

REPUBLIC OF KOREA

CERD A/36/18 (1981)

144. The initial report of the Republic of Korea (CERD/C/61/Add.2) was considered by the Committee together with the introductory statement made by the representative of the reporting State, which supplemented the information given in the report. The representative stated that since the submission of the initial report on 9 July 1980, there had been a change of Government in his country and a new democratic Constitution had been promulgated on 22 October 1980, after approval by referendum. As a State party to the International Convention on the Elimination of All Forms of Racial Discrimination, his country would continue to make every effort to ensure faithful observance of its provisions, and his country's next periodic report would contain the relevant provisions of the new Constitution.

145. Members of the Committee, taking into account the internal difficulties of the country, commended with gratitude the initial report of the Republic of Korea which demonstrated its willingness to establish a dialogue with the Committee.

146. Two general problems were discussed without reaching a consensus as to whether the Committee was competent to do so: (i) the provision that the territory of the Republic shall consist of the Korean peninsula and its adjacent islands (article 3 of the Constitution) and (ii) the problem whether the foreign troops stationed in the territory would be subject to the jurisdiction of that country in the event of the commission of an act of racial discrimination.

147. Attention was drawn to a statement in the report that the Government, not having any kind of experience or practice of racial discrimination, did not find it necessary to adopt or introduce special legal provisions. It was pointed out that the absence of racial discrimination in no way exempted the Government of a State party from adopting the legislative, judicial and other measures required under the Convention; that racial discrimination was a phenomenon that could arise at any time and in any country, as experience had in fact shown; and that the very fact of the ratification of the Convention imposed on the State party the obligation to adopt new legislation, if only to prevent the phenomenon from occurring; otherwise the State would be acting in breach of the Convention. The concern was expressed in connection with the fact that most of the information contained in the report was based on the Constitution which was no longer in force. Questions were asked concerning specific articles of the new Constitution, on the status of aliens and on the activities of the Supreme Court and other courts. It was also asked whether there were any plans to amend the criminal and civil legislation, or whether they were still in force.

148. Referring to article 2 of the Convention, the hope was expressed that the next report of the Republic of Korea would include detailed information on the demographic composition of the country and, if that composition was not homogeneous, on the measures adopted under article 2, paragraph 2, of the Convention, ensuring the adequate development and protection of certain racially disadvantaged groups.

149. In connection with the implementation of article 3 of the Convention, further information was requested especially on the attitude of the Government of the Republic of Korea towards South Africa. While welcoming the fact that the Government had no official relations with South Africa, a member wished to know whether there were any unofficial links, such as contacts between private firms and, if so, whether the Government intended to put an end to those relations in accordance with the relevant resolution of the United Nations.

150. Several members underlined that no legislative, judicial and other measures, as it was seen from the report, had been adopted by the Government of Korea to implement article 4 of the Convention. The attention was drawn to the fact that article 260 (1) of the Criminal Law, quoted in the report, failed to meet the requirements of article 4 of the Convention, especially paragraphs (a) and (b) of that article. It was suggested that this shortcoming should be remedied, and the hope was expressed that information on the progress in this field would be included in the next report.

151. Several questions were asked concerning article 5 of the Convention. Information was required on the emigration policy of the Republic of Korea and on the steps taken to safeguard the interests of its migrant workers in various countries. It was asked whether any economic policies were being implemented to correct imbalances in income distribution and growth which had given rise to tension among different groups in the community. Information was requested on the status of persons of mixed race in the social, economic and educational fields, and on whether such persons could enter all sectors of employment, including the army, or whether there was any restriction in that respect. As far as trade unions were concerned, it was asked whether or not strikes were permitted, whether there was more than one trade union organization and whether trade unions could be formed on ideological bases or only as part of the government machinery. It was understood that freedom of association was to be regulated, and it would be useful if the law on associations could be quoted in the second report. It was also asked whether there was equal pay for equal work for men and women, whether women had full equality before the law and what opportunities they had in various fields. The question was put whether criticism of the Constitution was permitted. Further information was requested on the implementation of the provisions of paragraphs (c), (d) and (e) of article 5, which was a most important article. Such information, as one of the members of the Committee pointed out, should refer not only to the constitutional principles but also to the legal provisions and other measures adopted.

152. Some members drew attention to the fact that there was no information in the report concerning article 6 of the Convention. Positive and specific legal provisions must be adopted in accordance with requirements of this article, and it would be advisable to bring that point to the attention of the Government of the Republic of Korea.

153. The Committee emphasized the importance of measures to be taken to implement article 7 of the Convention, and requested that detailed information concerning the implementation of this article be included in the next report.

154. Replying to some of the questions of the Committee, the representative of the Republic of Korea assured the Committee that there was no discrimination against aliens living in Korea and that they were

entitled to apply for Korean citizenship if they so wished. Where trade unions were concerned, he drew attention to article 30, paragraph (1) of the new Constitution, which stated that all citizens had the right to work and that the State should endeavour to promote employment and guarantee optimum wages. He also referred to paragraph (1) of article 31, which guaranteed the right to independent association, collective bargaining and collective action. Concerning questions on specific articles of the Constitution, particularly those dealing with compensations, the representative stated that the matter would be covered in the next report. Lastly, he reaffirmed that the Republic of Korea had no public, official or private relations with South Africa.

CERD A/37/18 (1982)

229. The second periodic report of the Republic of Korea (CERD/C/86/Add.1) was considered by the Committee, together with the introductory statement made by the representative of the reporting State, who informed the Committee that on 4 January 1982 his Government had lifted the curfew, thus strengthening the fundamental rights of the population.

230. Members of the Committee drew attention to part I, section A of the report, which stated that the Constitution sought "to harmonize the national security, law and order and efficiency with the people's desire for democratization, while guaranteeing basic human rights to the greatest possible extent", and asked whether the words "to the greatest possible extent" meant that the guarantee was not comprehensive. With reference to part I, section B of the report, setting out the text of the provision contained in article 5 (1) of the Constitution, they also asked whether it meant that treaties had the same effect as the Constitution or laws constituting domestic legislation, whether that article gave a victim of racial discrimination the right to bring suit before the courts or whether other appropriate provisions should be made, since States were obliged to adopt special measures to give effect to those provisions of the Convention which were not self-executing.

231. In connection with article 2 of the Convention, inquiry was made whether any measures had been taken in favour of certain social groups whose development had not followed that of the rest of society and who required protection in order fully to enjoy human rights and fundamental freedoms. With regard to part I, section C of the report, further details were requested on the homogeneity of the population from the point of view of ethnic origins, and also on the rights of foreigners.

232. With regard to article 4 of the Convention, the Committee noted that article 3 of the 1980 Constitution, which condemned and prohibited racial discrimination, and paragraph 1 of article 260 of the Penal Code, which imposed penalties, did not suffice to give effect to that article, in particular to all aspects of subparagraphs (a) and (b), as had been stated during the discussion of the initial report. The Committee emphasized the need for the Republic of Korea to adopt special legislation to implement those provisions.

233. The Committee requested additional information on the implementation of article 5 of the Convention, in particular concerning the right to leave the country freely and to return and on questions concerning the principle of equal pay for equal work, requested during the discussion of the initial report.

234. With reference to article 6 of the Convention, members of the Committee expressed their regret that the report did not mention the protection enjoyed by citizens and the possibilities of appeal available to them as well as measures taken to implement article 6, in particular, to permit victims of racial discrimination to seek damages.

235. Turning to article 7 of the Convention, information was requested on measures taken by the Government in the field of teaching, education and culture with a view to combating racial prejudice,

promoting tolerance and understanding among the various groups of the population, and disseminating the principles laid down in the Charter and the Convention, namely, how education on United Nations activities in the field of human rights, especially with regard to racial discrimination, was carried out in schools.

236. In reply to some questions raised by members of the Committee, the representative of the reporting State said that international treaties had the same effects as domestic legislation in the Republic of Korea, that there were no ethnic minorities in his country, that foreigners residing therein enjoyed civil rights and that Koreans were free to leave the country and return. The Government had taken measures to help certain sectors of the population; in particular, a campaign had been launched to improve the standard of living of both the rural population and the inhabitants of the coastal regions, who derived their living mainly from fishing.

237. The representative also stated that workers' rights were laid down in the new Constitution, which contained 29 articles governing the rights and duties of citizens. It provided that all citizens had the right to work and ensured special protection for working women and children. The workers also had the right to independent association, collective bargaining and collective action. In that connection, he reiterated that in January 1982, following abrogation of the martial law proclaimed one year previously, the Government had abolished the curfew that had been in force for 30 years. It had also abolished the press censorship.

CERD A/39/18 (1984)

387. The third periodic report of the Republic of Korea (CERD/C/113/Add.1) was introduced by the representative of the reporting State who highlighted the main points dealt with in his Government's report, in particular, the composition of the Korean population, the legal effect of the Convention on Korean domestic law, the rights enjoyed by foreigners residing in the Republic of Korea, the action of the Korean Government against the policy of apartheid and the provisions of the 1980 Constitution relevant to the implementation of the Convention.

388. Members of the Committee expressed their appreciation of the comprehensive report of the Republic of Korea, which had been drafted according to the Committee's guidelines and welcomed the presence of the Government's representative which was an indication of the co-operation of the Korean Government with the Committee. Noting that the Korean population was composed of a completely homogeneous group, one member of the Committee asked for clarification as to whether that homogeneous group in former times had been composed of tribes, clans or other types of social organization, each with its own characteristics and distinct social levels.

389. Furthermore, members of the Committee noted that while the Convention was incorporated into Korea domestic law, no specific legislative measures had been taken to enforce its provisions. They observed, in this connection, that certain legislative measures were necessary to give effect to the mandatory provisions of the Convention. Under article 4 of the Convention for instance, there was an absolute obligation for the States parties to enact certain legislation to prevent and punish any violation of its provisions. The Convention as such was not sufficient, because it did not express the sanctions and penalties to be imposed. It was stated in the report that the provisions of article 4 of the Convention were endorsed by article 10 of the Korean Constitution; however, members of the Committee wished to know whether any legal measures existed in the Republic of Korea to enforce the provisions of article 10 of the Constitution.

390. With reference to article 5 of the Convention, members of the Committee noted that, according to the report, the provisions of the Korean Constitution dealing with the right to freedom of movement included the right to leave the country and return to it and those dealing with the right to work included the right to equal pay for equal work. They pointed out, in this connection, that in the Constitutions of many States a distinction was made between freedom of movement within the frontiers of a State and the right to cross the frontier and that the right of equal pay for equal work was not generally included in the right to work, but required a special provision. They asked, therefore, whether the information provided was based on the judgement of a court and whether the Exit and Entry Control Act, which regulated the right to leave the country freely, applied to foreigners only or to everyone living in the Republic of Korea. They asked also whether Korean citizens had the right to choose their work and to form trade unions; whether conditions existed in the Republic of Korea to permit groups of diverse orientation, such as workers, students and professional classes, to meet within their own organization and to put forward their demands in relation to their work and with respect to the Government; whether the Republic of Korea had any immigrant workers and, if so, how they were protected legally, economically and with regard to health; whether there were any special legal measures for the protection

of foreigners resident in the Republic of Korea and how long they had to reside in the country before they could become citizens.

391. With regard to article 6 of the Convention, members of the Committee wished to know whether judicial guarantees in the Republic of Korea covered acts of racial discrimination in penal, civil or administrative courts, and what kind of recourse would be available if the rights mentioned in article 20 (2) of the Korean Constitution were violated.

392. Replying to questions and comments by members of the Committee, the representative of the Republic of Korea provided some information on the ethnological and political process through which the Korean people became a homogeneous group. He explained that all the international agreements ratified by the Republic of Korea and promulgated in accordance with its Constitution had the same effect as domestic laws in the sense that they were implemented by or reflected in domestic legislation more than incorporated into it. He also stated that the homogeneity of the Korean people had made it unnecessary to provide for penalties for acts of racial discrimination although there was a relevant provision in the Korean Penal Code.

393. Referring to the right to leave and enter the country, the representative pointed out that every male Korean citizen had a duty to do a period of military service and that every Korean male, wishing to travel abroad, was required to provide evidence that he had fulfilled his duties. There were however exceptions to that rule; students, for instance, were allowed to pursue their studies in foreign universities and to postpone their military service until the age of 26. The Government formed in 1980 had abolished all restrictions on the right to return based on political reasons which had been applied in the past. On the other hand, the Exit and Entry Control Act placed restrictions on the right of foreigners to enter Korea and on the duration of their stay in the country. However, every foreigner allowed to live in the country was free to engage in commercial, social and economic activities. There were about 27,000 permanent foreign residents in Korea: Chinese, numbering some 20,000, were the largest foreign community followed by Japanese and Americans.

394. With regard to the right to work and to form trade unions, the representative referred to the relevant provisions of the Constitution and of the Labour Standard Act. He stated that 16 industrial trade unions were affiliated to the Federation of Trade Unions and that industrial undertakings employing 10 or more workers were obliged by law to subscribe to the labour insurance scheme. In 1982, 88 labour disputes had occurred and 79 of them were settled through a labour-management reconciliational process. There were practically no immigrant workers in Korea, but some 200,000 Koreans worked abroad in 76 countries. Almost 160,000 of those migrant workers were employed by Korean business firms and the remaining 40,000 by foreign firms.

395. The representative of the Republic of Korea finally stated that further information regarding the questions put by the Committee, in particular those raised in connection with article 4 of the Convention, would be provided in his Government's next periodic report.

CERD A/42/18 (1987)

530. The fourth periodic report of the Republic of Korea (CERD/C/144/Add.1) was considered by the Committee at its 787th meeting on 9 March 1987 (CERD/C/SR.787).

531. The report was introduced by the representative of the Republic of Korea who highlighted parts of the report and assured the Committee that his Government would continue to pursue a strict and consistent policy against all forms of racial discrimination and to make every effort to fulfil its obligations under the Convention.

532. Members of the Committee thanked the representative of the Republic of Korea for his country's report, which was in accordance with the Committee's guidelines (CERD/C/70/Rev.1) and reflected his Government's willingness to continue its dialogue with the Committee.

533. Concerning the implementation of article 3 of the Convention, members asked whether the Republic of Korea maintained any diplomatic relations with South Africa and, if so, the hope was expressed that they would be broken off in order to isolate the racist regime of that country.

534. With regard to articles 4 and 6 of the Convention, members of the Committee pointed out that the fact that the Convention had become part of domestic law and that it could be invoked before the courts was insufficient. The enactment of specific domestic legislation was necessary for the implementation of the provisions of articles 4 and 6. In that context, information was requested about how cases arising under the Convention were settled in practice, since the Convention did not indicate any penalties for violation of its provisions. The provisions of article 4 of the Convention were mandatory and provided judges with an effective tool where a specific legal text had been enacted. Members welcomed the fact that the Government was studying a revision of the Criminal Code which would provide a good opportunity for enacting the appropriate legislation.

535. Regarding article 5 of the Convention, clarification was sought concerning the freedom of movement of citizens and the Exit and Entry Control Act, which provided that the Ministry of Justice could prohibit the departure of any person whose departure was considered detrimental to the interests of the country or who was under criminal investigation. Confirmation was sought of the statement in the report that the right of any national to return to his country may, under no circumstances, be restricted even by law. Members of the Committee requested information regarding the freedom to vote and to stand for election in free periodic elections, and refugees, in particular, North Koreans, seeking political asylum. Questions were asked concerning the status of persons of mixed United States/Korean parentage and it was inquired as to whether they could hold dual citizenship. It was also asked how foreigners who had lived in the Republic of Korea for generations were treated and whether they used their own languages and had their own schools. An explanation was requested in connection with the right of an alien to leave the country, which might be suspended when he was under criminal investigation or suspicion of having committed a crime that might "endanger national security" or "disturb the social order". It was also asked how the right to work was guaranteed, what the level of unemployment was, how "optimum wages" were guaranteed, and how the right to form trade unions

was secured.

536. In connection with article 14 of the Convention, it was asked whether the Government might be willing to make the optional declaration under that article recognizing the competence of the Committee to deal with individual communications.

537. Replying to comments and questions made by members of the Committee, the representative of the Republic of Korea said that it had been the consistent policy of his Government to seek the eradication of apartheid. His country maintained no diplomatic, consular or other relations with the racist r \square gime in South Africa.

538. Existing constitutional safeguards and domestic legislation were generally sufficient for the full implementation of article 4. The possible acceptance of an obligation to enact specific legislation under that article was under review by the Minister of Justice and further developments would be brought to the notice of the Committee in his country \square s next report.

539. On the issue of civil and political rights, chapter II of the Constitution, on the rights and duties of citizens, stipulated the rights and duties under each article of the Convention. There was, for example, full equality before the law and provision for habeas corpus. Concerning elections, he said that all citizens who had attained the age of 20 had the right to vote; all citizens also had the right to hold office after they had reached a certain age. That was reflected not only in legislative provisions but in practice.

540. In connection with freedom of movement and the right to return to one \square s own country, the right to return was fully guaranteed. The guarantees in respect of aliens provided under domestic law, combined with international practice, fully conformed to international standards. The departure of aliens might be suspended in accordance with article 25 of the Exit and Entry Control Act if they were under criminal investigation, remiss in complying with their tax or other public obligations, or if their departure was considered particularly inappropriate for the purposes of protection of the interests of the Republic of Korea.

541. As to questions relating to the right to work, the representative said that his country \square s economic development had certainly been successful but that there was still a long way to go. Unemployment was normally between 3 and 4 per cent. The reference to optimum wages meant wages that guaranteed a subsistence level for the worker consistent with the economic situation. On the issue of collective action by trade unions, he said that there were a number of articles in the Constitution on the right of association and collective bargaining.

542. A question had been raised concerning racial mixing resulting from the presence of foreign troops in the country. There had certainly been intermarriages but no statistics were available regarding the number of children of such marriages. The permanent foreign population was about 27,000 and it did not present a problem. Once foreigners had met stipulated conditions, they could accept jobs before becoming Korean citizens; most held white-collar jobs and many were teachers. With regard to the status of North Korean defectors, there were indeed some such cases and, from a constitutional point

of view, defectors were regarded as citizens.

543. Finally, he said that he would convey to his Government the desire of the Committee that the Republic of Korea make the optional declaration provided for in article 14.

CERD A/45/18 (1990)

137. The fifth and sixth periodic reports of the Republic of Korea (CERD/C/167/Add.1) were considered by the Committee at its 870th and 871st meetings, held on 10 August 1990 (CERD/C/SR.870 and SR.871).

138. The reports were introduced by the representative of the reporting State, who explained that they dealt mainly with new developments that had occurred since the consideration of his country's fourth periodic report and with the unanswered questions that were raised at that meeting. He informed the Committee that, in April 1990, Korea had acceded to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and its Optional Protocol (see General Assembly resolution 2200 A (XXI), annex). He also noted that no complaints of racial discrimination had been brought before the courts or administrative authorities.

139. Members of the Committee thanked the representative for the comprehensive information contained in the reports. Noting the political changes that had occurred in the country since 1988, they requested a copy of the new Constitution, particularly the parts relating to human rights. Members also asked how the role of the military had been altered as a result of those political changes.

140. With reference to articles 1 and 2 of the Convention, members wished to know what special measures were being taken to ensure the adequate development of minorities. They asked, in particular, how many schools had been established for the Chinese population, which constituted the largest minority, and whether their language and culture were being preserved. Concerning the Indo-Chinese refugees, currently accommodated in a camp at Pusan, it was asked whether such refugees could ultimately become Korean citizens. Additionally, members wished to know what measures were being taken to rectify the alleged discrimination and neglect of economic development in Cholla province.

141. With regard to article 4 of the Convention, clarification was sought as to why the Constitution did not address such important aspects of the Convention as civil rights and race. Members found it difficult to accept the claim that no racial discrimination existed in the country because of its homogenous nature and stressed that the Government had an obligation to enact legislation to give the force of law to the Convention's provisions. They expressed disappointment over the Government's continued failure to acknowledge this obligation. A student's self-immolation in protest at the presence of United States forces gave grounds for fearing that there might be an element of racial hostility in a political issue. Referring to the absence of complaints of racial discrimination in the courts, members wondered whether that could be due to the lack of information concerning the rights of individuals under the Convention or to the existence of obstacles to lodging such complaints. Information was also requested concerning the legal guarantees against discrimination as well as penal provisions relating to the crime of racial discrimination.

142. In connection with article 5 of the Convention, members wished to know what progress had been made to increase local autonomy; what action had been taken to amend the laws restricting the expression of ideas considered to be "communist", whether new laws had replaced the basic press

laws; whether there had been any change in the political limitations placed on academic freedom; whether the laws on the freedom of assembly and association had been relaxed, what action had been taken to prevent attacks on trade-union organizers; whether the Government had begun to address some of the major social welfare issues, including poverty, social dislocation and housing shortages; whether foreign nationals received the standard minimum wage; and whether the Government had changed its rules regarding the employment of children.

143. With reference to article 6 of the Convention, the Committee wished to receive the texts of the Civil and Criminal Codes, the Code of Civil Procedure, and the Acts on National Compensation, Criminal Compensation, and Administrative Procedure.

144. With regard to article 7 of the Convention, members wished to know whether any courses on human rights had been organized to enable magistrates, teachers and police personnel to overcome prejudices that could lead to racial discrimination in their attitudes and work and they also wished to know what was being done to familiarize the student population with the various cultures of the world.

145. Noting that the Government had acceded to the two International Covenants on the Optional Protocol to the International Covenant on Civil and Political Rights, members asked whether the Government was also contemplating to make the declaration under article 14 of the Convention.

146. In response to questions raised under article 1 and 2 of the Convention, the representative of the reporting State said that, out of the 53 schools for foreign nationals, approximately 20 had been specifically reserved for persons of Chinese nationality. The Government, in close co-operation with the Korean Red Cross Society and the Office of the United Nations High Commissioner for Refugees (UNHCR), was taking good care of the refugees in the camp at Pusan. Refugees awaiting resettlement in a third country were being cared for in accordance with the UNHCR comprehensive programme of action. Discrimination did not exist in Cholla province since the Government pursued a policy of equal treatment for all provinces; any apparent differences were due to the specific characteristics of the various provinces.

147. Turning to the questions raised under article 4 of the Convention, the representative said that, while the Constitution made no reference to race, that issue would be treated within the spirit of the Convention. Additionally, article 5 of the Constitution clearly stipulated that treaties and generally recognized rules of international law had the same force as the country's domestic laws. The Government did not automatically enact domestic legislation following its accession to international treaties, but would take steps to adjust domestic laws to bring them into line with international law in the event of a conflict between the two. The Republic of Korea could claim a homogeneous culture since, in its long history it had never colonized or occupied another country, had never incorporated other ethnic groups within its borders and thus had evolved as a genuinely homogeneous society, although foreigners who had settled in the country had lent an element of diversity to its national culture. The relevance of any question relating to the presence of United States forces was disputed.

148. The measures taken to strengthen human rights were listed in the sixth periodic report. They

included article 307 of the Penal Code, covering defamation, article 311, covering insults to aliens or nationals, and articles 750 and 751 of the Civil Code, covering cases of racial discrimination. All such violations were punishable by imprisonment. While the Government believed that the Constitution and existing legislation and practice fully covered all aspects of article 4, and that further legislation, therefore, was unnecessary, the Committee's continuing concerns in this regard would be conveyed to the Government.

149. In response to questions raised under article 5 of the Convention, the representative said that the question of local autonomy was of great importance to the Government. Consultations were being held between the Government and opposition parties and it was expected that the policy on local autonomy would be implemented by the end of 1990 or early 1991.

150. With regard to the request made under article 6 of the Convention, the representative assured the members that texts of the relevant legislation would be duly provided.

151. The representative stated that the prospect of his country's making the declaration under article 14 appeared promising and that the Committee's strong hopes in that regard would be conveyed to the Government.

CERD A/48/18 (1993)

199. The seventh periodic report of the Republic of Korea (CERD/C/221/Add.1) was considered by the Committee at its 987th meeting held on 3 August 1993 (CERD/C/SR.987).

200. The report was introduced by the representative of the reporting State, who briefly described the major developments that had occurred recently in his country. He drew particular attention to his Government's accession to the International Covenant on Civil and Political Rights and its Optional Protocol and to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol. He also highlighted measures taken by his Government to implement various articles of the Convention, pointing, in that regard, to his Government's enhanced involvement in international efforts to dismantle apartheid in South Africa.

201. Members of the Committee thanked the Government of the Republic of Korea for the timely submission of its report, which demonstrated the Government's serious attitude towards its obligations under the Convention. While it was observed that the information contained in the report was useful and had answered questions raised by the Committee in its examination of previous reports, it was also noted that the report did not contain sufficient information on the practical implementation of the Convention and on the factors and difficulties impeding the implementation of the Convention. It was recommended that information on those and other matters, including texts of the legislative measures taken to give effect to the provisions of the Convention, should be included in the next periodic report.

202. Members of the Committee also requested information on the system of administration of justice, on the impartiality and independence of the judiciary and on the scope of implementation of the national security law, especially as they related to the practical implementation of the rights contained in the Convention.

203. Members of the Committee drew attention to the reports they had received of xenophobia and of discrimination allegedly practiced against foreign residents, particularly those of Chinese descent, foreign workers and children of mixed parentage. Further information was requested concerning the situation of those groups and general social attitudes towards them. In addition, members of the Committee sought clarification on allegations of discrimination against persons from regions other than the south-east of the Republic of Korea.

204. Members of the Committee also requested clarification as to the status of the Convention in domestic law, especially in the event of conflict between the provisions of the Convention and the Constitution, as article 6.1 of the Constitution appeared to render the Convention equal in status, but not superior, to domestic law.

205. With regard to article 2 of the Convention, members of the Committee noted that article 11 of the Constitution, which provided for the prohibition of discrimination, contained no reference to the prohibition of racial discrimination and requested clarification in that regard.

206. Referring to the importance of establishing national human rights institutions to facilitate the implementation of the Convention, members of the Committee asked whether the State party had taken any steps in that regard.

207. Concerning article 3 of the Convention, members of the Committee asked for information on any recent changes regarding the implementation of its provisions.

208. With regard to article 4 of the Convention, members of the Committee emphasized the need to take positive measures to prevent xenophobia and racial discrimination, expressing concern at the omission of provisions against racial discrimination from the State party's penal law.

209. In connection with article 5 of the Convention, members of the Committee sought clarification on matters relating to naturalization and the rights to inheritance of naturalized citizens; foreigners' eligibility to join or create trade unions and enjoy the benefit of their protection; the level of wages received by foreign workers; and foreign workers' enjoyment of the rights to medical and other social services.

210. With regard to article 6 of the Convention, members of the Committee requested clarification as to the reasons for the lack of complaints of racial discrimination before the court or administrative authorities and as to the remedies available to victims of racial discrimination in the event of violations by government bodies and public agencies.

211. Concerning article 7 of the Convention, members of the Committee sought further information on the number, status and funding of schools for foreigners. They also wished to know more about the activities undertaken to promote human rights, understanding and tolerance in schools in general and the human rights training given to law enforcement officials, in particular.

212. Members of the Committee also requested further information on the reported intention of the State party to make the declaration provided for in article 14 of the Convention.

213. In reply to questions raised by the members of the Committee, the representative of the State party provided information on the breakdown of the foreign population in the State party and the trends in the size of the foreign population over time, especially with regard to the Chinese. In addition, he denied that there was discrimination in the State party on the basis of regionalism.

214. With respect to concerns raised over the status of the Convention in domestic law, he stated that his Government had incorporated the Convention in the law of the Republic of Korea so that it was directly applicable and could be invoked before the courts.

215. With regard to the question raised as to the omission of the prohibition of racial discrimination in article 11 of the Constitution, he replied that article 37 of the Constitution covered that point as it provided that the freedoms and rights of citizens "shall not be neglected on the grounds that they are not enumerated in the Constitution".

216. Concerning article 3 of the Convention, he indicated that his Government had lifted economic sanctions against South Africa except the ban on arms, nuclear technology and oil.

217. With regard to article 4 of the Convention, he pointed out that, should problems of racial discrimination arise, his Government would strengthen protective measures, as necessary.

218. In connection with article 5, he provided information on the requirements of naturalization and cases when such requirements could be waived or reduced. In addition, he informed the Committee that naturalized citizens benefited from the same rights and had the same obligations as other citizens. Non-nationals could own property subject to the existence of a policy of reciprocity in the State of which they were nationals. Equally, foreign workers had the same rights as workers who were nationals of the country, provided that they were legally registered for work, i.e. in accordance with immigration laws.

219. With regard to article 7 of the Convention, he indicated that many schools for foreign nationals covered both primary and secondary levels and that his Government did not provide funding for such schools. There was no discrimination against foreign schools in relation to diplomas, since all schools were evaluated in accordance with uniform standards. Schools played an important role in promoting human rights, and educating people about human rights and observed human rights week each December. In addition, his Government recognized the importance of educating law enforcement officers in human rights standards and that a training programme for such officers was in operation.

220. With regard to the declaration under article 14 of the Convention, his Government was still deliberating on that matter.

221. Finally, the representative said that he would transmit the Committee's comments to his Government, particularly those relating to article 4 of the Convention, national human rights institutions and the incorporation of the prohibition of racial discrimination in the Constitution. The new President of the Republic of Korea was committed to the promotion and protection of human rights and new goals were being set and new programmes developed to that end. The next report to be submitted under the Convention would reflect those developments.

Concluding observations

222. At its 1007th meeting, held on 17 August 1993, the Committee adopted the following concluding observations.

(a) Introduction

223. The Committee noted the timely submission of the report of the Republic of Korea, which was a reflection of the Government's seriousness in meeting its obligations under the Convention.

224. The Committee welcomed the information contained in the report and the additional information provided by the delegation in its oral presentation.

(b) Positive aspects

225. The Committee welcomed the measures taken by the State party to introduce policies and to promulgate legislation in conformity with its international human rights treaty obligations. The Committee appreciated, in particular, the efforts of the Republic of Korea to implement article 3 of the Convention and noted the intention of the Government actively to consider making the declaration under article 14 of the Convention.

226. The Committee also noted that the State party had not encountered any serious ethnic problems during the reporting period.

(c) Principal subjects of concern

227. The Committee noted with concern that article 11 of the Constitution and other legal provisions prohibiting discrimination contained no reference to race and other factors as grounds of discrimination.

228. The Committee was equally concerned that the necessary legislative and other measures to prevent and prohibit racial discrimination had not been taken by the State party. It noted, in particular, that domestic legislation lacked provisions to implement article 4 of the Convention and did not provide for the criminal penalization of racially discriminatory acts.

229. The Committee expressed its concern at the reported discrimination suffered by Amerasian children, children of foreign workers and their spouses and persons living in regions other than the south-east of the country.

(d) Suggestions and recommendations

230. The Committee recommended that the State party's next report should include sufficient information on the implementation of the Convention in practice, including factors and difficulties encountered in that regard. Equally, the report should contain the text of legislative provisions such as relevant parts of the Constitution and Penal Code designed to prevent and address problems of racial discrimination.

231. The Committee recommended that the State party should study carefully various general recommendations adopted by the Committee on matters relating to the implementation of the Convention. The contents of those recommendations should not only guide the State party in the preparation of its next report but also assist it in determining the action to be taken to ensure more effective compliance with the provisions of the Convention. In that respect, particular attention was drawn to the mandatory nature of compliance with the provisions of article 4 of the Convention concerning the prohibition of racial discrimination; the development of national institutions to protect and promote human rights, especially with regard to matters of racial discrimination; and the importance of providing human rights training and education to law enforcement officials.

232. In addition, the Committee recommended that steps be taken to rectify the omission of race as a ground for discrimination from national legislation. The State party should also give careful consideration to adopting measures to prevent discrimination and to providing for the punishment of discrimination in criminal law.

233. The Committee encouraged the State party to make the declaration under article 14 of the Convention and recommended that the State party should give serious consideration to setting up a national institution composed of independent members to monitor the implementation of human rights, including matters relating to discrimination.

234. Moreover, the Committee expressed the wish to receive further information, in the next report, on the actual status of the Convention in domestic legislation, particularly in cases where the provisions of domestic legislation conflicted with those of international instruments; on the situation of children of mixed parentage and foreign workers and the general social attitude towards them; on the actions taken to assure equal provision of education, medical and other care and employment opportunities for those persons living in the south-western region of the Republic of Korea as compared to those living in the south-eastern region; and on the provision of education and training to promote tolerance and better understanding of the principles and provisions of human rights instruments.

235. The Committee also expressed the wish to receive detailed information on the effectiveness of legal remedies for those who suffered from discriminatory practices and on specific cases where compensation had been provided to victims of such discrimination.

CERD A/51/18 (1996)

315. The Committee on the Elimination of Racial Discrimination considered the eighth periodic report of the Republic of Korea (CERD/C/258/Add.2) at its 1159th and 1160th meetings, held on 6 and 7 August 1996 (see CERD/C/SR.1159-1160), and adopted the following concluding observations at its 1176th meeting, held on 19 August 1996.

A. Introduction

316. The Committee welcomes the eighth periodic report of the Republic of Korea and is pleased by the regularity with which the State Party submits its reports. It takes note of the detailed supplementary information provided by the delegation, which includes replies to some of the suggestions and recommendations adopted by the Committee during its consideration of the seventh periodic report of the State Party. The Committee also appreciates the open dialogue initiated with the delegation and the delegation's oral replies to the questions raised during the discussion.

B. Factors and difficulties impeding the implementation of the Convention

317. The Committee notes that the Republic of Korea, of which the population has historically been ethnically homogeneous, has for several years been experiencing a rapid growth of its foreign population. In particular, the Committee notes that many of those foreigners are in an irregular situation, a fact which makes it difficult to implement the provisions of the Convention on their behalf because they have no legal status in the country.

C. Positive aspects

318. The Committee views with interest the Government's wish to establish an independent national human rights commission. It notes with appreciation that the Republic of Korea is among the States Parties which have accepted the amendments to article 8, paragraph 6, of the Convention, adopted at the 14th meeting of States Parties.

319. The adoption of administrative guidelines on the protection of foreign industrial trainees in order to ensure them protection on an equal basis with national and legally registered foreign workers is in the spirit of article 5 of the Convention.

320. In that regard, the Committee notes that the Government of the Republic of Korea is considering creating a work permit for illegal foreign workers that would place them under the aegis of the Labour Standards Act, which, inter alia, prohibits discrimination on the basis of nationality and ensures minimum protection against poor working conditions and low wages.

321. The Committee welcomes the setting up of complaint centres in all immigration control centres, where foreign workers can file complaints in cases where their rights have been violated.

322. The Committee notes the existence of many possibilities for seeking remedies with the governmental and legal authorities and for suing individuals, the State or its representatives for compensation in cases of violations of fundamental human rights.

323. The Committee appreciates the Government's implementation of the Committee's recommendation, made during its consideration of the State Party's previous report, that human rights awareness sessions should be organized for law enforcement officials as a contribution to the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination. The Ministry of Justice's translation into Korean of the texts of the international human rights conventions is also likely to enhance the general public's familiarity with those instruments.

324. The Committee notes with satisfaction that, according to the explanations provided by the delegation of the Republic of Korea, the provisions of the Convention may be invoked by individuals before the courts, which may apply them directly on the same basis as domestic law.

325. The Committee welcomes the statement by the delegation that the State Party is planning to accept soon the competence of the Committee under article 14, paragraph 1, of the Convention.

D. Principal subjects of concern

326. The Committee notes with concern that neither the Constitution nor the law of the Republic of Korea explicitly prohibits discrimination on the basis of race, colour, descent, or national or ethnic origin, despite the provisions of article 2 of the Convention and the Committee's previous recommendations on the matter.

327. The Committee also notes with concern that article 4 of the Convention has not yet been fully implemented, since the law of the Republic of Korea contains no provisions explicitly punishing acts of racial discrimination and prohibiting organizations which promote and encourage racial discrimination.

328. The Committee notes with concern that there is discrimination against people of foreign origin who were born and have settled in the Republic of Korea, particularly Chinese, in relation to people of Korean origin, with regard to certain matters - for example, the impossibility of acquiring citizenship of the Republic of Korea and the difficulty in obtaining employment in some large companies.

329. The Committee also notes that, although the Government recognizes the existence of a problem of discrimination against Amerasian children, no information has been provided on any steps taken by the Government to remedy that situation.

330. The Committee regrets the fact that insufficient information has been provided with regard to article 5 of the Convention. As a result, the Committee has been unable to form an opinion on the actual situation regarding the equal enjoyment by all, without distinction as to racial, national or ethnic origin, of the various rights set forth in article 5 of the Convention.

331. The large number of foreigners who are being employed in ever-increasing numbers by businesses in the Republic of Korea, who live and work clandestinely in the country, usually under difficult and precarious conditions, and who are the victims of discrimination under the provisions of article 5 (a), (b), (d), (e) and (f) of the Convention, is a source of concern for the Committee. The same concern has been expressed with regard to the situation of foreign trainees who are allegedly subjected to various form of discrimination and forced labour.

E. Suggestions and recommendations

332. The Committee recommends that constitutional and legislative measures should be taken to remedy the omission of race as a ground for discrimination in the law of the Republic of Korea and, in that regard, notes the compulsory nature of the provisions of article 2 of the Convention.

333. The Committee also underlines the compulsory nature of the provisions of article 4 of the Convention and recommends that the State Party adopt appropriate legislation to give effect to those provisions, particularly by enacting a law explicitly prohibiting and punishing acts of racial discrimination and organizations which promote and encourage racial discrimination. In that regard, the Committee recommends that the State Party should take account of the Committee's General Recommendation XV.

334. The Committee also recommends that measures be taken to ensure that persons of foreign origin who were born and have settled in the Republic of Korea are no longer subject to discrimination based on ethnic origin. The Committee would like the next report to provide further information on the situation of such foreigners, the current situation of the children of mixed marriages, particularly Amerasian children, and any measures taken to improve that situation.

335. The Committee recommends that the next report of the State Party should include detailed information on legislative and practical measures taken by the authorities to ensure respect for the provisions of article 5 of the Convention.

336. The Committee also recommends that measures be taken to improve the situation of migrant workers, particularly foreigners with irregular status in the Republic of Korea; in particular, it recommends that, as envisaged by the authorities, a work permit be introduced for such persons, in order to legalize their situation.

337. The Committee requests the State Party to include in its next report information on complaints received, and cases tried, concerning matters of racial discrimination.

338. The Committee recommends that the next periodic report of the State Party, which was due on 4 January 1996, be a full report dealing with all the points raised during the present discussion.

CERD A/54/18 (1999)

46. The Committee considered the ninth and tenth periodic reports of the Republic of Korea, submitted in one document (CERD/C/333/Add.1), at its 1307th and 1308th meetings, on 2 and 3 March 1999 (see CERD/C/SR.1307 and 1308), and adopted, at its 1329th meeting (see CERD/C/SR.1329), on 17 March 1999, the following concluding observations.

A. Introduction

47. The Committee welcomes the report of the Republic of Korea and expresses its appreciation for the regularity with which the State party submits its reports. It takes note of the detailed supplementary information provided by the delegation in the oral dialogue with the Committee. Nevertheless, the Committee is of the view that the information submitted regarding the follow-up of recommendations made by it during the consideration of the previous report of the State party was incomplete. The Committee commends the quality of the delegation's oral replies to the questions raised during the discussion.

B. Positive aspects

48. The commitment by the State party to adopt a Human Rights Act and establish a national human rights institution before the end of the year 1999 is welcomed.

49. It is noted with satisfaction that the State party ratified, on 4 December 1998, International Labour Organization (ILO) Convention (No. 111) concerning discrimination in respect of employment and occupation.

50. Legislative measures taken by the State party to prevent and combat racial discrimination are welcomed. These measures include the State party's decision to apply the Labour Standard Act to all illegal foreign workers as of October 1998; the amendment to the Foreign Land Acquisition Act on 15 May 1998 and the amendment to the Nationality Act on 13 December 1997.

51. It is noted with interest that, according to the information provided in the report of the State party, the provisions of the Convention take precedence over any conflicting national law.

52. The wide range of dissemination and training activities undertaken by the authorities in the field of human rights, including activities to prevent and combat racial discrimination, are welcomed.

53. The declaration made by the Republic of Korea under article 14, paragraph 1, of the Convention, recognizing the competence of the Committee to receive and consider communications from individuals or groups, is welcomed, as well as the State party's ratification of the amendment to article 8, paragraph 6, of the Convention.

C. Principal subjects of concern

54. While acknowledging that the envisioned Human Rights Act is intended to contain provisions covering all legal obligations set out in articles 2 and 4 of the Convention, the Committee remains concerned that neither the Constitution nor any law of the State party explicitly prohibits discrimination on the basis of race, colour, descent, or national or ethnic origin, and that no law contains provisions explicitly penalizing acts of racial discrimination or prohibiting organizations which promote and incite racial discrimination.

55. The absence of information in the State party's report regarding acts of racial discrimination as well as on action to prevent racial segregation in the light of general recommendation XIX is regarded as a shortcoming.

56. The Committee notes that information provided with regard to article 5 of the Convention covered only labour-related rights. As a result, the Committee has been unable to form an opinion on the actual situation regarding the equal enjoyment by all persons of the other rights set forth in article 5 of the Convention.

57. The Committee is concerned at the vulnerable situation of foreigners with irregular status who live and work in the country, usually under difficult and precarious conditions. Such persons are victims of discrimination, in violation of article 5 of the Convention, notably paragraphs 5 (d) and (e).

58. While acknowledging the efforts undertaken by the State party to improve the status of foreigners, concern is expressed about discrimination against people of foreign origin who were born and have settled in the Republic of Korea. De facto discrimination against Amerasian children and against Korean women married to asylum seekers is also of concern.

D. Suggestions and recommendations

59. The Committee recommends that the State party take all appropriate legislative measures to ensure that articles 2 and 4 of the Convention are fully reflected in domestic law. In this regard, it suggests that the Human Rights Act that is to be enacted before the end of 1999 explicitly prohibit discrimination on the basis of race, colour, descent, or national or ethnic origin, declare such acts illegal and penalize them, as prescribed in article 4 of the Convention. Additionally, the Committee requests that the State party submit, together with its next periodic report, the full texts of all new legislation adopted to prevent and combat discrimination.

60. The Committee recommends that the next report of the State party should include information on legislative and practical measures taken by the authorities to ensure respect for the provisions of article 5 of the Convention.

61. While acknowledging the fact that the State party has recently taken measures to improve the status of foreign "industrial trainees" and other foreigners working in the country, the Committee suggests that

the Government of the Republic of Korea take further measures against discrimination in the labour conditions of foreign workers. The Committee also recommends that measures be taken to improve the situation of all migrant workers, particularly those with irregular status.

62. The Committee recommends that further measures be taken to ensure that persons of foreign origin who were born or have settled in the Republic of Korea are not subject to discrimination based on ethnic origin. The Committee recommends that the State party take all appropriate measures, including awareness-raising campaigns, to protect women married to asylum seekers and children of mixed marriages, particularly Amerasian children, from racial discrimination or racial prejudice.

63. Noting that no cases of racial discrimination have reached the courts or administrative bodies, the Committee recommends to the State party to increase its efforts to provide easy access to existing recourse mechanisms dealing with relevant provisions of the Convention, including the procedure set out in its article 14.

64. The Committee recommends that the State party provide legal aid to victims of acts of racial discrimination and facilitate access to recourse procedures by vulnerable groups.

65. The Committee suggests that the State party allocate more resources to facilitate dissemination, education and training in order to promote the principles and objectives of the Convention. In this regard, it recommends that the State party take appropriate steps to widely disseminate its report, along with the present concluding observations of the Committee, in the Republic of Korea.

66. The Committee recommends that the next periodic report of the State party be an updating report dealing with the suggestions and recommendations of the present concluding observations.

CERD A/58/18 (2003)

486. The Committee considered the eleventh and twelfth periodic reports of the Republic of Korea (CERD/C/426/Add.2), which were due on 4 January 2000 and 2002 respectively, submitted as one document, at its 1592nd and 1593rd meetings (CERD/C/SR.1592 and 1593), held on 8 and 11 August 2003. At its 1604th meeting (CERD/C/SR.1604), held on 18 August 2003, it adopted the following concluding observations.

A. Introduction

487. The Committee welcomes the reports submitted by the State party and the additional oral and written information provided by the delegation. It expresses its satisfaction with the progress reported. The Committee is encouraged by the attendance of a large delegation and expresses its appreciation for the candid and constructive responses of its members to the questions asked.

B. Positive aspects

488. The Committee notes with satisfaction the adoption of the National Human Rights Commission Act in 2001 establishing a national human rights institution.

489. The Committee welcomes legislation adopted in July 2003 establishing the Employment Permit System, which provides foreign workers with the same labour protection as domestic workers. It also welcomes the amendment to the education regulations that allows foreign children of compulsory school age, including those of undocumented migrant workers, equal access to local schools.

490. The Committee welcomes the April 2002 amendments to the immigration regulations, which have facilitated the attainment of permanent resident status by foreigners, including members of the ethnic Chinese community.

491. The Committee notes with appreciation the progress made in improving the asylum system and the process for determining refugee status, in particular the expansion of the Refugee Recognition Council to include members of civil society and the increased access to social services and the labour market afforded to refugees.

C. Concerns and recommendations

492. The Committee takes note of the view of the State party as to the homogeneity of its population. However, it also notes the information provided in the report about ethnic Chinese and other ethnic minorities living in the Republic of Korea.

In light of the absence of specific statistical data on the ethnic composition of society in the Republic, the Committee recommends that the State party provide an estimate of the ethnic

composition of the population in subsequent reports, as requested in paragraph 8 of the reporting guidelines, and draws the attention of the State party to its general recommendation VIII concerning the self-identification of members of particular racial and ethnic groups. The Committee also suggests that the State party take into account its general recommendation XXIX on descent-based discrimination when gathering information on the situation of the Paekjong community.

493. The Committee regrets the lack of specific information in the State party's report on acts of racial discrimination and complaints and legal action by victims. The Committee reminds the State party that the absence of complaints and legal action by victims of racial discrimination may be the result of the absence of relevant specific legislation, or of a lack of awareness of the availability of legal remedies, or of insufficient will on the part of the authorities to prosecute.

The Committee requests that the State party include in its next periodic report statistical information, disaggregated by gender, on investigations and prosecutions launched and penalties imposed in cases of offences which relate to racial discrimination and where the relevant provisions of the existing domestic legislation have been applied. The Committee also requests more detailed information on how the term "unreasonable discrimination" in article 30 (2) of the National Human Rights Commission Act (2001) has been interpreted and applied in practice.

494. While taking note that there are ongoing discussions in the State party concerning the drafting of a Discrimination Prohibition Law, the Committee nevertheless remains concerned that the legislation of the State party does not seem to respond fully to the requirements of article 4 of the Convention.

The Committee recommends that the State party review its domestic legislation in the light of general recommendation XV concerning the implementation of article 4 of the Convention and that it adopt specific legislation on the offence of racial discrimination and incitement of racial hatred in accordance with article 4.

495. The Committee remains concerned that foreign workers in the industrial trainee programme and undocumented migrants do not fully enjoy their rights as provided by article 5.

The Committee recommends that the State party continue to take measures to improve the situation of all migrant workers, in particular with regard to the right to security of person and to social security and social services. The Committee also recommends that the State party include in its next report information on the implementation of relevant provisions of article 5 for all foreign workers, including industrial trainees, undocumented migrants, refugees and asylum-seekers.

496. The Committee is concerned about the trafficking of foreign women to the State party for the purpose of prostitution, although it notes the State party's efforts to combat this phenomenon.

The Committee encourages the State party to expand and strengthen ongoing efforts to prevent trafficking and provide support and assistance to victims, wherever possible in their own language.

497. The Committee encourages the State party to consult with organizations of civil society working in the area of combating racial discrimination during the preparation of the next periodic report.

498. The Committee recommends that the State party disseminate information widely and raise public awareness of the domestic remedies available against acts of racial discrimination, on the legal avenues for obtaining compensation in cases of discrimination and on the individual complaints procedure under article 14 of the Convention.

499. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on action plans or other measures taken to implement the Durban Declaration and Programme of Action at national level.

500. The Committee recommends that the State party's reports be made readily available in the Korean language to the public from the time they are submitted and that the observations of the Committee on these reports be similarly publicized.

501. The Committee recommends that the State party submit its thirteenth periodic report jointly with its fourteenth periodic report, due on 4 January 2006, and that it address all points raised in the present concluding observations.