

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION 71ST SESSION THE REPUBLIC OF KOREA, 13TH & 14TH PERIODIC REPORTS 9-10 AUGUST 2007

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Information submitted to the Committee

State report

On 3 July 2006 the Republic of Korea submitted its combined 13th and 14th periodic report to the Committee on the Elimination of Racial Discrimination (the Committee).¹ The report contains status updates on all points raised by the Committee in its previous concluding observations.² The report covers legislative, judicial administrative and other measures taken by the Government to implement the provisions of the Convention and progress made between 2003 and 2005. The report covers Constitutional provisions for human rights; the activities of the National Human Rights Commission; human trafficking and the rights of refugees, foreigners and migrants workers. In relation to Article 2 of the Convention the report detailed the National Human Rights Commission, the National Action Plan for the Protection and Promotion of Human Rights (NAP); status of ethnic Chinese and policy reformation regarding the rights of foreigners. In regards to Article 3 of the Convention, the report briefly discussed the State’s relationship with South Africa and its lack of domestic policies of segregation and apartheid. In response to Article 4 of the Convention the report made reference to the Constitutional and legislative provisions for non-discrimination. Treatment of foreigners and

¹ CERD/C/KOR/14, 18 August 2006.

² CERD/C/426/ADD.2

foreign workers; immigration laws; issues of refugees claims and refugee/migrant worker support and integration were outlined in the report's sections on Articles 5 and 6 of the Convention. The final section of the report examined provisions under Article 7 of the Convention and detailed Government policies and plans for human rights at all levels of Korean Society. This included public awareness campaigns, education in schools and education of public employees.

The list of issues

Country rapporteur Mr Kamal submitted a list of issues to the State prior to their review before the Committee. The list requested updated information regarding Korean policy and legislation and specific areas of concern, including Korea's National Action Plan on human rights; the *Discrimination Prohibition Act*, the *Immigration Control Act* and the *Act on Foreign Workers Employment*. The Committee asked the State to detail legislative measures taken to prohibit and punish racially motivated crimes; Constitutional provisions defining racial discrimination; human rights training programs; and actions taken by the State to combat the trafficking of persons. Questions on the rights of migrant workers, foreigners and spouses of migrant workers were also prominent in the list. The list concluded by asking if the State intended to ratify the *International Convention on the Protection of All Migrant Workers and Member of Their Families*.

Themes and issues

The Korean delegation consisted of Mr CHANG Dong-hee, Deputy Permanent Representative of the Mission of the Republic of Korea in Geneva, and other delegates from the Mission of the Republic of Korea in Geneva, the Human Rights and Social Affairs Division of the Ministry of Foreign Affairs, the Ministry of Justice and the Ministry of Labor.

In his opening statement, Mr CHANG welcomed the Committee's consideration of the Korean report, and summarized the report dealing with significant developments in Korea since the submission of the 11th and 12th report in 2002,³ as well as the Committee's conclusion in 2003.⁴

Domestic implementation of the Convention

The Committee raised the issue of a lack of specific reference to racial discrimination in the Constitution and the need for legislation on the prohibition of racial discrimination. It also requested detailed information on the number and nature of prosecutions, convictions, and sanctions imposed with regard to criminal offences relating to racial discrimination, as well as the communications concerning cases of alleged racial discrimination considered by the National Human Rights Commission.

The delegation responded that the Constitution provides for the general principles of equality⁵ and added that the Constitutional Court as well as Supreme Court interprets these as fundamental legal principles against racial discrimination. There have been few initiatives to create additional legislation for the implementation of the Convention, as ratified international conventions have the same legal effect as domestic laws,⁶ and crimes clearly related to racial discrimination have been extremely rare. However, taking note of the Committee's recommendation, the Government, led by the Ministry of Justice, is now in the preparation of the *Discrimination Prohibition Act*. In its present form, the draft prohibits discrimination on the grounds of race, skin colour and religion in legal matters, employment, education or the supply of goods and services, and is

³ *Ibid.*

⁴ CERD/C/63/CO/9 10 December 2003.

⁵ Article 11, paragraph 1 of the Constitution of the Republic of Korea.

⁶ Article 6, paragraph 1.

going through a process of inter-agency consultation. Korean representatives also informed the Committee about the details of the 47 cases of racial discrimination received by the Commission between 2001 and 2006. However, they were unable to provide information related to prosecutions, convictions and sanctions due to an absence of data.

Upon the request of the Committee for an update concerning the adoption of the National Action Plan (NAP) for the Promotion and Protection of Human Rights, the delegation briefly introduced the contents of the NAP to be implemented from 2007 to 2011. The NAP presents detailed implementation schemes for international standards and recommendations of international human rights bodies. It addresses the protection of human rights of socially vulnerable and minority groups as well as plans for disputed issues such as the *National Security Act*, the death penalty and conscientious objection of military service. Mr Kemal indicated, on the basis of the recommendations and comments made by the National Human Rights Commission of Korea, that the consultation process for the formulation of NAP was not inclusive enough to reflect the views of various stakeholders and that plans for the protection of minorities and socially disadvantaged was not clear enough. However, he noted that since the NAP has been enacted in May 2007, it is still too early to evaluate its functions.

Migrant workers and non-citizens

Committee members addressed the issue of migrant workers, emphasizing that the majority of foreign work forces are allocated in labour sectors deemed to be dirty, dangerous and difficult – or so-called ‘three D’ jobs. Mr Sicilianos noted cases of discrimination against migrant workers through longer working hours and lower wages in comparison to peer Korean workers. Mr Kemal highlighted the unjust situations faced by many migrant workers due to the limits in job mobility under the current Employment Permit System (EPS) and the abuse by employers of their position as the only guarantor, often in the form of arbitrary withholding of payments and physical harassment. He added, in parallel with the argument of Mr Avtenov, that the 3 years period for permit renewal of EPS is realistically too short and may result in producing illegal workers unless more flexibility and liberty is given to the workers as the first permits start to expire by August 2007. Mr Kjaerum and Mr Kemal asked about the issue of discrimination against foreigners in finding employment in major corporations or as public officials, and the difference in treatment of white collar workers from Europe and America *vis-à-vis* those from Asia.

Questions on the protection of the rights of illegal migrant workers and their treatment were also widely discussed. Mr Avtonomov asked about the measures taken by the Government regarding the fire accident in the Yeosoo detention facility for illegal migrants on 11 February 2007, in which 10 illegal migrant workers lost their lives and 17 others were injured. Mr Kemal quoted NGO sources to indicate problems of language that seriously undermine migrant workers’ access to proper legal procedures and information, and asked about the measures taken by the Government in this regard. Mr Rodriguez and Mr Kjaerum wondered about the discriminatory nature of prohibiting trade union activities to illegal migrant workers. Mr Sicilianos requested information on the types of supportive measures provided for victims of trafficking and clarification on the issue of the deportation of foreign sexual workers against their will.

Korean representatives asserted that in accordance with the Constitution, the *Labor Standard Act*, the *National Human Rights Act* and *ILO Convention No. 111*, prohibition of discrimination and equal working conditions among legal migrant workers of different nationalities, as well as between migrant workers and Korean workers, are guaranteed. Difference in working hours and payment is often due to the difference in productivity and skill among workers and not due to the difference in their skin colour. There are also a significant number of ‘white collar’ foreigners working in different levels in major Korean corporations, though exact data was not available. Concerning the abuse of the EPS, the delegation stated that Article 6 of the *Labor Rights Act*, Article 9 of the *Trade Union and Labor Relation Act*, the *Labor Standards Act* and the *Minimum Wages Act* provide the legal basis for punishing unfair treatment by employees, obtaining remedies and changing work places.

Since the Yeosoo fire accident, the Korean Government has taken steps to prevent a recurrence of such an accident and to ensure safety within these facilities through a better fire prevention system and increased presence of public officials. Regarding difficulties of communication for convicted illegal migrants, the Ministry of Labour has established the Interpretation Support Centre for Foreign Migrant Workers in June 2006 to facilitate 3-way conversation between foreign workers and public institutions. Currently there are 29 interpretation agents in 26 centres. However it was stated that they fall short to the ever growing demand and national diversity coming from the rapid increase of foreign workers. On the matter of the banning of the formation of trade unions by illegal migrants, the decision was made based on the illegality of the status of those workers and not on the grounds of their race, religion, gender, political party and social status, as Article 9 on the *Trade Union and Labor Relation Act* prohibits such discrimination. However, a lawsuit filed against the decision is currently being considered by the Supreme Court. Concerning victims of trafficking, the delegation claimed that the Korean Government supports them with employment, assistance in lodging complaints and provisions of shelters, and restricts forced deportation unless appropriate legal remedies have been completed.

Integration and naturalization of foreigners

The Committee requested detailed information on Government reforms made to eliminate discrimination against foreigners or naturalized foreigners and measures to facilitate their integration. Accordingly, Mr. Sicilianos demanded a clearer timeframe for the implementation of the *Basic Act on the Treatment of Foreigners in Korea*. The Committee also raised the issue of discrimination against foreign spouses and their children born through inter-ethnic marriage. Stronger emphasis was placed on the integration process and prevention of discrimination against children of inter-ethnic origin, or so-called “mixed bloods.” Mr Kemal also pointed out the problem of the current international marriage system, which does not guarantee an the right of independent identity to the foreign spouse but imperatively requires a Korean guarantor even upon the separation of the couple.

The delegation explained about the five year “Basic Plan on the Policy on Foreigners”, which on the grounds of the *Basic Act on the Treatment of Foreigners in Korea* broadly comprises policies for foreigners on entry, employment, social security measures, and education programs to facilitate the integration of migrants, naturalised foreigners and their children. The education program includes not only support for foreigners in understanding Korean language and culture, but also aims to promote the understanding of multiculturalism amongst Koreans and foreigners. With regard to the guarantor system, the Korean delegation explained that it was a measure to protect foreign spouses from the threat of trafficking and forced prostitution in the form of marriage in disguise. They acknowledged also the problems arising from the ever growing number of inter-ethnic marriages and international marriage brokerage, and introduced to the Committee the Bill on the Regulation of Marriage Brokerage that aims to protect foreigners from possible fraud by marriage brokers.

‘Pure blood’ and ‘mixed blood’

One of the central issues of debate during the session was the use of the notion of ‘pure blood’ and ‘mixed blood.’ While the delegation accentuated that the term was used to reflect the perceptive reality of Koreans in general and not to assert the position of the Government, many members raised concern on the symbolic impact of the use itself of such a notion. Mr Thornberry commented that ‘purity’ in blood can have a connotation of racial superiority and it would be important to find an alternative notion. Mr Yutzis, welcoming the Government’s intention to change public attitude favouring ‘pure bloodness’, asked for details on reformative measures required to change such symbolic attitudes deeply rooted in history and culture.

The delegation repeatedly emphasized that the Government realized the problems behind the use of terms such as ‘pure’ and ‘mixed’ but still used the notion in the report to properly reflect the reality of Korean society. It stressed that the Government is making different efforts through education and awareness-building

to mitigate such a discriminatory perception on ethnic diversity. Mr Kemal supported the assertion of the delegation by congratulating the efforts made by the Korean Government.

Conclusions and next steps

The country rapporteur Mr Kemal thanked the delegation for its effort to comprehensively answer all the questions posed by the Committee and congratulated them for the human rights improvements in the country. However he expressed his concern at the absence of specific reference to racial discrimination under the Constitution and a separate domestic legislation for the implementation of the Convention. He evaluated the acknowledgement of the existence of racial discrimination in the country as a 'great step' and invited the Government to take measures to lead the country toward a more open and multicultural society through a dynamic National Action Plan. He finally stressed the need to apply the 'principle of mutual benefit' in treating and dealing with migrant workers.

At the time of writing, the Committee's concluding observations had not yet been published.⁷

Last revised and updated: 12 October 2007.

⁷ Available at <http://www.ohchr.org/english/bodies/cerd/cerds71.htm>

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The *Treaty Body Monitor* forms part of the Human Rights Monitor Series produced by ISHR. It reports on each country reviewed by the six treaty bodies (all but the Committee on the Rights of the Child) and provides an overview of every treaty body session. It is currently an online publication that can be found at <http://www.ishr.ch/hrm/TMBs>.

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