

REPUBLIC OF KOREA

Article 11 of the Constitution of the Republic of Korea declares that all citizens are equal before the law, and there may be no discrimination in political, economic, social or cultural life on account of sex, religion, or social status. Article 32, paragraph 4 of the Constitution prohibits discrimination against women in the workforce and Article 36 of the Constitution provides that marriage and family life are entered in to and sustained on the basis of individual dignity and equality of the sexes, and that the state must do everything in its power to achieve that goal. In 1995 the Government adopted the Basic Women's Development Act with the goal of achieving gender equality in all spheres of life. Equality Now recognizes that in recent years the Republic Of Korea has made progress towards compliance with the Covenant by amendments to the Nationality law, the Family Law and the Civil Act. However there are still numerous statutes that by their plain language are discriminatory towards women. Equality Now believes that pervasiveness of violence against women, the criminalization of abortion and the prevalence of sex selective abortions and laws that discriminate against women in family matters leave South Korea short of compliance with its obligations under the Covenant. Information for this submission was provided by the Saranbang Human Rights Group and the Korean Women's Development Institute. Equality Now also consulted information from Korea Women's Associations United, Korea Women's Hotline and the Korean Working Women's Network.

Family Law and Practice

Article 36 (1) of the Constitution provides that "marriage and family life are entered into and sustained on the basis of individual dignity and equality of the sexes, and the State must do everything in its power to achieve that goal". However discriminatory statutes and practices concerning family matters continue to deny women their full rights under the Covenant. Article 984 of the Civil Act, Order of Succession to Family Headship, provides that in the first instance family headship passes to a male who is a lineal descendant of the person to be succeeded (Annex A). Family headship gives that individual the right to represent the household in most business and property transactions. The family headship system substantially limits the legal powers of women within the family structure and is the basis for the family register system that forces a woman to abandon her own family and join her husband's family (Rosa Kim, *The Legacy Of Institutionalized Gender Inequality In South Korea: The Family Law*, B. C. Third World L. J. 145, 155, 1994). Through the family register system the law sanctions male authority over the rest of the family on personal, social and legal matters. (Kay C. Lee, *Confucian Ethics, Judges, And Women: Divorce Under The Revised Korean Family Law*, 4 Pac. Rim L. & Policy Journal 479, 483, 1995). Article 781 of the Civil Act provides that a child shall assume its father's surname and the origin of surname, and shall have the name entered in its father's family register (Annex A). Article 826 (3) of the Civil Act states that the wife shall have her name entered in her husband's family register (Annex A). Article 807 sets the legal age of marriage for men at 18 and at 15 for women (Annex A). Article 811 of the Civil Act mandates a six month waiting period for a woman to remarry from the day of the termination her previous marriage. No such prohibition exists for men (Annex A). Equality Now is deeply concerned that a preference for sons leads many parents to engage in sex selective abortion to ensure that they will have a son and not a daughter. In the Republic of Korea nearly 116 boys are born for every 100 girls (Annex B). For fourth children the ratio is 215 boys for every 100 females

(Annex C, p. 133). The government has made it a crime to disclose the sex of a fetus and has arrested several doctors who have done so (Annex B). Equality Now requests the Committee to urge the government to continue to enforce the law against disclosing the sex of a fetus and to pursue other measures to prevent sex selective abortions. Equality Now is pleased to note the Government's representation in paragraph 66 of its report that there are efforts underway to abolish the mandatory waiting period for remarriage and the family headship system. Equality Now submits that the differential treatment of men and women by statute and practice violates the equality provisions of Articles 3 and 26 of the Covenant and that the legal age of marriage should be the same for men and women. Equality Now further submits that the government should make greater efforts to prevent sex selective abortions.

Violence Against Women

Equality Now notes and welcomes the passage of the Act Relating to Punishment of Sexual Violence Crimes and Protection of Victims, the Prevention of Domestic Violence and Victim Protection Act and the Special Act for the Punishment of Domestic Violence. However Equality Now is deeply concerned by the degree of violence against women in the Republic of Korea. According to the Korea Women's Hotline, surveys show that between 42 percent and 61 percent of married women have been battered (www.hotline.peacenet.or.kr/gender.html, p.4). Although the Special Act for the Punishment of Domestic Violence became effective on July 1, 1998 Equality Now is concerned that several of its provisions are inadequate to fully protect women victimized by domestic violence. Article 29 of the Act limits the duration of temporary measures for the protection of domestic violence victims to a two month maximum, without regard to any previous violence inflicted by the perpetrator upon the victim or without regard to the possibility of further violence against the victim (Annex D, p.23). Although judges may extend this period for the protection of the victim the extension may only be for one additional two month period. Article 41 and 45 of the Act also limit the duration of certain types of protective dispositions issued by a judge after examination of an offender irrespective of the previous violence against the victim or the likelihood of further violence (Annex D, p.26-27). Furthermore, the crime of rape, Criminal Act 297, is not included in the definition of domestic violence crimes contained in the Special Act for the Punishment of Domestic Violence (Annex D, p.18)

According to Korea Women's Associations United, the Republic of Korea ranked second in the world in the frequency of sexual violence crimes reported, with a rape committed every two minutes since 1990 (www.women21.or.kr.eng/news/97news.htm, p.1 and www.women21.or.kr.eng/news/96news.htm). This group estimates that only 2.2 per cent of rapes are reported (Ibid. 1996, p.1). Article 297 of the Criminal Act sets forth the use of violence or intimidation as elements of the crime of rape (Annex E). The Criminal Act also recognizes the crime of Quasi-Rape (Annex E, Art. 299) which is applicable to sexual intercourse or indecent acts with a woman who is unconscious or unable to resist. According to Korea Women's Hotline the level of resistance of the victim and her sexual history have been the basis of Court decisions (www.hotline.peacenet.or.kr/gender.html, p.3-4). Article 304 of the Criminal Act which punishes sexual intercourse through fraudulent means is applicable only if the woman victim is "not habitually immoral" (Annex E). The crime of raping a minor, Criminal Act 302, provides for a maximum penalty of five years, the same as the penalties for injuring credit and interfering

with business (Annex E, Art. 313 & 314). Equality Now is also concerned, based on the case of Man-Soon Cheng, as reported by the Special Rapporteur on Violence Against Women, that societal pressure exists for rape victims to marry their attackers. Ms. Cheng was raped by a friend of hers and “. . . felt guilty and believed that she must accept responsibility and marry the man who had raped her”. (E/CN.4/1996/53, para.63).

Korea Women's Hotline also reports that violence against women has been encouraged by the increasing commercialization of women as sex objects by the pornography industry and corrupt entertainment establishments (www.hotline.peacenet.or.kr/gender.html, p.5). That organization also reports that the clients of prostitutes are not punished although their conduct also violates the law (Ibid. p.4). The failure to protect women from violence violates their right to equal protection under the law guaranteed by Article 26 of the Covenant.

Criminalization of Abortion

Article 269 (Abortion) of the Criminal Act provides that “A woman who procures her own miscarriage through the use of drugs or other means shall be punished by imprisonment for not more than one year or by a fine not exceeding two million won” (Annex E). Abortion is permitted with spousal authorization to save the mother's life, for physical health, or in cases of rape, incest, and fetal impairment (www.crlp.org). In paragraph 74 of its report, the government states that “. . .due to the absolute predominance of the national sentiment that the lives of unborn children must be protected under the right to life, the crime of abortion was retained in the revised Criminal Code.” Despite the criminalization of abortion it is estimated that for every live birth in the Republic of Korea there are 2.5 abortions. The number of abortions is estimated at two million per year (www.hotline.peacenet.or.kr/gender_1.html). Article 36 (2) of the Constitution provides that “The State endeavors to protect mothers.” Despite this constitutional mandate the rate of maternal mortality, 130 per 100,000 live births is quite high compared to other countries at similar levels of human development (www.un.org/Depts/unsd/gender_3-2asi.htm). Of six countries with the same grounds for legally obtaining an abortion as in the Republic of Korea and approximately the same range of human development as reported by the United Nations Development Programme the Republic of Korea has the second highest rate of maternal mortality (www.undp.org/hdro/child.htm).

Equality Now submits that forced maternity constitutes cruel, inhuman and degrading treatment in violation of Article 7 of the Covenant. Equality Now also submits that the relatively high level of maternal mortality is attributable to unsafe, illegal abortions which threaten a women's right to life guaranteed by Article 6 of the Covenant. Equality Now urges the Committee to clarify that Article 6 of the Covenant does not require the prohibition of abortion, and to note in fact the criminalization of abortion leads to heightened maternal mortality rates, which threaten women's right to life, guaranteed by Article 6 of the Covenant.

Discrimination in Employment

Article 32 (4) of the Constitution provides that “Special protection has to be accorded to working women, and they may not be subjected to unjust discrimination in terms of employment, wages, and working conditions.” Article 5 of the Labor Standards Act (Annex F) states that “An

employer shall not discriminate against workers by sex” The Basic Employment Policy Act provides in Article 19 that “the employer shall not discriminate on the basis of gender....” (CCPR/C/114/Add.1, para.25) Other laws such as the Infant Nursery Act and the Basic Vocational Training Act seek to increase women’s employment (Ibid., para. 41,45). The Employment Equality Act (Annex G) provides in Article 1 that its purpose is “... to contribute to the improvement of status of the working women and promotion of their welfare by securing an equal opportunity and treatment between men and women in any employment. . .” Despite these constitutional and statutory prescriptions women workers in South Korea are still subject to various *de jure* and *de facto* forms of employment discrimination. Article 63 of the Labor Standards Act prohibits female workers and those under 18 years of age from any work detrimental to morality or health which shall be determined by Presidential Decree. Article 68 prohibits females and minors from working between 10 PM and 6 AM or on holidays without the approval of the Ministry of Labor. Article 69 limits women’s overtime work and Article 70 prohibits women from working inside a pit. Equality Now notes that women usually work in lower paid smaller enterprises with less than five employees (www.hotline.peacenet.or.kr/gender_6.html p.1). Because the protections of the Labor Standards Act (Annex F, Art. 10) and the Employment Equality Act (Annex G, Art. 3) are applicable only to businesses that ordinarily employ more than five workers these statutes do not protect the majority of women workers, although the latter statute is designed specifically for that purpose (Annex G, Art. 1). Nor does the Employment Equality Act specifically define, proscribe, or punish sexual harassment in the workplace.

According to the International Labour Office women in the Republic of Korea constitute 40 per cent of the adult labor force (www.un.org/Depts/unsd/gender/5-1asi.htm). However only four per cent of women work as administrative or managerial workers (www.un.org/Depts/unsd/gender/5-3asi.htm). The average wage of women workers is only 59 per cent of that of men (http://hotline.peacenet.or.kr/gender_6.html, p.1). According to Hoo-Jung Yoon, then Chairperson of the Presidential Commission on Women’s Affairs, in 1997 women held only 0.7 per cent of senior positions in the country’s top 50 corporations (CEDAW Press Release, WOM/1069, 1998). Furthermore, the Korea Working Women’s Network reports that the Asian economic crisis has led to deteriorating job security for women, severe threats to the principle of equality, and has resulted in women failing to protest against discrimination or seek maternity benefits (www.kwwnet.org/english/wwomen/ww17/ww17-27.html).

Equality Now submits that the employment discrimination suffered by women and the lack of a law prohibiting sexual harassment violates the equality provisions of Articles 3 and 26 of the Covenant.

Political Participation

Article 25 of the Constitution provides that “all citizens have the right to hold public office under the conditions prescribed by law”. In paragraph 64 of its report, the government attributes the low levels of women’s political participation to a patriarchal tradition disfavoring women’s participation in society, a lack of social recognition of the capability of women politicians, lack of involvement among women and insufficient support from political parties. According to the Inter-Parliamentary Union women occupy only 11 of the 299 seats in the

National Assembly (www.ipu.org/wmn-e/classif.htm). According to the Korean Overseas Culture and Information service as of 1995 only 27.3 per cent of civil servants were women and more than half of these were teachers or faculty members (www.kowin.kocis.go.kr, p.8). There is only one woman cabinet member of the twenty ministers (Ibid. p. 8). Women constitute only 3.7 per cent of the judges in the Republic of Korea (CEDAW Press Release WOM/1070, 1998). In paragraph 63 of its report the government states that women comprise only 1.6 percent of local council members and 5.7 percent of the members of the greater local councils. Equality Now notes and welcomes the representation in paragraph 64 of the state party Report that the Basic Women's Development Act provides that national and local governments shall exert themselves to support increased women's participation in politics and that the government is considering various measures in response to that law. Equality Now encourages the Government to adopt such measures that would increase the political participation of women.

The low levels of participation of women in the various branches and levels of government and the failure of the government to effectively address the under-representation of women violates the equal right of women to take part in the conduct of public affairs as set forth in Article 25 of the Covenant.

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- B. Sheryl WuDunn, Korean Women Still Feel Demand to Bear a Son, New York Times, January 14, 1997, p.A3.
- C. Risks, Rights and Reforms, Republic of Korea, Women's Environment and Development Organization, New York, 1999.
- D. Prevention of Domestic Violence and Victim Protection Act and Special Act for the Punishment of Domestic Violence, Republic of Korea.
- E. Sections of the Criminal Act of the Republic of Korea.
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