



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the fifteenth and sixteenth periodic reports of the Republic of Korea, adopted by the Committee at its eighty-first session (6-13 August 2012)

1. The Committee considered the fifteenth and sixteenth periodic reports of the Republic of Korea (CERD/C/KOR/15-16), submitted in one document, at its 2187th and 2188th meetings (CERD/C/SR.2187 and 2188), held on 21 and 22 August 2012. At its 2201st meeting (CERD/C/ SR.2201), held on 30 August 2012, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the timely submission of the combined fifteenth and sixteenth periodic report submitted by the State party in accordance to the Committee's reporting guidelines (CERD/C/2007/1).

3. The Committee appreciates the presence of the delegation and the responses provided to the questions and comments raised by the Committee members during the consideration of the report.

B. Positive aspects

4. The Committee welcomes a number of positive developments and activities undertaken by the State party to fight racial discrimination and promote diversity, including:

- (a) The enactment of the Refugee Act which will enter into force in July 2013;
- (b) The ratification of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions;
- (c) The Enforcement Decree on the Primary and Secondary Education Act;
- (d) The Establishment of the Nationality and Refugee division in the Ministry of Justice and in the Seoul Immigration Office.

5. The Committee notes the adoption in December 2008 of the first Basic Plan for Policies on Foreigners, and in March 2012 of the second National Action Plan for the Promotion and Protection of Human Rights.

C. Concerns and recommendations

Definition of racial discrimination

6. While noting that the State party affirms that article 11, paragraph 1, of its Constitution, as well as a series of individual laws, are sufficient to ensure equality among citizens and prohibit racial discrimination, the Committee reiterates its concern about the absence of a legal definition of racial discrimination in line with article 1 of the Convention.

The Committee reiterates its recommendation that the State party review its position that a definition of racial discrimination in line with the Convention is not necessary since sufficient protection against discrimination is guaranteed to citizens through article 11, paragraph 1, of its Constitution. It urges the State party to include in its legislation a definition of racial discrimination which encompasses all prohibited grounds of discrimination, in line with article 1 of the Convention, and which guarantees equal rights to citizens and non-citizens as recommended in the Committee's general recommendation No. 30 (2004) on discrimination against non-citizens.

Legislation on racial discrimination

7. The Committee notes that the Ministry of Justice submitted the draft bill of the Discrimination Prohibition Act to the National Assembly in 2007, in compliance with previous recommendations of the Committee. It regrets that the bill was discarded when the 17th session of the National Assembly came to an end in May 2008. It notes the information received from the State party that a council of experts was established to continue the consideration of the Discrimination Prohibition Act.

The Committee urges the State party to take immediate action on the finalization and adoption of the Discrimination Prohibition Act or other comprehensive legislation to prohibit racial discrimination, in line with article 4 of the Convention. The Committee recalls that the same recommendation was made in 2009 by the Committee on Economic, Social and Cultural Rights (E/C.12/KOR/CO/3), and in 2011 by the Committee on the Elimination of Discrimination against Women (CEDAW/C/KOR/CO/7) and by the Committee on the Rights of the Child (CRC/C/KOR/CO/3-4).

Criminalization of racial discrimination

8. The Committee regrets that the draft bill of the Discrimination Prohibition Act did not provide for the criminal punishment of discriminatory acts. It further notes that the existing legislation is not in full compliance with article 4 of the Convention, including the absence of criminal sanctions for incitement to racial discrimination and acts of racially motivated violence.

Recalling its general recommendation No. 1 (1972) on States parties' obligations, the Committee reiterates the mandatory character of the provisions of articles 2 and of article 4 of the Convention and urges the State party to amend its Criminal Code to include racial discrimination as a crime and to adopt comprehensive legislation which criminalizes racial discrimination, provides for adequate punishments proportional to the gravity of the offence, considers racial discrimination as an aggravating circumstance and provides for reparations to the victims.

Lack of relevant data and virtual absence of court cases on racial discrimination

9. The Committee notes the information provided by the State party that crimes based on racial discrimination have rarely occurred throughout the history of the country and that the State party does not record separate statistics on racially motivated crimes.

Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee is of the view that the very low number of complaints of acts of racial discrimination is not necessarily positive and may be the consequence particularly of lack of legislation prohibiting racial discrimination, or lack of confidence or awareness of possibilities for redress by victims. The Committee requests the State party to undertake an in-depth analysis on the low number of complaints and to provide, in its next report, data and statistics on the number of cases of racial discrimination reported to the relevant authorities, the nationality of the complainants and their legal status, the percentage of investigations and prosecutions of those complaints and the outcomes.

Racist hate speech

10. The Committee notes that racist hate speech directed against non-citizens is becoming more widespread and explicit in the media and on the Internet. The Committee notes that the fundamental right to freedom of expression of the individuals involved does not protect the dissemination of ideas of racial superiority or incitement to racial hatred.

In accordance with its general recommendations No. 7 (1985) on legislation to eradicate racial discrimination, No. 15 (1993) on organized violence based on ethnic origin, and No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party monitor the media, Internet and social network to identify those individuals or groups who disseminate ideas based on racial superiority or incite to racial hatred against foreigners. The Committee recommends that the State party prosecute and adequately punish the authors of such acts.

Migrant workers

11. The Committee notes the amendments in the Employment Permit System but remains concerned that migrant workers are subject to discrimination, exploitation and lower or unpaid wages. The Committee expresses further concern that migrant workers cannot de facto become eligible for permanent residency in the Republic of Korea, which requires five years of continuous presence in the country, as the maximum employment period amounts to 4 years and 10 months, renewable once after a break of three months outside the country. The Committee is greatly concerned about the information that migrant workers, especially those who become undocumented, cannot enjoy their right to organize and join a labour union and that some union executive members have been expelled from the country. The Committee fully shares the recommendations of the Committee on Economic, Social and Cultural Rights (E/C.12/KOR/CO/3) in this regard.

The Committee recommends that the State party further amend the Employment Permit System in particular with regard to the complexity and variety of types of visa; discrimination based on country of origin; the limitation of the migrant workers' ability to change their place of work; the maximum employment period, and ensure that migrant workers can fully enjoy their rights and that they and their families, in particular children, enjoy an adequate livelihood, housing, health care and education. The Committee urges the State party to guarantee the right of all persons to form and join trade unions freely. The Committee requests the State party to report on these specific issues. The Committee recommends that the State party ratify the

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Undocumented migrant workers

12. The Committee understands that one of the consequences of the inflexible system of time-limited permits and visas is that many migrant workers, who entered the country legally, become undocumented and that they and their families cannot enjoy their rights or access to services. Moreover, the Committee received information that the labour inspections carried out in the workplaces are aimed at identifying undocumented migrants, rather than checking working conditions, and that crackdowns have been strengthened and have resulted in a higher number of deportations.

The Committee urges the State party to protect the rights of undocumented migrant workers and requests information on the number of undocumented workers identified during labour inspections, their condition and length of detention, as well as the number of migrant workers who have been expelled. The Committee requests the State party to take all measures to ensure that migrant workers who entered the country legally do not become undocumented as a result of the inflexibility of the work-permit system.

Situation of refugees, asylum seekers and stateless persons

13. While noting the increased efforts made by the State party in this area through the establishment of the Nationality and Refugee division of the Ministry of Justice and the increase in the number of people who have been granted refugees status during the past years, the Committee notes with concern the very low acceptance rate as compared to the world average. The Committee received information that the number of public officials handling refugee applications remains low and that as of May 2012, there were more than 1,200 applications pending. Moreover, according to the information received, the procedure still fails to guarantee due process of law as interpreters are not adequately provided and the Refugee Recognition Committee handles appeal procedures without conducting hearings involving the applicants. The Committee remains concerned about challenges faced by refugees and asylum seekers in terms of livelihood, employment, access to public services, education and citizenship. Of particular concern is the lack of proper birth registration of the children of refugees, asylum seekers and stateless persons.

The Committee recommends that the State party ensure unhindered and equal access to official procedures for lodging asylum applications at ports of entry, thereby upholding the principle of non-refoulement; take all necessary measures so that refugees and asylum seekers enjoy the right to work and that they and their families enjoy an adequate livelihood, housing, healthcare and education; and establish a system and procedures to properly register the birth of children of refugees, humanitarian status holders and asylum seekers born in the State party, as already recommended by the Committee on the Rights of the Child in 2011 (CRC/C/KOR/CO/3-4), and of children of undocumented migrants. The Committee requests that the State party, in its next report, provide the total number of applications for refugee status per year, broken down by those rejected and those accepted.

The Committee further recommends that the procedure for recognizing refugee status conform to international standards and be further implemented, including by appointing more officials to review the applications. Due process of law should be respected at all stages of the process, inter alia, by providing interpreters for the

applicants and guaranteeing their right to be heard during the appeal procedures which concern them.

Protection of foreign women

14. While noting the revision in 2010 of the Act on the Management of International Marriage Agencies with a view to strengthening the protection for the clients of such agencies, the launch of overseas programmes in five cities of three countries to provide information to marriage migrants before their entry into the Republic of Korea and the opening of Multi-Cultural Family Support Centres, the Committee remains concerned that its previous recommendation on the protection of the rights of foreign female spouses has not been implemented. In particular, the Committee remains concerned that in cases of divorce, while a foreign wife may retain her residence permit, the burden of proof that the divorce is attributable to the Korean spouse is alleviated if she submits a written confirmation of divorce from a certified women's group. The Committee is also concerned that the rights of foreign women who request a divorce are still not adequately protected and that their continued stay in the country is conditional on typically gendered roles such as the care of children and parents-in-law.

Recalling its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee reiterates its recommendation to the State party to increase its efforts to protect foreign women married to Korean citizens by granting them equal rights in case of separation or divorce, and with regard to subsequent residence permits and other provisions. In this regard, the Committee requests the State party to provide information on the number of foreign spouses who have been denied resident status in the State party after separation or divorce since 2007, when the Committee made its first recommendation in this regard.

15. The Committee notes that migrant women who are subjected to domestic and/or sexual violence often do not report such crimes due to fear of losing their legal resident status, and as a consequence, they lack protection. The Committee is also concerned about reports of violence and discrimination against foreign wives of Korean men.

The Committee urges the State party to ensure that foreign women who are victims of domestic violence, sexual abuse, trafficking or other forms of violence can confidently access justice. Women victims of violence should be guaranteed a legal stay in the State party until they recover and have the option to remain in the country if they so wish.

Human trafficking

16. The Committee welcomes the State party's intention to ratify the Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the establishment of the Support Centre for Female Victims of Forced Prostitution. However, the Committee is concerned by reports received, according to which, migrant women continue to be trafficked and subjected to forced prostitution through various routes, including through abuses of the E-6 visa granted to work in the entertainment industry. The Committee shares the concerns expressed and the recommendations made by the Committee on the Elimination of Discrimination against Women (CEDAW/C/KOR/CO/7).

The Committee urges the State party to ratify the Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in

Persons, Especially Women and Children, and to revise the Criminal Code and adopt national legislation which allows prosecution and adequately punishes the perpetrators of trafficking, provides reparations to victims and ensures that fear of expulsion does not deter reporting of such crimes. The Committee recommends that the State party review the current E-6 visa regime, and exercise the necessary control on all categories of actors, including private businesses, related to it.

Multicultural families

17. The Committee notes the Multicultural Families Support Act, but is concerned with the definition of multicultural families which, at present, limits itself to the union between a Korean citizen and a foreigner, while excluding other forms of multicultural families such as those composed of two foreign partners. The Committee is concerned that the Multicultural Families Support Act excludes a large number of the people present in the country and hampers their integration in the State party's society, thereby creating de facto discriminatory situations which have particularly heavy consequences on the children and foreign spouses.

The Committee recommends that the State party broaden the definition of multicultural families to include unions between foreigners or inter-ethnic unions in order to fully integrate a large number of the people present in its territory who, at present, cannot benefit from the support provided for under the act. The Committee urges the State party to pay particular attention to the children of such families who bear the heaviest consequences of the lack of integration.

Mandate of the National Human Rights Commission

18. While noting that the budget of the National Human Rights Commission of Korea (NHRCK) has increased by more than 4 per cent in the current year, the Committee is concerned that the increase does not compensate for the downsizing of 21 per cent which occurred a few years ago. In addition, the Committee has received reports of forceful deportation of foreign workers while the NHRCK's investigations were still taking place. The Committee notes that some experienced Commissioners resigned in the recent years and that the NHRCK did not provide an independent report on the implementation of the Convention to the Committee, but rather provided comments to the draft report of the State party.

The Committee recalls the recommendations made in 2009 by the Committee on Economic, Social and Cultural Rights (E/C.12/KOR/CO/3) and in 2011 by the Committee on the Elimination of Discrimination against Women (CEDAW/C/KOR/CO/7). The Committee reminds the State party of its responsibility to ensure that the National Human Rights Commission of Korea remains compliant with the Paris Principles, in particular with respect to its independence. It urges the State party to respect the timing of the investigations by the NHRCK, to provide it with adequate financial resources and experienced human rights experts so as to enable it to carry out its mandate effectively, including promoting and monitoring the rights under the Convention.

D. Other recommendations

Ratification of other treaties

19. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying the International Convention on the Protection of the

Rights of All Migrant Workers and Members of Their Families, as well as the Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

Follow-up to the Durban Declaration and Programme of Action

20. In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests the State party to include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

Dissemination

21. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

Common core document

22. The Committee encourages the State party to regularly update its core document (HRI/CORE/KOR/2010) submitted in 2010, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth Inter-Committee Meeting of the human rights treaty bodies held in June 2006 (HRI/GEN.2/Rev.6, chap. I).

Follow-up to concluding observations

23. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 11, 12 and 13 above.

Paragraphs of particular importance

24. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 14, 17 and 18, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next report

25. The Committee recommends that the State party submit its seventeenth to nineteenth periodic reports in a single document, due on 4 January 2016, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60-80 pages for the common core document (see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, chap. I, para. 19).