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U.S. Department of State

Republic of Korea Country Report on Human Rights Practices for 1998

Released by the Bureau of Democracy, Human Rights, and Labor, February 26, 1999.

REPUBLIC OF KOREA

The Republic of Korea is governed by a directly elected president and a unicameral legislature selected by both direct and proportional voting. Kim Dae Jung was elected president in a free and fair election in December 1997 and was inaugurated in February. The judiciary operates independently of the executive branch.

Responsibility for maintaining internal security lies with the National Security Planning Agency (NSP), the Korean National Police (KNP), and the Defense Security Command (DSC). Legislation passed in 1993 restricts the NSP and DSC from interfering in domestic politics and grants the NSP investigative authority only in cases involving terrorism, espionage, and international crime organizations. The Government revised this law in 1996 to allow the NSP to investigate members of domestic organizations that are viewed as supporting the North Korean Government. There continued to be credible reports that some members of the security forces were responsible for occasional human rights abuses.

After a long period of sustained growth in gross domestic product (GDP) averaging about 9 percent per year, the economy slowed in 1996 and 1997. In November 1997, the country entered a severe foreign exchange liquidity crisis. The Government reached agreement on a financial package with the International Monetary Fund in December 1997, which helped stabilize the won and allowed the country to rebuild its foreign exchange reserves. The Government also took significant steps to open the economy and attract foreign investment. However, the impact of the financial crisis, necessary financial and corporate restructuring, and sluggish economies in major regional trading partners have caused rising corporate bankruptcies and unemployment. GDP is expected to decline by at least 5 percent in

1998.

The Government generally respects the human rights of its citizens; however, there were problems in some areas. The use or threatened use of the National Security Law (NSL) continued to infringe upon citizen's civil liberties, including the right to free expression. There was no progress toward reform of the NSL, but in September President Kim promised visiting Amnesty International Secretary General Pierre Sane that he would revise the NSL before too long. In July the Government announced repeal of the system under which prisoners arrested under the NSL had to renounce their real or alleged Communist beliefs in order to receive parole. While this was a significant step forward for the new Government, prisoners still had to promise in writing to obey the law, including the controversial NSL, and recognize the Republic of Korea. A total of 103 prisoners were freed in the August 15 amnesty by submitting such written promises. (An official figure for the number of prisoners who refused to submit written promises was unavailable.) The MOJ continued to implement guidelines requiring that suspects be told at the time of arrest of their right to remain silent and their right to a lawyer. Nevertheless, credible sources reported instances in which police subjected detainees to verbal and physical abuse, although human rights groups report that such cases have declined considerably. Women continued to face legal and societal discrimination. President Kim, a long-time democracy and human rights activist, has stated repeatedly that promoting the rights of women would be a priority goal. Violence against women and physical abuse remain serious problems, and to combat these the Government in July enacted the the Prevention of Domestic Violence and Victim Protection Act which defines domestic violence as a serious crime. Women's groups praised this law as a significant step forward in combating domestic violence. There is still insufficient legal redress for these problems. Ethnic minorities, very small in number, face legal and societal discrimination. Although labor statutes were revised to expand freedom of association, they remained below international standards in some respects.

The Government continued to require released political prisoners to make regular reports to the police under the Social Surveillance Law, and it still has not authorized independent investigations of the cases of some prisoners who received sentences on charges believed to have been fabricated by previous governments. Some of these prisoners reportedly were subjected to torture to extract confessions and received trials that did not meet international standards of fairness.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Political and Other Extrajudicial Killing

There were no reports of political or extrajudicial killings.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Penal Code prohibits mistreatment of suspects; the Government has ordered investigating authorities to protect the human rights of suspects; and allegations of abuse by authorities of those in custody for questioning continued to decline. Nonetheless, prosecutors continued to place much emphasis on securing convictions through confessions, this is driven by cultural factors, which see confession as a necessary prelude to reform. The Supreme Court ruled that evidence obtained after a

suspect had been deprived of sleep during an interrogation could not be used in court. In spite of the court ruling and government directives discouraging sleep deprivation as a technique for obtaining confessions, there continued to be reports of police questioning suspects through the night. Credible sources also reported that in some cases police verbally or physically abused suspects, including beatings, threats, and sexual intimidation in the course of arrest and police interrogation. However, human rights groups report that such cases have declined considerably.

In October during their trial three defendants, accused of a plot to bring about a North Korean military provocation in order to ensure the election of the candidate of the Grand National Party in 1997 alleged that they were tortured into confessing by NSP agents. The Prosecutors Office is investigating the allegations.

Former detainees who claimed that officials of past military governments had tortured them continued to request compensation. However, the Government has not provided an effective mechanism for redress, such as an independent body to investigate complaints of past human rights violations. Officials accused of abuse or harassment of suspects rarely have been prosecuted.

Prison conditions are Spartan. Prison diets are adequate, but the facilities offer little protection against cold in winter and heat in the summer. Some prisoners claim that these conditions damaged their health and that medical care has been inadequate. Inmates occasionally have criticized guards for using excessive force or needlessly putting prisoners in manacles. Inmate access to reading materials and television broadcasts has improved significantly in recent years. Authorities announced in June that visitors could schedule appointments with prisoners by telephone or fax and expanded the number of prisons in which exemplary inmates could use public phones from 4 to 24.

There is little independent monitoring of prison conditions, although representatives of human rights groups may visit certain prisoners at the discretion of the prison warden.

d. Arbitrary Arrest, Detention, or Exile

The law is often vague, and prosecutors have wide latitude to interpret the law. The NSL defines espionage in broad terms and permits the authorities to detain and arrest persons who commit acts viewed as supportive of North Korea and therefore dangerous to the Republic of Korea. Authorities arrested not only persons spying on behalf of North Korea but also those who praised North Korea, its former leader Kim Il Sung, or its "self-reliance" ("juche") political philosophy. The United Nations Human Rights Committee has termed the NSL "a major obstacle to the full realization of the rights enshrined in the International Covenant on Civil and Political Rights." According to Ministry of Justice figures, 583 persons were charged with violating the NSL through November 30. Of these 429 were detained, with the remainder charged without detention. These figures represent a 14.5 percent decrease in the number of persons charged and a 29.6 percent decrease in the number of persons detained during the same period in 1997.

The NSL permits the imprisonment for up to 7 years of anyone who "with the knowledge that he might endanger the existence or security of the State or the basic order of free democracy, praised, encouraged, propagandized for, or sided with the activities of an antistate organization." The legal standard for knowing that one might endanger the security of the State is vague. Consequently, a number of Koreans have been arrested for what appeared to be the peaceful expression of opposing views, which the authorities apparently considered pro-North Korean or antistate views. For example, Duksung University student Kim Eun Hee was arrested in 1997 for posting a unification greeting from North Koreans on a college bulletin board. She was convicted under the NSL and given a suspended sentence.

In August Catholic priest Moon Kyu Hyun was arrested on charges of violating the NSL, after he returned from North Korea. On October 20, he was released on bail; at year's end his trial was still underway. Although he had received permission from the Government to travel to North Korea, prosecutors alleged that Father Moon praised Kim Il Sung in a North Korean visitors book and participated in a North Korean-sponsored reunification festival in Panmunjom. The eight other priests who traveled with Father Moon were not arrested.

The Government's rationale for retaining the NSL is that North Korea is actively trying to subvert the Government and society, and that due to this special circumstance, some forms of expression must be limited to block the greater danger to freedom and democracy posed by totalitarianism. The effect sometimes is to relieve the Government of the burden of proof in a court of law that any particular speech or action in fact does threaten the nation's security. For example, the Government has prosecuted citizens for unauthorized travel to North Korea (see Section 2.d.). In 1997 novelist Kim Ha Ki was convicted under the NSL after making a trip to North Korea in July 1996, but he was pardoned on the occasion of the President's inauguration.

The Criminal Code requires warrants to be issued by judges in cases of arrest, detention, seizure, or search, except if the person is apprehended while committing a criminal act, or if a judge is not available and the authorities believe the suspect may destroy evidence or escape capture if not quickly arrested. In such emergency cases, judges must issue arrest warrants within 48 hours after apprehension, or, if a court is not located in the same county, within 72 hours. Police may detain suspects who voluntarily come in for questioning for up to 6 hours, but must notify the suspects' families. The police generally respected these legal requirements.

The standards for issuing warrants were tightened in 1997, but following complaints from prosecutors that the new system was administratively cumbersome, the National Assembly voted to amend the rules to ease standards for issuing warrants. Authorities normally must release suspects after 30 days unless indictment is issued. Hence, detainees are a relatively small percentage of the total prison population.

The Constitution specifically provides for the right to representation by an attorney, but lawyers are not allowed to be present during police interrogation.

The Government began in 1993 to permit suspects to consult with "duty lawyers" during breaks in interrogation. These duty lawyers are hired and paid by the individual suspects, but often bill at reduced fees as a public service. The Justice Ministry also issued guidelines in 1995 requiring police to inform suspects at the time of arrest about their right to be represented by a lawyer, and there were no reports of access to legal counsel being denied. There is a bail system, but human rights lawyers say that bail generally is not granted when detainees are charged with committing serious offenses.

The Government does not use forced exile.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary. The President appoints the Chief Justice and most justices of the Constitutional Court. Although judges do not receive life appointments, they cannot be fired or transferred for political reasons. In recent years, the judiciary has shown increasing independence. Judges in some district courts have ruled, for example, that activists' exchange of faxes with North Korean students or meetings with North Korean representatives in third countries were not, in themselves, sufficient grounds to convict them of violating the NSL, contrary to prosecutors' assertions.

Local courts are presided over by judges who render verdicts in all cases. There is no trial by jury. Defendants can appeal a verdict to a district appeals court and to the Supreme Court. Constitutional challenges can be taken to the Constitutional Court, which was created in 1988.

The Constitution provides defendants with a number of rights in criminal trials including the presumption of innocence, protection against self-incrimination, freedom from retroactive laws and double jeopardy, the right to a speedy trial, and the right of appeal. When a person is detained physically, the initial trial must be completed within 6 months of arrest. These rights generally are observed. Trials are open to the public, but the judge may restrict attendance if he believes spectators may seek to disrupt the proceedings.

Judges generally allow considerable scope for examination of witnesses by both the prosecution and defense. Cases involving national security and criminal matters are tried by the same courts. Although convictions rarely are overturned, appeals often result in reduced sentences. Death sentences are appealed automatically.

Human rights groups believe that many dissidents tried under past military governments during the 1970's and 1980's were sentenced to long prison terms on trumped-up charges of spying for North Korea. Furthermore, these persons, dozens of whom are still in jail, reportedly had been held incommunicado for up to 60 days after their arrest, subjected to extreme forms of torture, forced to make "confessions," and convicted after trials that did not conform to international standards for a fair trial. In July the Government announced repeal of the system by which prisoners had to renounce their real or alleged communist beliefs in order to receive parole. While this was a significant step forward for the new Government, under the new system prisoners still must in writing promise to obey the law and recognize the Republic of Korea in order to receive parole. A total of 103 prisoners were freed in the August 15 amnesty by submitting such written promises. (An official figure for the number of prisoners who refused to submit written promises was unavailable.) Human rights groups criticized the new system on the grounds that requiring a promise to obey the law, which included the NSL, was tantamount to forcing citizens to renounce their beliefs. Some released political prisoners were required to report their activities regularly to the police.

Also on the occasion of the Independence Day amnesty, the Government granted pardons to 12 former army generals who were close to former presidents Chun Doo Hwan and Roh Tae Woo and were convicted for their involvement in the December 12, 1979 coup and the May 18, 1980 Kwangju incident. On the occasion of President Kim's inauguration, the Government granted amnesty to 74 violators of the NSL.

It is difficult to estimate the number of political prisoners, because it is not clear whether particular persons were arrested for merely exercising the rights of free speech or association or were detained for committing acts of violence or espionage. Some human rights monitors estimate the number of political prisoners at around 300. However, these monitors' definition of political prisoner often includes all persons imprisoned for politically motivated acts, without distinction as to whether the acts themselves included violence or other criminal behavior. The number of political prisoners and detainees as defined by international standards appears to number under 200.

f. Arbitrary Interference With Privacy, Family, Home, or Correspondence

In general the Government honors the integrity of the home and family. In the past, the security services conducted varying degrees of surveillance, including wiretaps, of political dissidents. The 1995 Antiwiretap Law and the law to reform the NSP were designed to curb government surveillance of

civilians, and largely appear to have succeeded. The Antiwiretap Law lays out broad conditions under which the monitoring of telephone calls, mail, and other forms of communication are legal. It requires government officials to secure a judge's permission before placing wiretaps, or, in the event of an emergency, soon after placing them, and it provides for jail terms for those who violate this law. Some human rights groups argue that a considerable amount of illegal wiretapping still is taking place, and they assert that the lack of an independent body to investigate whether police have employed illegal wiretaps hinders the effectiveness of the Antiwiretapping Law.

On December 31, opposition lawmakers broke into the NSP liaison office in the National Assembly building, and removed documents that they claimed substantiated allegations that the office was being used to conduct surveillance of National Assembly members.

Citizens are not allowed to listen to North Korean radio in their homes or read books published in North Korea if the Government determines that they are doing so for the purpose of helping North Korea. Student groups make plausible claims that government informants are posted around university campuses.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

While most political discourse is unrestricted, under the NSL the Government limits the expression of ideas that authorities consider Communist or pro-North Korean. Broad interpretations of the NSL allow for restrictions on the peaceful expression of dissenting views.

Although the Government has abandoned direct control over the news media, it continues to exercise indirect influence. Some officials reportedly lobby journalists aggressively to discourage them from writing stories critical of the Government, although this practice reportedly has declined significantly. Newspapers played an instrumental role in 1997 in bringing to light political influence peddling associated with Hanbo Steel, which resulted in jail sentences for many senior government officials and political figures, including a son of former President Kim Young Sam. Nevertheless, the latent threat of tax investigations against parent media companies and government pressure on advertisers is still widely believed to encourage newspapers and broadcasters to soften criticism. Moreover, while the Government's anticorruption campaign curtailed politicians' payments of money to reporters, it did not eliminate them. Nevertheless, press criticism of the Government is extensive in all fields, and authorities have not used repressive measures to stop media reporting. Many radio and television stations are state supported, but they maintain a considerable degree of editorial independence in their news coverage.

Journalists allege that the libel laws are used to harass publications for articles that are unflattering but not necessarily untrue, and some journalists have been arrested and jailed for libel. For example, in December 1997 a foreign journalist of Korean ancestry was arrested on libel charges for reporting in a story that a local newspaper was in financial trouble and would be taken over by a large conglomerate. He was released 3 weeks later. In February a Seoul court ruled that the journalist had to pay damages of \$2,500 (3 million won) to the newspaper.

Prosecutors continued to indict dissidents under the NSL for producing, selling, or distributing pro-North Korean or pro-Communist materials. Court precedents allow citizens to possess these kinds of publications for purely academic use, profit, or curiosity, but not with the intent of subverting the State. Prosecutors have wide discretion in determining motives for possessing or publishing such material.

The Government continued to allow, within its guidelines, substantial media coverage of North Korea. Television networks continued to broadcast edited versions of North Korean television programs, and reported extensively on United States and South Korean talks with North Korean officials. In September a television station received permission for the first time to broadcast a North Korean-produced film.

The Government Censorship Board, which screens movies for sexual or violent content, has followed more liberal guidelines in recent years and allowed a broader range of films to be released.

In 1997 Suh Jun Shik, the publisher of a daily human rights newsletter in Seoul, was arrested along with several other activists under the NSL for attempting to screen an allegedly pro-North Korean movie. His case still was awaiting trial at year's end.

In 1994 authorities began investigating eight Kyongsang University professors on the grounds that their textbook on Korean society endorsed North Korean ideology. This investigation was regarded by much of the scholarly community as a serious infringement of academic freedom. However, prosecutors who sought to arrest several of the professors under the NSL were denied warrants by a judge who concluded that authorities had not provided evidence of the scholars' pro-Communist activities. This investigation has been closed, and no instances of prosecution for scholarly writing were reported during the year. However, student groups plausibly report the presence of government informants on university campuses (see Section 1.f.).

b. Freedom of Peaceful Assembly and Association

The Law on Assembly and Demonstrations prohibits assemblies considered likely to undermine public order. The law forbids outside interference in peaceful assemblies approved by the authorities and requires that the police be notified in advance of demonstrations of all types, including political rallies. Police must notify organizers if they consider the event impermissible under this law.

The Constitution provides for freedom of association, and there are no registration requirements. Associations, except those whose aim is deemed by the Government to be the overthrow of the State, operate freely.

c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government respects this provision in practice.

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

Most citizens are allowed to move freely throughout the country, but police may restrict the movements of some former prisoners. Foreign travel generally is unrestricted, but the Government must approve travel to North Korea. To obtain approval, potential visitors must demonstrate that their trip does not have a political purpose--that is, to praise North Korea or criticize the South Korean Government. During the year, the Government took significant steps to expand contacts between South and North Koreans, granting permission to the Hyundai Group to develop a tourist destination in North Korea that could be visited by South Korean citizens, allowing civic and religious groups to visit North Korea to discuss aid delivery and distribution, and granting permission to advertising companies to film advertisements in North Korea. However, travelers to North Korea who do not receive government permission are likely to be arrested upon their return to South Korea. For example, novelist Kim Ha Ki, who traveled to the North in 1996, was sentenced in 1997 to 3 years in prison, but was pardoned on the

occasion of the President's inauguration. The court held that the novelist revealed state secrets to North Korean authorities during his visit.

In the past, the Government forbade some Koreans convicted of politically related crimes from returning to Korea, and some citizens still face sanctions if they return. In 1994 the NSP lifted the entry ban on composer Yun I Sang, a dissident who had been living in Berlin for many years. However, the Government required that he refrain from any political activity while in Korea and that he give an accounting of his political activities overseas before authorities would allow him into the country. Yun refused these conditions and decided against returning to South Korea. He died abroad in 1995.

The Government cooperates with the office of the U.N. High Commissioner for Refugees and other humanitarian organizations in assisting refugees. Government guidelines provide for offering temporary refuge in the case of a mass influx of asylum seekers. However, the issue of provision of first asylum did not arise during the year. There were no reports of forced return of persons to a country where they had a fear of persecution.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

Citizens have the right to elect their own government. The Constitution, as amended in 1987, provides for the direct election of the President and for a mixed system of direct and proportional election of legislators to the unicameral National Assembly. The President serves a single 5-year term and may not be reelected. The National Assembly's term is 4 years. All citizens 20 years of age or above have the right to vote, and elections are held by secret ballot.

Because of cultural traditions and discrimination, women occupy few important positions in government. There are two women in the Cabinet, the Minister of Health and Welfare and the Minister of Culture and Tourism. Eleven female legislators were elected to the 299-seat National Assembly, one of whom chairs a special committee on women's affairs.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

Several nongovernmental private organizations are active in promoting human rights, and they operate without government restriction. Chief among these groups are the Lawyers for a Democratic Society, Sarangbang, the Human Rights Committee of the National Council of Churches in Korea, the Korean Bar Association, People's Solidarity for Participatory Democracy, and "Mingahyup," an association of the families of political prisoners. These groups publish reports on the human rights situation in Korea and make their views known both inside and outside the country. Government officials generally have been willing to meet with international human rights groups.

Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status

The Constitution and equal opportunity statutes forbid discrimination on the basis of race, sex, religion, disability, or social status, and the Government respects these provisions. However, traditional attitudes limit opportunities for women and the disabled. Ethnic minorities, very small in number, face both legal and societal discrimination.

Women

Violence against women remains a problem, and some women's rights groups maintain that such

violence, including spousal abuse, has worsened with the recent decline of the economy. A 1997 survey found that 31.4 percent of households had seen incidents of domestic violence. In July the Government enacted the Prevention of Domestic Violence and Victim Protection Act, which defines domestic violence as a serious crime. Authorities can order offenders to stay away from victims for up to 6 months and to be put under probation or to see court-designated counselors. The law also requires police to respond immediately to reports of domestic violence. Women's groups praised the law as a significant step forward in combating domestic violence.

Rape remained a serious problem, with 6,293 cases reported in 1997 (the last year for which statistics are available). Many incidents of rape go unreported because of the stigma associated with being a rape victim. The activities of a number of women's groups have increased awareness of the importance of reporting and prosecuting rapes, as well as offenses such as sexual harassment in the workplace. According to women's rights groups, cases involving sexual harassment or rape generally go unprosecuted, and perpetrators, if convicted, often receive very light sentences.

The amended Family Law, which went into effect in 1991, permits women to head a household, recognizes a wife's right to a portion of the couple's property, and allows a woman to maintain greater contact with her offspring after a divorce. Although the revisions helped abused women, divorce remains a social taboo, and there is little government or private assistance for divorced women. These factors, plus the fact that divorced women have limited employment opportunities and have difficulty remarrying, leads some women to stay in abusive situations. The Government has created some shelters for battered women and increased the number of child care facilities, giving women in abusive situations more options, but women's rights groups say that they fall far short of effectively dealing with the problem.

A conservative Confucian tradition has left women subordinate to men socially and economically. Despite the passage of equal employment opportunity legislation in 1988, few women work as company executives, and sexual discrimination in the workplace remains a problem. Moreover, some government agencies' preferential hiring of applicants with military service (nearly always men) point to continued legal barriers against women. However, there are means for women to seek redress for sexual discrimination. For example, in January two women at a construction company who received dismissal notices while on maternity leave filed protests with the Ministry of Labor and had their jobs reinstated. Women have full access to education, and social mores and attitudes gradually have begun to change. The major political parties, for example, are making more efforts to recruit women; the Ministry of Women's Affairs continued its efforts to expand employment opportunities; and the military and service academies continued to expand opportunities for women.

In April the Government decided to pay each of 152 identified Korean "comfort women" (women who, during World War II, were forced to provide sex to soldiers of the Japanese Imperial Government) \$22,000 (won 38 million) and announced that it would seek no compensation from the Government of Japan. In announcing this decision, the Government also called for an official Japanese Government apology.

Children

The Government provides high-quality elementary education to all children free of charge, and most obtain a good secondary education. High-quality health care facilities are widely available to children.

Child abuse does not appear to be a significant problem, but it has not been studied extensively, and statistics on such abuse are limited. A total of 136 cases were reported during the year. Although experts

believe that a number of cases go unreported, instances of child abuse still appear to be relatively rare. The Seoul metropolitan government runs a children's counseling center, which investigates reports of abuse, counsels families, and cares for runaway children. Prior to 1998 there was no specific law against child abuse; however, the new Prevention of Domestic Violence and Victim Prevention Act, which defines domestic violence as a serious crime, allows a child to bring charges against his mother or father in cases of abuse. The authorities announced in April that people buying sex from minors would automatically be arrested on rape charges and would face prison terms of up to 3 years. In cases of children under age 13, the authorities said that it would pursue the law even more vigorously. The National Assembly is proceeding with the development of additional legislation in this area.

The traditional preference for male children continues, although it is less evident among people in their twenties and thirties. Although the law bans fetal testing except for those cases when a woman's life is in danger, a hereditary disease would be passed along, or in case of rape or incest, such testing and the subsequent termination of pregnancies with female fetuses frequently occur. The Government has expressed concern about the widening disparity in male and female birth rates.

People With Disabilities

Although measures aimed at creating opportunities for the disabled have been taken, public facilities for their everyday care and use remained inadequate. However, there is no legal discrimination against disabled persons in employment, education, or in the provision of other state services.

In 1995 the Government expanded job training programs, medical benefits, and welfare facilities for disabled citizens. Since 1991 firms with over 300 employees have been required by law either to hire disabled workers or pay a fee. Surveys indicate that most companies either paid the fee or evaded the law. After human rights groups had publicized one such survey in 1996, the Labor Ministry increased the subsidies provided to companies that hire the disabled. Nonetheless, hiring of the disabled remains below target levels. The disabled make up 0.46 percent of the total work force. New public buildings are required to include facilities for the disabled, such as a ramp access to entrances, a wheelchair lift, and special parking spaces. The Health and Welfare Ministry has announced that existing government buildings must be retrofitted with these facilities over the next 7 years.

National/Racial/Ethnic Minorities

The Republic of Korea is a racially homogeneous country with no ethnic minorities of significant size. Citizenship is based on blood, not location of birth, and Koreans must show as proof their family genealogy. Thus, ethnic Chinese born and resident in Korea cannot obtain citizenship or become public servants, and may have difficulty being hired by some major corporations. Due to legal as well as societal discrimination, many ethnic Chinese have emigrated to other countries since the 1970's. There are approximately 20,000 ethnic Chinese, who represent 0.05 percent of the population. The Government passed legislation in June to allow a Korean woman to transmit citizenship to her child regardless of the citizenship of the child's father. Amerasians face no legal discrimination, but informal discrimination is prevalent, making it more difficult for them to succeed in academia, business, or government.

Section 6 Worker Rights

a. The Right of Association

The Constitution gives workers, with the exception of public sector employees and teachers, the right to

free association. However, the Government passed legislation to allow government workers to form workplace councils, beginning in 1999. In the government sector, unions are restricted to organizing blue-collar workers in such agencies as the postal service, railways, telecommunications, and the national medical center. As few as two employees may form a union. Until 1997 the Trade Union Law specified that only one union was permitted at each workplace. However, labor law changes in 1997 authorize the formation of competing unions from the year 2002. All unions are required to notify the authorities when formed or dissolved. About 10 percent of workers belong to a union.

In the past, the Government did not recognize formally labor federations that were not affiliated with the country's two legally recognized labor groupings--the Federation of Korean Trade Unions (FKTU) and the Independent Korean Federation of Clerical and Financial Workers. In the past several years, however, the Labor Ministry officially recognized some independent white-collar federations representing hospital workers, journalists, and office workers at construction firms and government research institutes. The courts ruled in 1992 that affiliation with the FKTU was not required to be registered as a legal labor federation. In 1997 the National Assembly passed a labor reform bill that cleared the way to authorize dissident federations, such as the Korean Confederation of Trade Unions (KCTU). However, the KCTU allowed the outlawed teachers union to affiliate with it, and consequently the Government refused to grant it official authorization. In practice labor federations not formally recognized by the Labor Ministry have operated without government interference.

The Government arrested and tried unionists who allegedly instigated violent strikes or illegally disrupted normal business operations. Although there were several large general strikes, the Government did not punish unionists for their participation in these general strikes. The Government also did not punish bank workers who went on strike in July to protest the forced closure of their banks.

The Government retained the ban on teachers unions, arguing that organizations such as the Korean Teachers Union (Chonkyojo) are essentially political organizations with radical aims. Several teachers were suspended temporarily from their jobs because they were union leaders.

Labor laws prohibiting political activities by unions were rescinded in 1997. Election laws that apply to other social organizations regulate unions. These regulations prohibit donations by unions (and other social organizations) to political parties. Some trade unionists have temporarily resigned from their union posts to run for office.

Strikes are prohibited in government agencies, state-run enterprises, and defense industries. By law, unions in enterprises determined to be of "essential public interest," including public transportation, utilities, public health, banking, and telecommunications, can be ordered to submit to government-ordered arbitration in lieu of striking. However, in practice the Government rarely imposes arbitration. The number of labor disputes has declined in recent years. According to Labor Ministry statistics, about 80 strikes occurred in 1997, the last year for which complete data are available. The Labor Dispute Adjustment Act requires unions to notify the Labor Ministry of their intention to strike, and it mandates a 10-day "cooling-off period" before a work stoppage may legally begin, 15 days in public interest sectors. Labor laws prohibit retribution against workers who have conducted a legal strike and allow workers to file complaints of unfair labor practices against employers.

The FKTU and KCTU are affiliated with the International Confederation of Free Trade Unions (ICFTU). Most of the FKTU's 20 constituent federations maintain affiliations with international trade secretariats, as does the KCTU Metalworkers Council. In 1997 the International Labor Organization (ILO) Committee on Freedom of Association criticized some aspects of the labor laws, such as the prohibition on organizing unions for teachers and government employees.

In recent years, the Government has cultivated a more neutral stance in labor disputes. Striking workers shut down the Hyundai Motors' auto plant in Ulsan in August, and although the Government threatened to use police to clear out the workers, labor and management settled their dispute peacefully. Unlike in previous years, there were no reports that employer-hired squads assaulted workers in 1998.

South Korea was reinstated in June to the Overseas Private Investment Corporation's (OPIC) insurance programs, which had been suspended since 1991 on worker rights grounds.

b. The Right to Organize and Bargain Collectively

The Constitution and the Trade Union Law provide for the right of workers to collective bargaining and collective action. This law also empowers workers to file complaints of unfair labor practices against employers who interfere with union organizing or practice discrimination against union members. Employers found guilty of unfair practices can be required to reinstate workers who were fired for union activities.

Extensive collective bargaining is practiced, even with unions whose federations are not recognized legally by the Government. The labor laws do not extend the right to organize and bargain collectively to teachers, defense industry workers, or government employees, (although the Government did pass legislation to allow government workers to form workplace councils beginning in 1999), including workers at state- or publicly run enterprises.

There is no independent system of labor courts. The central and local labor commissions form a semiautonomous agency of the Labor Ministry that adjudicates disputes in accordance with the Labor Dispute Adjustment Law. Each labor commission is composed of equal numbers of representatives of labor and management, plus neutral experts who represent the "public interest." Local labor commissions are empowered to decide on remedial measures in cases involving unfair labor practices and to mediate and, in some situations, arbitrate labor disputes. Arbitration can be made compulsory in sectors of the economy (e.g., utilities and transportation) that are deemed essential to public welfare.

In February the Government established the Tripartite Commission, with representatives from labor, management, and the Government, to deal with labor issues related to the economic downturn. The work of the Commission made it legal for companies to lay off workers due to economic hardship and authorized temporary manpower agencies.

In the past, regulations forbade intervention in disputes by so-called third-parties, such as labor federations not recognized by the Government. Labor laws were revised in 1997 to lift the ban on third-party intervention and allow dissident federations to assist member unions involved in a strike.

Enterprises in the two export processing zones (EPZ's) had been designated by the Government as public interest enterprises. Workers in these enterprises, whose rights to organize were formally restricted, have gradually been given all the rights enjoyed by workers in other sectors of the economy.

c. Prohibition of Forced or Compulsory Labor

The Constitution provides that no person shall be punished, placed under preventive restrictions, or subjected to involuntary labor, except as provided by law and through lawful procedures. Forced or compulsory labor, including forced labor by children, is not practiced.

d. Status of Child Labor Practices and Minimum Age for Employment

The Government prohibits forced and bonded child labor and enforces this prohibition (see Section 6.c.). The Labor Standards Law prohibits the employment of persons under the age of 15 without a special employment certificate from the Labor Ministry. Because education is compulsory through middle school (about age 14), few special employment certificates are issued for full-time employment. Some children are allowed to hold part-time jobs such as selling newspapers. To obtain employment, children under age 18 must have written approval from their parents or guardians. Employers may require minors to work only a limited number of overtime hours and are prohibited from employing them at night without special permission from the Labor Ministry. Child labor laws and regulations are clear and usually enforced when violations are found, but the Government employs too few inspectors to carry out regular inspections.

e. Acceptable Conditions of Work

The Government implemented a minimum wage in 1988, and the minimum wage level is reviewed annually. As of September, the minimum wage was raised to approximately \$1.17 (1,525 won) per hour. Companies with fewer than 10 employees are exempt from this law. The FKTU and other labor organizations assert that the current minimum wage does not meet the basic requirements of urban workers. In fact, a worker earning the minimum wage would have difficulty in providing a decent standard of living for himself and his family, despite the fringe benefits, such as transportation expenses, with which companies normally supplement salaries. (However, the money an average blue-collar worker takes home in overtime and bonuses significantly raises the total compensation package.) According to the Ministry of Health and Welfare, 2.6 percent of the population lived below the poverty level in 1997.

Foreign workers, most of whom come from China, the Philippines, Bangladesh, Nepal, and Pakistan, often face difficult working conditions. The Government sought to ameliorate the problems of illegal workers by creating a program that allowed about 60,000 foreign workers to enter Korea legally to work at established wages with legal safeguards. Although close to 50,000 illegal foreign workers took advantage of a government "grace period" and departed Korea in the first 7 months of the year in the wake of the country's economic troubles, an estimated 100,000 workers remain and still suffer significant hardships in the workplace. It is difficult for illegal workers to seek relief for loss of pay or unsatisfactory living and working conditions because they face the threat of being deported. However, the Government has established counseling centers that hear complaints from illegal foreign workers about such issues as overdue wages and industrial accidents. Foreigners working as language teachers have complained that language institutes that hired them frequently violated employment contracts, for which the legal system provided insufficient redress.

Amendments to the Labor Standards Law passed in 1989 brought the maximum regular workweek to 44 hours, with provision for overtime to be compensated at a higher wage. The law also provides for a 24-hour rest period each week. Labor laws were revised in 1997 to establish a flexible hours system, according to which employers could require laborers to work up to 48 hours during certain weeks without paying overtime, as long as average weekly hours for 2-weeks did not exceed 44. If a union agreed to a further loosening of the rules, management could ask employees to work up to 56 hours in a given week. The legislation established a daily cap on the working day of 12 hours. Labor groups claim that the Government does not adequately enforce maximum workweek provisions at small companies.

The Government sets health and safety standards, but the accident rate is unusually high by international standards. However, this rate continues to decline gradually due to improved occupational safety programs and union pressure for better working conditions. The Labor Ministry still lacks enough inspectors to enforce the laws fully. The Industrial Safety and Health Law does not guarantee security for workers who remove themselves from dangerous work environments.

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