - joint or independent - of parties or candidates and, instead, expanding channels of election campaigns through various media such as newspapers, TV and radio broadcastings and the Internet; stricter transparency in the accounting of election expenditures; the establishment of the cyber election irregularities monitoring team in each governmental, municipal or provincial election management committee, which monitors election irregularities occurring on the Internet; a reduction in the election campaign period to 14 days for the offices of the heads of local governments and the National Assembly; legalisation of election campaigns through candidates' own Internet homepage; imposition of technical obligation to Internet media enterprises for checking the authenticity of the names and the resident registration numbers of users before allowing users to express opinions on elections on bulletin boards and discussion rooms of the enterprises' Internet sites; and introduction of obligatory rules for candidates to pay by cheque whenever a single campaign expenditure exceeds 200 thousand won and limiting total cash expenditures to no more than 10 percent of the legal limit of campaign expenditure for each candidate.

### **Enactment of the Local Referendum Act and foreigners' right to referendum**

361. After article 13, paragraph 2, subparagraph 2 of the Local Autonomy Act revised in March 1994 required the Government to introduce a mechanism of local referendum, it worked to legislate the Local Referendum Act to institutionalise input of local residents' opinions into the local administrative decision-making process to make participatory autonomy effective. As a result of this, the Local Referendum Act was enacted on 29 January 2004 and put into effect on July 2004, by which local referendums are held on important decisions to be made by local governments, which may cause an excessive burden to or significantly affect local residents, when demanded by more than a certain number of local residents, the local council or the head of the local government.

362. The newly enacted Local Referendum Act opens the way for foreigners residing in Korea to participate in important decision-making processes of local governments, by providing that foreigners with certain qualifications may exercise their right to vote in local referenda according to relevant ordinances of the local government concerned.

### **The Constitutional Court's ruling on elections**

363. On 25 October, the Constitutional Court decided "Whereas the National Assembly has broad discretion to delimit electoral constituencies, the discretion is also limited to a certain extent in accordance with the demand of the Constitution for the implementation of fair elections. In the case of the Dong-an district constituency in An-yang city, Gyung-gi Province, the delimitation of the constituency exceeds the scope of discretion given to the National Assembly, since the constituency is the most populous in terms of the average population per constituency with a 57 percent deviation from the national average. Therefore the delimitation is in violation of the petitioner's right to vote and the right to equality provided for in the Constitution" (decisions 2000 HEON-MA 92 and 200).

### **Article 26**

364. The Government amended the Act on Prohibition and Remedies of Gender Discrimination on 29 May 2003. This amendment expanded the spheres of prohibited indirect discrimination, which had been confined to the prohibition of discrimination in employment by the Equal Employment Act, to cover discrimination in public agencies, the implementation of laws and policies, and the provision and use of goods, facilities and services. The Act on Prohibition and Remedies of Gender also prohibits sexual harassment among employees of public agencies and private enterprises, recognizing it as a form of gender discrimination. The contents of the Government's efforts to guarantee equal rights have already been illustrated in detail in the section on article 3 of this report.

365. The Government has identified, as major concerns, five main types of discrimination in society, based on gender, academic alumni affiliations, disability, temporary employment and nationality, and established the Task Force for Correcting Discrimination with a mandate to draft a discrimination prohibition law prohibiting discrimination in order to build a more equal society by addressing the issue. The relevant works of the Government have been illustrated earlier in the section on article 2 of this report.

### **The establishment of review committees on appeals**

366. On 1 July 2003, a review committee on appeals was formed in a high public prosecutors' office as a pilot project, which allows outside experts such as lawyers and legal academics to join with high public prosecutors in the process of reviewing plaintiffs' appeals cases against non-indictment decisions made by public prosecutors to present opinions after reviewing the records. This project aims to protect the human rights of criminal victims and plaintiffs by improving the fairness and credibility of decisions on criminal cases with the participation of civil experts in the review process of appeal cases. After evaluating the results of the project, the Government plans to decide whether it will expand the project to all high public prosecutors' offices.

**Article 27**

367. In the Republic of Korea, as already mentioned in the second report (CCPR/C/114/Add.1, paras. 257 and 258), every individual enjoys the right to appreciate one's own culture, to profess and practise one's own religion and to use one's own language. This applies to all minorities including residents of foreign nationality and naturalised citizens.

368. Affirming the benefits of cultural and lingual diversity, the Republic of Korea provides foreign schools with autonomy in the development of their curricula and recognises certificates issued by a school whose curricula has been approved by its affiliated country. The approved schools are granted with tax benefits in accordance with the Secondary School Education Act and the Private School Act. As of December 2003, there are 60 foreign schools, of which 8,649 pupils attend 43 approved schools. In addition, regardless of the legal status of foreign residents, equal rights to education are enjoyed by their children including those of unregistered foreign workers: school-aged children of foreign nationals enjoy rights equal to those enjoyed by Korean nationals in receiving primary and junior high school education free of charge.

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