



**COUNTRY BASELINE UNDER THE ILO DECLARATION ANNUAL REVIEW (2000-2008)<sup>1</sup>: REPUBLIC OF KOREA**

***THE ELIMINATION OF ALL FORMS OF FORCED OR COMPULSORY LABOUR (FL)***

<b>REPORTING</b>	<b>Fulfilment of Government's reporting obligations</b>	YES, except for the 2003 Annual Review (AR).	
	<b>Involvement of Employers' and Workers' organizations in the reporting process</b>	YES, according to the Government: Involvement of the employers' organizations (Korea Employers' Federation (KEF)) and the workers' organizations (Federation of Korean Trade Unions (FKTU) and the Korean Confederation of Trade Unions (KCTU)) through communication of Government's report.	
<b>OBSERVATIONS BY THE SOCIAL PARTNERS</b>	<b>Employers' organizations</b>	<b>2004 AR:</b> Observations by the KEF.	
	<b>Workers' organizations</b>	<b>2007 AR:</b> Observations by the KCTU. Observations of the International Trade Union Confederation (ITUC). <b>2004 AR:</b> Observations by the KCTU. <b>2002 AR:</b> Observations by the KCTU. <b>2001 AR:</b> Observations by the International Confederation of Free Trade Unions (ICFTU). <b>2000 AR:</b> Observations by the FKTU.	
<b>EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT</b>	<b>Ratification</b>	<b>Ratification status</b>	<b>The Republic of Korea has ratified neither the Forced Labour Convention, 1930 (No. 29) (C.29), nor the Abolition of Forced Labour Convention, 1957 (No. 105) (C.105).</b>
		<b>Ratification intention</b>	<b>YES, since 2000. Feasibility of ratification of C.29 and C.105 is being considered in consultation with the employers' and workers' organizations and the ILO, with the intention of ratifying both Conventions.</b>  <b>2007 AR:</b> According to the Government: In an effort to ratify both C. 29 and C.105, the Government held a seminar on forced labour in May 2006 where ILO experts, tripartite representatives, and people from related ministries were invited to discuss the matter. The Government also organized the International Labour Policy Advisory Board to accelerate the ratification process for these instruments. However, discussion is still under way due to divergence of opinions between relevant ministries. The KEF and the KCTU had no objection to the ratification of C.29 and C.105.

<sup>1</sup> Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: information provided by the Government under the Declaration Annual Review, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention, please see: [www.ilo.org/ilolex](http://www.ilo.org/ilolex)

			<p><b>2006 AR:</b> According to the Government: In 2001, the Government commissioned research to explore the feasibility of ratifying C.29 and C.105 and examine the policy tasks to be fulfilled, with the intention of ratifying both Conventions.</p> <p><b>2000 AR:</b> According to the Government: In preparing ratification of C.29 and C.105, the Government consulted with the ILO experts on these Conventions on several occasions to seek their advisory assistance on whether the Korean legal system is in compliance with the provisions of both Conventions.</p>
	<b>Recognition of the principle and right (prospect(s), means of action, main legal provisions)</b>	<b>Constitution</b>	<p><b>YES</b> The Constitution:</p> <ul style="list-style-type: none"> <li>- Article 10 (respect for human dignity and worth): «All citizens shall be assured of human worth and dignity and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals».</li> <li>- Article 12, paragraph 1 (personal liberty): «All citizens shall enjoy personal liberty. No person shall be arrested, detained, searched, seized or interrogated, except as provided by Act. No person shall be punished, placed under preventive restrictions or be subject to involuntary labour, except as provided by Act and through lawful procedures».</li> <li>- Article 15 (freedom to choose occupations): «All citizens shall enjoy freedom of occupation».</li> </ul>
<b>EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT</b>	<b>Recognition of the principle and right (prospect(s), means of action, basic legal provisions)</b>	<b>Policy, legislation and/or regulations</b>	<ul style="list-style-type: none"> <li>• <b>Policy</b></li> </ul> <p><b>2004-2005 ARs:</b> According to the Government: There is a national policy to realize the principle and right (PR) of the elimination of all forms of forced or compulsory labour for every citizen and every worker, through the implementation of the Constitution, the Labour Standards Act (LSA), and the Criminal Act. These texts provide for the principle of human dignity and values, physical freedom, prohibition of forced labour, imprisonment under court rulings, and sanctions against violation.</p> <ul style="list-style-type: none"> <li>• <b>Legislation</b></li> </ul> <p><b>2000 AR:</b> According to the Government, section 6 (prohibition of forced labour) of the Labour Standards Act (LSA) provides that: «An employer shall not force a worker to work against his/her own free will through the use of violence, intimidation, confinement or by any other means which unjustly restrict mental or physical freedom.» In order to secure implementation of the legal provision, penal sanctions are also contained in national laws and regulations.</p>
		<b>basic legal provisions</b>	(i) Constitution (articles 10, 12 and 15); (ii) Labour Standards Act (LSA), sections 6 and 110; (iii) Criminal Act, sections 123, 324 and 460; and (iv) Criminal Procedure Act.
		<b>Definition of forced or compulsory labour</b>	<b>YES</b> , section 6 of the LSA gives a definition of the term «forced labour» by providing that «[a]n employer shall not force a worker to work against his own free will through the use of violence, intimidation, confinement or by any other means, which unjustly restrict mental or physical freedom».
		<b>Judicial decisions</b>	<b>2006 AR:</b> According to the Government: there are no cases of judicial decisions resulting from the violation of the PR (under section 6 of the LSA).
	<b>Exercise of the principle and right</b>	<b>Special attention to particular situations and human trafficking</b>	NIL
	<b>Information/Data collection and dissemination</b>	<b>2004 AR:</b> According to the Government: Systems for gathering information	

		are established, but there are no meaningful statistics on forced labour because of its non-existence in the country.
<b>Monitoring, enforcement and sanctions mechanisms</b>	<p><b>2004-2007 ARs:</b> According to the Government: In realizing the PR, the following measures have been implemented: (i) inspection/monitoring mechanisms; (ii) penal sanctions; (iii) civil or administrative sanctions; and (iv) capacity building. Moreover, the prosecutors' offices and police offices are in charge of sanctions against human trafficking and abuse of power of public servants engaged in the identification, emancipation and/or rehabilitation of persons subjected to forced labour. The Ministry of Labour monitors the implementation of the prohibition of forced labour by employers.</p> <p><b>2001 ARs:</b> According to the Government: The LSA requires employers to comply with the legal obligations concerning the prohibition of forced labour, and imposes penal sanctions in case of non-compliance.</p> <p><b>2000-2005 ARs:</b> According to the Government: Section 460 of the Criminal Procedure Act provides that the sentence of imprisonment shall be executed under the direction of a public prosecutor and in accordance with the court decision. Moreover, the Criminal Act provides for penal sanctions in the following cases:</p> <ul style="list-style-type: none"> <li>- In the case of a public official who, by abusing his official authority, forces a person to do any forced work (section 123 of the Criminal Act: abuse of authority);</li> <li>- In the case of a person who coerces another to do any forced work, by using violence or intimidation (section 324 of the Act: coercion); or</li> <li>- In the case a person who arrests, confines, captures or entices another person as hostage and makes him or her do any forced work (section 324-2 of the Act: coercion by hostage).</li> </ul> <p>The responsibilities for taking action against forced labour are assumed by the police, prosecution and courts. Under Section 110 of the LSA, an employer who forces an employee to work against his/her own free will in violation of Article 6 of the LSA shall be punished by imprisonment of up to five years or by a fine not exceeding 30 million won [about US \$ 29,300 as of December 2005.] In this regard, if any law is found to be violated or if any violation is alleged, labour inspectors investigate the case and, when relevant, take measures to criminally punish the offender.</p> <p>The Ministry of Labour is responsible for: (i) applying the LSA; (ii) monitoring the implementation of the Act; (iii) ensuring labour inspection at workplace; and (iv) ensuring that measures are taken against violations of the LSA.</p> <p>Under the direction and supervision of the Ministry of Labour, labour inspectors of the 46 regional labour offices conduct workplace inspections, ask employers to make reports or attendances and act as law enforcement officers in case of violation, in order to ensure that employers fully observe their obligations with regard to the prevention and elimination of forced labour.</p>	
<b>Involvement of the social partners</b>	<p><b>2004-2007 ARs:</b> According to the Government: Tripartite examination of related issues have been implemented in realizing the PR. Employers' and workers' organizations have been involved in the development and implementation of government measures. Employers' and employees' organizations were consulted in revising or enacting laws related to the prohibition of forced labour.</p>	
<b>Promotional activities</b>	<p><b>2004-2007 ARs:</b> According to the Government: In realizing the PR, the following measures have been implemented: (i) awareness raising/advocacy; (ii) employment creation/income generation; (iii) educational programmes; (iv) rehabilitation following removal from forced labour; and (v) international cooperation programmes or projects.</p>	
<b>Special initiatives</b>	<p><b>2008 AR:</b> According to the Government: The Government has requested the advisory assistance of the ILO on provision of interpretation on special types of military system in Korea and received comments from the Office. Moreover, the Government is carrying out inter-ministerial consultation on long-term basis, which is considering possible future changes in the military system.</p> <p><b>2007 AR:</b> The Government organized the International Labour Policy Advisory Board with a view to accelerate the ratification process for these instruments.</p>	

<b>CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT</b>	<b>According to the social partners</b>	<b>Employers' organizations</b>	NIL
		<b>Workers' organizations</b>	<p><b>2004 AR:</b> The KCTU observed that despite the Government's comment on the general prohibition of forced labour in the country, various forms of forced/compulsory labour were found at workplaces, involving especially migrant workers.</p> <p>No particular challenges were raised in the ITUC's comments.</p> <p><b>2001 AR:</b> No particular challenges were raised in the ICFTU's comments.</p> <p><b>2000 AR:</b> According to the FKTU, some employers abuse the position of those workers who have chosen to work rather than carrying out their military service.</p>
<b>CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT</b>	<b>According to the Government</b>	<p><b>2008 AR:</b> The ILO Declaration Expert-Advisers (IDEAs) observed that the Annual Review had made it possible to highlight and follow up country situations that required greater attention, and that some countries such as new member States, in particular in the South Pacific (as well as China and the Gulf States) had made important efforts during this process. However, according to them, more needed to be done. The IDEAs listed Samoa among the countries having expressed their intention to ratify C.29 and/or C.105 or to complete the ratification process. They encouraged these countries to accelerate this process so as to make an important step forward towards universal ratification. In particular, the IDEAs encouraged the Government of Samoa (and three other governments) to initiate or finalize their national labour law review processes. In strengthening and reforming their legal framework in compliance with international labour standards, these countries would allow a better implementation of the principle and right. Finally, the IDEAs noted that a number of governments, employers' or workers' organizations in various countries, including Samoa, were willing to meet these challenges and had requested technical cooperation, with a view to realizing country assessments and workshops with the support of the ILO. (Cf. Paragraphs 12, 41, 43 and 51 of the 2008 Annual Review Introduction – ILO: GB.301/3).</p> <p><b>2008 AR:</b> With regards to the KCTU's observation in the 2004 AR alleging that various forms of forced/compulsory labour were found at workplaces involving especially foreign workers, the Government indicated that in 1992, in order to respond to labour shortage and to reduce the number of undocumented workers, Korea introduced the Industrial Trainee System (ITS), which was in force until January 2007. However, as the ITS was a system which was more focused on training foreign trainees, it had certain limits as an employment system for foreign workers. Therefore, in 2004 the Korean Government introduced a new system for foreign workers' employment, the Employment Permit System. Under this system in force since 2004, the rights of foreign workers was significantly reinforced and much of the problems have been resolved, thanks to the provision on non-discrimination against foreign workers in the EPS Act, which allowed labour-related laws to be applicable equally to foreign workers and nationals, providing equal level of protection in case of infringement of foreign workers' rights.</p> <p><b>2007 AR:</b> According to the Government: Because of its unique military situation, such as military confrontation with North Korea, the Republic of Korea adheres to the universal conscription system (compulsory military service). In this respect, it is needed to interpret and review special types of military service, etc.</p> <p><b>2004 AR:</b> In response to KCTU's comments, the Government indicated that separate statistics on forced labour were expected to be compiled owing to the computerization of labour inspection. With regard to forced labour of migrant workers, the Government mentioned that it had made active efforts to prevent employers from forcing foreign workers to work.</p> <p><b>2002 AR:</b> In response to KCTU's comments, the Government observed that, in line with the objectives of the 1998 ILO Declaration, the follow-up should be of a strictly promotional nature and for technical cooperation, which would help ILO member States to implement effectively the core Conventions. In this regard, the KCTU's comments under the 2002 Annual Review were not compatible with the basic objectives of the 1998 ILO Declaration and its follow-up.</p>	

<b>TECHNICAL COOPERATION</b>	<b>Request</b>	<p><b>2008 AR:</b> According to the Government: the Government requests further advisory assistance in its process of considering the ratification of the conventions including the interpretation of whether special types of military services constitute compulsory labour or not.</p> <p><b>2007 AR:</b> The Government requested the ILO to provide advisory assistance in interpreting special types of military service.</p>
	<b>Offer</b>	<p><b>2004 AR:</b> The Government mentioned that it was actively cooperating with ILO and ILO/IPEC.</p>
<b>EXPERT-ADVISERS' RECOMMENDATIONS</b>	<p><b>2008 AR:</b> The ILO Declaration Expert-Advisers (IDEAs) listed the Republic of Korea among the countries having expressed their intention to ratify C.29 and/or C.105 or to complete the ratification process. They encouraged these countries to accelerate this process so as to make an important step forward towards universal ratification. In particular, the IDEAs encouraged the Government of the Republic of Korea (and four other governments) to initiate or finalize their national labour law review processes. In strengthening and reforming their legal framework in compliance with international labour standards, these countries would allow a better implementation of the principle and right. Finally, the IDEAs noted that a number of governments, employers' or workers' organizations in various countries, including the Republic of Korea, were willing to meet these challenges and had requested technical cooperation, with a view to realizing country assessments and workshops with the support of the ILO. (Cf. Paragraphs 12, 41, 43 and 51 of the 2008 Annual Review Introduction – ILO: GB.301/3).</p> <p><b>2007 AR:</b> The IDEAs encouraged the Government of the Republic of Korea (and four other governments) that had expressed their intention to ratify C.29 and/or C.105 to complete the process. The IDEAs also welcomed the significant increase in the reports of action to combat forced labour in several countries, including the Republic of Korea, and noted that an increasing number of States were recognizing that forced labour does exist in their country [...]. For the IDEAs, such recognition was indispensable to combating forced or compulsory labour, as it was undoubtedly the first step in what is a daunting but essential task (Cf. Paragraphs 40 and 41 of the 2007 Annual Review Introduction – ILO: GB.298/3).</p> <p><b>2005 AR:</b> The IDEAs listed the Republic of Korea among the countries where some efforts were being made in terms of research, advocacy, activities, social dialogue, national policy formulation, labour law reform, preventive, enforcement and sanctions mechanisms and/or ratification (Cf. Paragraph 13 of the 2005 Annual Review Introduction – ILO: GB.292/4).</p>	
<b>GOVERNING BODY RECOMMENDATIONS</b>	NIL	