



**International Convention on  
the Elimination of All Forms  
of Racial Discrimination**

Distr.: General  
2 March 2012

Original: English

---

**Committee on the Elimination of Racial Discrimination**

**Reports submitted by States parties under article  
9 of the Convention**

**Combined fifteenth and sixteenth periodic reports of States  
parties due in 2010**

**Republic of Korea\* \*\***

[13 February 2012]

---

\* This document contains the fifteenth and sixteenth periodic reports of the Republic of Korea due respectively in 2008 and 2010 submitted in one document. For the thirteenth and fourteenth periodic reports and the summary records of the meetings at which the Committee considered this report, see documents CERD/C/KOR/14 and CERD/C/SR.1833, 1834 and 1844.

\*\* In accordance with the information transmitted to the States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

## Contents

|  | <i>Paragraphs</i> | <i>Page</i> |
|--|-------------------|-------------|
| I. Introduction .....  | 1–3               | 3           |
| II General .....   | 4–16              | 3           |
| A. Naturalization .....  | 4–5               | 3           |
| B. Foreigners residing in the Republic of Korea .....                | 6–9               | 3           |
| C. Ethnic Chinese .....  | 10–11             | 5           |
| D. Foreigners and their children .....                               | 12–14             | 5           |
| E. Refugees .....  | 15–16             | 6           |
| III. Information relating to articles 1 to 7 of the Convention ..... | 17–137            | 8           |
| Article 1 .....  | 17–27             | 8           |
| Article 2 .....  | 28–48             | 10          |
| Article 4 .....  | 49–52             | 13          |
| Article 5 .....  | 53–116            | 14          |
| Article 6 .....  | 117–126           | 24          |
| Article 7 .....  | 127–137           | 26          |

## I. Introduction

1. In accordance with the provisions of article 9, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter referred to as “the Convention”), the Republic of Korea submits its combined fifteenth and sixteenth periodic reports. The information contained in the present report is set out in accordance with the revised general guidelines concerning the form and contents of the reports submitted by States in January 2007 (CERD/C/2007/1).

2. The present report deals mainly with the legislative, judicial, administrative and other measures taken by the Government of the Republic of Korea in the practical implementation of the provisions of the Convention and the progress achieved during the period from 2006 to 2010.

3. This report also contains status updates on the points raised by the Committee on the Elimination of Racial Discrimination (hereinafter referred to as “the Committee”) in its concluding observations (CERD/C/KOR/CO/14) with respect to the thirteenth and fourteenth periodic reports (CERD/C/KOR/14).

## II. General

### A. Naturalization

4. The number of persons acquiring citizenship by naturalization rapidly increased from 2001, decreased briefly in 2006, and has been on the rise ever since. The total number of naturalized citizens during the eleven years from 2000 to 2010 amounts to 98,329, which is 0.19 per cent of the 50,515,666 registered citizens.

5. Chinese immigrants take up the majority of naturalized Korean citizens, followed by those from Vietnam and the Philippines. The number of naturalized citizens from Vietnam outnumbered that from the Philippines in 2007. 16,312 persons were naturalized in the year 2010 alone, and among them 11,874 were Chinese (72.8 per cent), 2,997 were Vietnamese (18.4 per cent), 450 were Filipinos (2.8 per cent), 181 were Mongolians (1.1 per cent), and 68 were Pakistanis (0.4 per cent).

Table 1  
Number of naturalized citizens by year (Unit: Person)

| <i>Year</i>             | <i>2000</i> | <i>2001</i> | <i>2002</i> | <i>2003</i> | <i>2004</i> | <i>2005</i> | <i>2006</i> | <i>2007</i> | <i>2008</i> | <i>2009</i> | <i>2010</i> | <i>Total</i> |
|-------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|
| Naturalized<br>Citizens | 200         | 724         | 2,972       | 5,986       | 7,261       | 12,299      | 7,477       | 8,536       | 11,518      | 25,044      | 16,312      | 98,329       |

### B. Foreigners residing in the Republic of Korea

6. The number of foreigners residing in the Republic of Korea<sup>1</sup> has been steadily increasing. The ratio of foreign residents to the total number of national registered citizens

<sup>1</sup> This number of foreign nationals includes both long-term residents and short-term visitors as well as both legitimate and irregular residents.

has also been increasing every year since 2005. As of December 2010, the proportion of foreign residents to the total number of national registered citizens is 2.50 per cent.

Table 2

**Registered citizens and foreign residents by year (Unit: Person)**

| <i>Year</i>                  | 2005       | 2006       | 2007       | 2008       | 2009       | 2010       |
|------------------------------|------------|------------|------------|------------|------------|------------|
| Foreign Residents            | 747,467    | 910,149    | 1,066,273  | 1,158,866  | 1,168,477  | 1,261,415  |
| National Registered Citizens | 48,782,274 | 48,991,779 | 49,268,928 | 49,540,367 | 49,773,145 | 50,515,666 |
| Percentage                   | 1.53%      | 1.86%      | 2.16%      | 2.34%      | 2.35%      | 2.50%      |

7. As of December 2010, there are 706,918 foreign resident males (56.0 per cent) and 554,497 foreign resident females (44 per cent) living in Korea. A total of 1,261,415 foreigners are residing in the Republic of Korea, of which 608,881 are Chinese (including 409,079 ethnic Koreans, 48.3 per cent), 127,140 are Americans (10.1 per cent), 103,306 are Vietnamese (8.2 per cent), 48,905 are Japanese (3.9 per cent), 47,241 are Filipinos (3.7 per cent), and 44,250 are Thai (3.5 per cent). Among 1,261,415 foreigners residing in the Republic, 477,029 persons (37.8 per cent) are ethnic Koreans with nationalities from other countries (87.0 per cent or 415,004 of which have Chinese citizenship).

8. The number of irregular residents has steadily declined since 2007. As of December 2010, 13.4 per cent of the total population of foreigners residing in the Republic of Korea is irregular residents.

Table 3

**Number of foreigners residing in the republic of Korea by year (Unit: Person)**

| <i>Year</i>                         | 2005    | 2006    | 2007      | 2008      | 2009      | 2010      |
|-------------------------------------|---------|---------|-----------|-----------|-----------|-----------|
| Foreigners Residing in the Republic | 747,467 | 910,149 | 1,066,273 | 1,158,866 | 1,168,477 | 1,261,415 |
| Legitimate residents                | 566,675 | 698,161 | 842,809   | 958,377   | 990,522   | 1,092,900 |
| Irregular residents                 | 180,792 | 211,988 | 223,464   | 200,489   | 177,955   | 168,515   |
| Proportion of Irregular residents   | 24.2%   | 23.3%   | 21.0%     | 17.3%     | 15.2%     | 13.4%     |

9. The number of married immigrants (foreigners who married a Korean citizen) is consistently increasing every year. As of December 2010, 141,654 married immigrants are residing in the country: 18,561(13.1 per cent) are males and 123,093 (86.9 per cent) are females. By nationality, there are 66,687 Chinese (including 31,664 ethnic Koreans, 47.1 per cent), 35,355 Vietnamese (25.0 per cent), 10,451 Japanese (7.4 per cent), 7,476 Filipinos (5.3 per cent), 4,195 Cambodians (3.0 per cent), 2,533 Thais (1.8 per cent), and 2,421 Mongolians (1.7 per cent).

Table 4  
**Number of married immigrants by year (Unit: Person)**

| <i>Year</i>                            | <i>2005</i> | <i>2006</i> | <i>2007</i> | <i>2008</i> | <i>2009</i> | <i>2010</i> |
|--|-------------|-------------|-------------|-------------|-------------|-------------|
| Foreigners<br>Residing in<br>ROK       | 747,467     | 910,149     | 1,066,273   | 1,158,866   | 1,168,477   | 1,261,415   |
| Married<br>Immigrants                  | 75,011      | 93,786      | 110,362     | 122,552     | 125,087     | 141,654     |
| (Male)                                 | 8,352       | 10,958      | 13,126      | 14,753      | 15,876      | 18,561      |
| (Female)                               | 66,659      | 82,828      | 97,236      | 107,799     | 109,211     | 123,093     |
| Proportion of<br>Married<br>Immigrants | 10.0%       | 10.3%       | 10.4%       | 10.6%       | 10.7%       | 11.2%       |

### C. Ethnic Chinese

10. The Government does not have separate statistics on ethnic Chinese in the Republic. As of December 2010, the number of Taiwanese residing in the country on long-term stay visas (F-2 and F-5 Visas) amounted to 19, 885. The vast majority lives in major metropolitan cities.

11. In the thirteenth and fourteenth periodic reports, Taiwanese who qualified for a long-term stay were classified as ethnic Chinese. However, as an increasing number of Taiwanese who are not ethnic Chinese now qualify for long-term stay status, it is no longer a viable standard for deciding whether a person is ethnic Chinese. Treatment of ethnic Chinese is detailed in paragraph 30 to 32 of the thirteenth and fourteenth periodic reports (CERD/C/KOR/14, paras. 30-32).

### D. Foreigners and their children

12. The number of children of foreign parents or parents of foreign origin living in the Republic of Korea is increasing as well. In its concluding observations on the thirteenth and fourteenth periodic reports of the Republic of Korea, the Committee requested the disaggregated statistical data on the number of persons born from inter-ethnic unions in the Korean territory (CERD/C/KOR/CO/14, para. 12). Although no statistical data has been kept regarding children born from inter-ethnic unions at the State level, the Ministry of Public Administration and Security has been able to accumulate data on the subject by incorporating a survey on foreign residents' children (under foreign parents, foreign-Korean parents, naturalized Korean parents<sup>2</sup>) with the 'Study on the Foreign Residents by Local Administration,' which has been conducted annually since 2006.

13. As of 1 May 2011, there are 151,154 children of foreign residents residing in the Republic of Korea. Among them, there are 93,537 (61.9 per cent) children under the age of six (children not attending school) and 37,590 (24.9 per cent) between the ages of 7-12 (children attending elementary school), which accounts for 86.8 per cent of the total foreign

<sup>2</sup> This occurs in a case where both parents are Korean but one or both parents are foreign nationals who are naturalized Korean.

residents' children in Korea. As of 1 May 2011, 76,985 (50.9 per cent) of the foreign residents' children are male and 74,169 (49.1 per cent) are female. 9,621 children (6.4 per cent) have two foreign parents, 126,317 (83.6 per cent) children have one foreign parent, and 15,216 (10.1 per cent) children have parents who are naturalized citizens.

Table 5

**Children of foreigners or parents of origin of foreign countries (as of 1 May 1 2011)  
(Unit: Person)**

| Age   | Total  |         | Foreign Parents |        | Foreigner-Korean |         | Naturalized Korean |        |
|-------|--------|---------|-----------------|--------|------------------|---------|--------------------|--------|
|       | Male   | Female  | Male            | Female | Male             | Female  | Male               | Female |
| Total |        | 151,154 |                 | 9,621  |                  | 126,317 |                    | 15,216 |
|       | 76,985 | 74,169  | 4,789           | 4,832  | 64,275           | 62,042  | 7,921              | 7,295  |

14. Although the studies were conducted at different times, the total number of children of foreign residents can be compared with the total number of national registered residents as of December 2010 in order to compare relative proportions. Foreign residents' children aged 0-4 years (the largest group) remain at 3.3 per cent of the total national registered population of the same age.

Table 6

**Comparison of registered residents with the children of foreign residents in 2010  
(Unit: Person)**

| Age       | National Registered Residents (2010) |           |           | Children of Foreign Residents (May 2011) |        |        |
|-----------|--------------------------------------|-----------|-----------|--|--------|--------|
|           | Total                                | Male      | Female    | Total                                    | Male   | Female |
| 0-4 yrs   | 2,299,695                            | 1,185,537 | 1,114,158 | 76,698<br>(3.3%)                         | 39,091 | 37,607 |
| 5-9 yrs   | 2,457,829                            | 1,278,040 | 1,179,789 | 36,339<br>(1.5%)                         | 18,453 | 17,886 |
| 10-14 yrs | 3,262,445                            | 1,706,007 | 1,556,438 | 27,472<br>(0.8%)                         | 14,095 | 13,377 |

## E. Refugees

15. Since Korea joined the Convention Relating to the Status of Refugees in 1992, a total of 2,915 persons have applied for refugee status by December 2010; 222 of them were recognized as refugees<sup>3</sup>, and 136 applicants were granted stay permits on humanitarian grounds. 258 applications were reviewed in 2010, and 424 applicants still remain on the wait-list as of December 2010. Since the establishment of the Nationality and Refugee Division in the Ministry of Justice in February 2006, the number of recognized refugees and those granted stay permits on humanitarian grounds increased significantly. The yearly statistics from 2006 to 2010 are as follows:

<sup>3</sup> This number of recognized refugee includes the case recognized as refugees by the Ministry of Justice as well as by the judicial judgment on the applicant's filing of administrative lawsuit challenging the denial of refugee status rendered by the Ministry of Justice.

Table 7

**Yearly statistics on refugees and those granted humanitarian protection (Unit: Person)**

|                         | 2006 |        | 2007 |        | 2008 |        | 2009 |        | 2010 |        |
|-------------------------|------|--------|------|--------|------|--------|------|--------|------|--------|
|                         | Male | Female |
| Refugees                |      | 11     |      | 13     |      | 36     |      | 74     |      | 47     |
|                         | 6    | 5      | 5    | 8      | 26   | 10     | 54   | 20     | 31   | 16     |
| Humanitarian Protection |      | 13     |      | 9      |      | 22     |      | 22     |      | 43     |
|                         | 10   | 3      | 2    | 7      | 16   | 6      | 10   | 12     | 28   | 15     |

16. Statistics on recognized refugees and applicants granted stay permits on humanitarian grounds from 2006 to December 2010, categorized by gender, age and nationality are as follows:

Table 8

**Refugees and those granted humanitarian protection by gender (Unit : Person)**

|                         | <i>Total</i> | <i>Male</i> | <i>Female</i> |
|-------------------------|--------------|-------------|---------------|
| Refugee                 | 222          | 156         | 66            |
| Humanitarian Protection | 136          | 88          | 48            |

Table 9

**Refugees and those granted humanitarian protection by age (Unit: Person)**

|                         | <i>Total</i> | <i>1-4yrs</i> | <i>5-17yrs</i> | <i>18-59yrs</i> | <i>60 and over</i> |
|-------------------------|--------------|---------------|----------------|-----------------|--------------------|
| Refugee                 | 222          | 15            | 14             | 190             | 3                  |
| Humanitarian Protection | 136          | 10            | 4              | 119             | 3                  |

Table 10

**Refugees by nationality (Unit: Person)**

| <i>Total</i> | <i>Myanmar</i> | <i>Bangladesh</i> | <i>Congo</i> | <i>Ethiopia</i> | <i>Iran</i> | <i>Uzbekistan</i> | <i>Misc.</i> |
|--------------|----------------|-------------------|--------------|-----------------|-------------|-------------------|--------------|
| 222          | 92             | 47                | 17           | 15              | 8           | 6                 | 37           |

Table 11

**Those granted humanitarian protection by nationality (Unit: Person)**

| <i>Total</i> | <i>Myanmar</i> | <i>Ethiopia</i> | <i>Congo</i> | <i>China</i> | <i>Uganda</i> | <i>Côte d'Ivoire</i> | <i>Pakistan</i> | <i>Misc.</i> |
|--------------|----------------|-----------------|--------------|--------------|---------------|----------------------|-----------------|--------------|
| 136          | 27             | 14              | 14           | 12           | 10            | 10                   | 7               | 42           |

### III. Information relating to articles 1 to 7 of the Convention

#### Article 1

##### Definition of racial discrimination

17. In its concluding observations on the thirteenth and fourteenth periodic reports of the Republic of Korea, the Committee noted the absence of a definition of racial discrimination in domestic laws and pointed out that article 11, paragraph 1 of the Constitution on equality and non-discrimination does not include all the prohibited grounds of discrimination referred to in article 1, paragraph 1, of the Convention. In this respect, the Committee recommended that the Republic of Korea bring its domestic law in line with the Convention by including a definition of racial discrimination that reflects article 1 of the Convention. The Committee further recommended that the Republic of Korea consider reviewing the definition of discrimination set out in article 11, paragraph 1 of the Constitution with a view to extending the list of prohibited grounds of discrimination in accordance with article 1, paragraph 1, of the Convention (CERD/C/KOR/CO/14, para. 10).

18. Article 11, paragraph 1, of the Constitution provides that all citizens shall be equal before the law, and that there shall be no discrimination in political, economic, social or cultural life on account of gender, religion or social status. Article 11, paragraph 1 of the Constitution does not mention “race, colour, family, national origin or ethnic origin,” which are listed as discriminatory grounds in article 1, paragraph 1 of the Convention. However, the grounds listed in article 11, paragraph 1 of the Constitution are exemplary rather than definitive, and discriminatory acts on grounds other than those listed in article 11, paragraph 1, of the Constitution are also prohibited.

19. In relation to article 11, paragraph 1 of the Constitution, the Constitutional Court has ruled that the content in article 2, paragraph 2 of the International Covenant on Economic, Social and Cultural Rights, which prohibits discrimination based on ‘race, colour, ethnic or social origin, birth or other status,’ should be considered in the interpretation of the Constitution (Constitutional Court 2007. 8. 30. Case No. 2004Hun-Ma670).

20. While the Korean domestic laws do not contain a definition of racial discrimination, many individual laws prohibit discriminatory acts based on the prohibited grounds provided in article 1, paragraph 1 of the Constitution. Article 4, paragraph 1 of the Framework Act on Education; article 9 of the Trade Union and Labor Relations Adjustment Act; article 5, paragraph 1 of the Act on Promotion of News Communications; article 6, paragraph 2 of the Broadcasting Act; article 3, paragraph 1 of the Child Welfare Act, and article 3, paragraph 1 of the Juvenile Welfare Support Act prohibit discriminatory acts on the basis of ‘race’; article 3, paragraph 3 of the Military Service Act prohibits discriminatory acts on the basis of ‘race and colour’; and article 5 of the Administration and Treatment of Correctional Institution Inmates Act prohibits discriminatory acts on the basis of ‘national and ethnic origin.’ Furthermore, article 6 of the Labor Standard Act prohibits discriminatory acts based on ‘nationality’ and article 22 of the Act on the Employment of Foreign Workers prohibits discrimination against migrant workers.

21. Article 2, subparagraph 4 of the National Human Rights Commission Act provides a definition of the term ‘discriminatory act of violating the right to equality,’ and that definition greatly reflects the definition of racial discrimination provided in article 1 of the Convention. According to article 2, any act of favorably treating, excluding, differentiating or unfavorably treating a particular person in employment, in the supply or use of goods, services, transportation, commercial facilities, land, and residential facilities and in the provision of education and training at or usage of educational facilities or vocational

training institutions on the grounds of ‘national origin, ethnic origin, race, skin colour, etc.’ without reasonable cause falls under the definition of ‘a discriminatory act of violating the right to equality’. However, if a particular person receives favorable treatment for the purpose of remedying existing discrimination, then such favorable treatment shall not be deemed a discriminatory act.

22. When receiving a petition regarding discriminatory acts by individuals or State bodies, the National Human Rights Commission has the authority to recommend the party concerned or the head of the organ or organization to which the party concerned belongs the relief measures such as suspending discriminatory acts, restitution, compensation for damages, and prevention measures for recurrence. The National Human Rights Commission also has the authority to conduct an investigation on its own initiative if there is a reason to believe that human rights violations or discriminatory acts have occurred (art. 30, art. 44, para. 1, art. 42, para. 4 of the National Human Rights Commission Act).

23. Article 11, paragraph 1, of the Constitution does not contain specific provisions regarding indirect discrimination. While there have been no decisions of the Constitutional Court in which the term “indirect discrimination” was mentioned, the Constitutional Court has recognized the principle of indirect discrimination while making a decision with regard to the violation of article 11, paragraph 1 of the Constitution. With regard to the Constitutional Complaint against article 8, paragraph 1 of the Support for Discharged Soldiers Act, the Constitutional Court ruled that the extra point system for veterans in civil service examinations ‘substantially discriminates against female applicants in favor of male applicants since more than 80 per cent of males can be veterans while a very small number of women can become veterans and in fact there are virtually no female veterans.’ The Constitutional Court’s reasoning is equally applicable to racial discrimination cases.

#### **Different treatment based on race, nationality, etc in domestic law**

24. There is no domestic law which differentiates treatment on the basis of race. Before the amendment of the Military Service Act in July 2010, article 65, paragraph 1, subparagraph 3 of the Military Service Act provided that persons who are deemed to be seriously influenced by race, skin colour, etc. in their active service or recruit service may be assigned to the recruit service or the second militia service, while article 3, paragraph 3 of the Act provides that in principle, discrimination on the grounds of race, skin colour, etc. is forbidden with regard to military service or applications for military service. However, with the amendment of the Act in July 2010, article 65, paragraph 1, subparagraph 3 was removed, thus requiring any man who is a national of the Republic of Korea perform military service regardless of his race, skin colour, etc.

25. Foreigners’ rights under the Constitution are equal to those of nationals of the Republic of Korea. Article 6, paragraph 2 of the Constitution provides that the status of aliens shall be guaranteed as prescribed by international laws and treaties; thus, foreigners are entitled to exercise their fundamental rights under the Constitution. The Constitutional Court has also ruled that foreigners enjoy the same fundamental rights as Korean nationals (Constitutional Court 2001. 11. 29. Case No. 99Hun-Ma494).

26. However, there are several domestic laws which stipulate restrictions on foreigners exercising their rights, either due to the nature of the rights concerned or based on the principle of reciprocity. In addition, temporary restrictions can be put in place only in exceptional circumstances where such measures are deemed necessary and proportionate to maintain national security, law and order, and the public welfare.

27. The right to vote in a referendum (art. 7 of the National Referendum Act), to elect presidents and National Assembly members (art. 15, paragraph 1 of the Public Official Election Act), and to be elected as president, a National Assembly member, local council

member, or head of local government (art. 16 of the Public Official Election Act) are limited to nationals of the Republic of Korea. Article 22, paragraph 1 of the Political Parties Act also stipulates that only persons having the right to elect Assembly members may become promoters and party members. Article 26-3 of the State Public Officials Act and article 25-2 of the Local Public Officials Act stipulate that the heads of government agencies or local governments may appoint foreigners as public officials, except in those fields relating to national security and secrets. Article 7 of the State Compensation Act; article 126 of the National Pension Act; article 10 the Crime Victim Aid Act; article 3 of the Foreigner's Land Acquisition Act, and article 25 of the Patent Act stipulate restrictions based on reciprocity.

## **Article 2**

### **Government policies for the elimination of racial discrimination**

#### **Establishment of the National Action Plan (NAP)**

28. On 22 May 2006, the Republic of Korea established the National Action Plan for the Promotion and Protection of Human Rights (NAP) for 2007 to 2011. The NAP is the first comprehensive plan on human rights policies that aims to improve human rights-related laws, institutions and practices.

29. The NAP was established in accordance with the recommendation made to countries across the world by the Vienna Declaration and Programme of Action, which was adopted at the 1993 World Conference on Human Rights, and the recommendation made by the Committee on Economic, Social and Cultural Rights in its concluding observations on the second periodic report of the Republic of Korea in May 2005.

30. The NAP was confirmed at a meeting of the National Human Rights Policy Council, over which the Minister of Justice presides as chairperson and whose members are comprised of vice ministers or officials at the vice ministerial level of relevant authorities. The plan is designed to establish and improve a national infrastructure for the promotion of human rights through the enactment or revision of laws and the improvement of relevant systems.

31. With regard to the elimination of racial discrimination, the NAP includes a variety of implementation tasks, including the implementation of the Framework Act on Treatment of Foreigners Residing in the Republic of Korea, the provision of language support and counselling to foreign workers, the strengthening of health and safety management for foreign workers, the provision of medical services to irregular foreign workers and their children, assistance for the social integration of the families of married immigrants, the prevention of domestic and sexual violence against married female immigrants and the provision of relief to such victims, support for married female immigrants' admission to mother-and-child care facilities, the protection and promotion of cultural diversity, the securing of a fair determination procedure for determining refugee status, the protection of the rights of applicants for refugee recognition, etc., the provision of social security services to recognized refugees, and education on human rights.

32. The NAP stipulates that the Ministry of Justice, as the competent authority shall compile the implementation results of the plan every year and report the results to the National Human Rights Policy Council before releasing them to the public. Accordingly, the Ministry reported the implementation results of the 2007 NAP, 2008 NAP and 2009 NAP to the Council in 2008, 2009 and 2010 respectively, and afterwards published them in booklets, which were then distributed to government agencies and the public.

**Consideration of the enactment of the Discrimination Prohibition Act**

33. In the concluding observations on the thirteenth and fourteenth periodic reports of the Republic of Korea, the Committee urged the Republic of Korea to take quick measures to draft and adopt a discrimination prohibition act (CERD/C/KOR/CO/14, para. 13). The Ministry of Justice subsequently submitted a draft bill of the Discrimination Prohibition Act to the National Assembly in November 2007, but the bill was discarded when the 17th session of the National Assembly came to an end in May 2008. As of December 2011, no draft of the Discrimination Prohibition Act is pending in the National Assembly.

34. The discarded draft bill of the Discrimination Prohibition Act prohibited discrimination on the grounds of race, skin colour and ethnic origin, and also included provisions which prohibited indirect discrimination and advertisements that encourage harassment and discrimination. However, the Act did not provide for the criminal punishment of the prohibited discriminatory acts.

35. The Ministry of Justice established and operated a Task Force in 2008 and 2009 to reexamine relevant domestic laws, international standards and overseas legislation with regard to discrimination. In April 2010, the Ministry of Justice has also established a council of experts on anti-discrimination, consisting of authorities from relevant organizations and public officials, and has held in-depth discussions on the overall issue of discrimination and the results of the Task Force research. The Ministry is carefully considering the enactment of the Discrimination Prohibition Act, examining its compatibility with existing domestic laws on discrimination.

**The Framework Act on Treatment of Foreigners Residing in the Republic of Korea**

36. In the concluding observations on the thirteenth and fourteenth periodic reports of the Republic of Korea, the Committee requested that the Republic of Korea provide an English translation of the Act on Treatment of Foreigners Residing in the Republic of Korea and detailed information on the implementation of the Act (CERD/C/KOR/CO/14, para. 11).

37. The Government enacted the Framework Act on Treatment of Foreigners Residing in the Republic of Korea,<sup>4</sup> which regulates the basic elements of the treatment of foreigners, on 17 May 2007. The Act became effective on 18 July 2007. The goal of the Act is to assist foreigners in the Republic of Korea to adjust to Korean society, to fully exercise their skills and abilities, and to foster a social environment in which Korean nationals and foreigners in the Republic of Korea understand and respect one another.

38. The Act stipulates that the Minister of Justice shall develop a basic plan for policies on foreigners every five years in consultation with the heads of relevant central administrative agencies, and that the heads of relevant central administrative agencies shall establish and implement annual implementation plans within their respective jurisdictions in accordance with the basic plan. In addition, the Act provides that the Foreigners' Policy Committee shall be established under the direction of the Prime Minister to deliberate and coordinate major issues concerning policies on foreigners.

39. The Act further stipulates that the central government and local governments shall endeavor to take the necessary measures, such as the conduct of education and publicity activities, to prevent unreasonable discrimination against foreigners and their children residing in the Republic of Korea and to safeguard their human rights. In addition, the Act

---

<sup>4</sup> The term "Foreigners Residing in the Republic of Korea" means people who do not have obtained Korean citizenship and legally stay in Korea for the purpose of residence in Korea.

provides for social adjustment, child care and education, refugee support, programmes to enhance multicultural awareness, civil service guides, and consultation for foreigners, and also designated May 20 as ‘Together Day.’

40. An English translation of the Framework Act on Treatment of Foreigners Residing in the Republic of Korea is attached to this report.

#### **Basic Plan for Policies on Foreigners**

41. In its consideration of the thirteenth and fourteenth periodic reports, the Committee recommended that the Republic of Korea adopt further measures, including legislative measures, to guarantee the equal and effective enjoyment by persons of different ethnic or national origin of the rights set out in article 5 of the Convention (CERD/C/KOR/CO/14, para 11).

42. In accordance with article 5 of the Framework Act on Treatment of Foreigners Residing in the Republic of Korea, the Government established ‘the First Basic Plan for Policies on Foreigners (2008 to 2012)’ on 17 December 2008. The purpose of the Plan is not only to eliminate direct discrimination against immigrants as a social minority, but also to foster a mature multicultural society through support for their social adjustment and to promote the multicultural awareness of the public.

43. The Plan sets out the Government’s commitment to strengthen immigrant support in order to reduce indirect social discrimination due to their delayed social adjustment, and to standardize a variety of supporting policies through the introduction of a social integration programme. In addition, the Government committed to continually expand its service base (support centres for multicultural families, schools, local cultural centres, social organizations, etc.), operate self-help associations, and provide a variety of educational opportunities to the spouses and families of married immigrants to promote the understanding of international marriage.

44. To foster immigrant children’s integration into the Education system, the Plan also delivers Government’s plans to operate ‘the Central Education Centre for Multiculture,’ foster a dual language education environment in schools and child rearing facilities, and train experts on multicultural education and dispatch them to each school.

45. Furthermore, the Government committed to strengthening workplace inspections in order to make sure that the employers comply with the relevant labour laws, such as the Labor Standard Act and the Act on the Employment of Foreign Workers, which provide the same protections and benefits to foreign workers as Korean nationals receive in workplace. This Plan also illustrates the determination of the Government to reinforce the counselling and legal consulting services for immigrants provided in employment centres and immigration offices.

#### **Measures to monitor policies**

46. The Government has established a monitoring system to correct discriminatory practices on the grounds of race, nationality, etc. in accordance with the Basic Plan for Policies on Foreigners. The Policy Monitoring Group for the Social Integration is comprised of local citizens as well as immigrants with various stay statuses from various occupations, and this mechanism helps monitor social phenomena and government policies from the perspective of immigrants so that the results may be reflected in government policies. In addition, through on-site inspections on immigrants’ social adjustment, it enables the Government to identify and reduce deviations and obstacles in the course of the implementation of relevant policies.

**Constitutional review of laws**

47. Pursuant to articles 107 and 111 of the Constitution and articles 41 and 68 of the Constitutional Court Act, if a law constitutes or perpetuates racial discrimination and results in the violation of a right guaranteed by the Constitution and that law is referred to in the adjudication of the court case, the presiding court can request either ex officio or by decision upon a motion by the party injured by the law that the Constitutional Court adjudicate the constitutionality of the law in question. If the party's motion is dismissed by the court, he himself can petition to the Constitutional Court for the adjudication of the constitutionality of the law.

48. If the Constitutional Court rules the law unconstitutional, the law or the provisions of the law become null and void as of the date of the ruling, and must be revised or abolished by the legislature.

**Article 4****Active countermeasures for the elimination of acts based on racial superiority or hatred****Punishment of racially motivated crimes**

49. In its consideration of the thirteenth and fourteenth periodic reports, the Committee recommended that the Republic of Korea create a special legislation to prohibit and punish racially motivated criminal offences (CERD/C/KOR/CO/14, para. 11).

50. Apart from the Act on Punishment, etc. of Crimes under Jurisdiction of the International Criminal Court, which stipulates that racially motivated genocides and crimes against humanity are subject to punishment, Korea has no separate law for the punishment of criminal acts based on racial discrimination. This is due to the fact that crimes of this nature have rarely occurred throughout the history of Korean society, and it is already the case that racially motivated crimes can be penalized within the scope of existing legislation.

51. Engaging in acts of instigation of racial discrimination, advertisements based on racial superiority and so forth are punishable under article 307 the Criminal Act as an act of defamation or as an act of insult under article 311 of the Criminal Act. Violent acts based on racial discrimination are a violation of Chapter 25 of the Criminal Act (Crimes of Inflicting Bodily Injury and Violence) and the Punishment of Violence, Etc. Act. Those who aid and abet such crimes are also punished. Since the Criminal Act stipulates that the motive for the commission of the crime shall be taken into consideration in determining the penalty for a crime, judges may consider racial discrimination when determining the appropriate punishment.

**Statistics on accusation, prosecution, and ruling with regard to crimes of racial discrimination**

52. The Republic of Korea does not currently record separate statistics on racially motivated crimes. However, statistics on human trafficking of foreigners are managed on a separate basis, as outlined in more detail in paragraph 101.

## Article 5

### Equality and prohibition of discrimination in exercising rights

#### Protection of foreigners during investigation

53. When racist or racially discriminatory acts constitute criminal acts under domestic law, the investigation bodies of the Republic of Korea, including the prosecution and the police, can initiate investigations on all occasions regardless of whether the offender is a public organization or an individual. Meanwhile, the National Human Rights Commission can receive complaints from those who claim to have been discriminated against on the grounds of race, and investigate the racially discriminatory acts on its own initiative and then report them to the prosecution if, during the investigation, the discriminatory acts are revealed to be criminal acts. The prosecution indicts the accused for such acts, and the court gives a verdict.

54. Pursuant to article 4 of the Working Rules for Investigation in Harmony with Human Rights Protection, which prohibits discrimination on grounds such as race and nationality, the investigation bodies must not be influenced by the suspects' race, etc in their judgment with regard to their suspected criminal act. As mentioned in paragraph 77 of the thirteenth and fourteenth periodic reports, foreigners are notified of the available services in their native language, including the summary of the crime at the time of the arrest, the grounds for the arrest and the right to an attorney (CERD/C/KOR/14, para 77).

55. Article 180 of the Criminal Procedure Act stipulates that a statement by a person who is not fluent in the Korean language shall be interpreted by an interpreter so as to ensure that the foreigner does not have communication problems during the course of the trial or investigation. The Government provides interpretation services by operating its own interpretation team, requesting embassies for interpretation, or utilizing interpretation volunteers. The Ministry of Justice is planning an interpreter training programme for married immigrants with higher education, which is expected not only to help secure qualified interpreters, but also to promote the social participation and integration of the immigrants.

56. Pursuant to articles 244, paragraph 5 and 276, paragraph 2, newly inserted in the Criminal Procedure Act on 1 June 2007, a person who has a reliable relationship with the defendant may sit in company with the defendant if it is necessary to facilitate the defendant's psychological stability and smooth communication. Furthermore, in accordance with newly inserted article 163, paragraph 2 and article 165, paragraph 2 of the Act, a person of reliable relationship is allowed to sit with the victim during the course of the investigation. The Government also promotes video-recording investigations for the sake of victim protection.

57. As a state party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Republic of Korea prevents and strictly punishes violence, torture, inhuman or degrading treatment and any other acts of human rights violation during the course of the investigation of foreign suspects. As part of such efforts, the Government enacted the Working Rules for Investigation in Harmony with Human Rights Protection and revised the Criminal Procedure Act to incorporate such provisions as providing interpreters and allowing the companion of a person with a reliable relationship. In accordance with article 308, paragraph 2 of the Criminal Procedure Act, any evidence obtained in violation of the due process shall not be admissible.

### **Protection of a foreigner on trial**

58. The Government's systems to ensure the rights of criminal defendants, including foreign defendants, to a fair trial are as outlined in paragraphs 198 to 214 of the initial report of the Republic of Korea to the International Covenant on Civil and Political Rights (CCPR/C/68/Add.1, paras. 198-214).

59. The judicial appointment system and guarantee of judges' status are as explained in paragraphs 232 to 234 of the third periodic report of the Republic of Korea under the International Covenant on Civil and Political Rights (CCPR/C/KOR/2005/3, paras. 232-234). The professionalism and independence of judges are guaranteed by the provisions concerning the qualifications and disqualifications for the appointment of judges and the guarantee of judicial officers' status in Part 4 of the Court Organization Act.

60. The Criminal Procedure Act, revised on 1 June 2007, has newly inserted article 259, paragraph 2 for the guarantee of the victims' right to know and article 294, paragraph 2 and 3 for the protection of victims. Under the revised Criminal Procedure Act, upon request to the prosecutor, foreign victims can be notified of whether the prosecutor has indicted the offender, of the time and location of the trial, of the court's decision and of matters concerning the imprisonment such as the arrest or release of the suspect or the accused. The victims can then apply to the chief judge for perusing and copying of trial records. In the case of a victim standing as a witness in court, the court may, where it is deemed necessary to protect the privacy or safety of the victim, decide not to open the trial to the public.

### **Protection of foreigners during the course of imprisonment**

61. The Enforcement Rule of the Administration and Treatment of Correctional Institution Inmates Act, enacted on 19 December 2008, has separate provisions for foreign inmates, classifying them as individuals in need of special protection. Chapter IV of the enforcement rule stipulates the establishment of separate correction facilities for foreign inmates, development and implementation of customized correction programmes, separate detention of different groups of foreign inmates and provision of necessary facilities in consideration of religion, custom, inter-ethnic relations, etc, as well as supply of food in consideration of food custom, etc. The enforcement rule also provides for the designation of correction officers wholly responsible for foreign inmates to perform a variety of work, ranging from interviews, resolution of their difficulties, interpretation services, guaranteeing the right of consular access and communication for the provision of legal support.

62. Acts of violence, including torture, committed during the course of imprisonment are strictly restricted as outlined in paragraph 57. In cases where rights of foreigners are violated, the foreigners can restore their rights by applying for an interview with the warden or making a written petition to the Ministry of Justice, etc pursuant to articles 116 and 117 of the Administration and Treatment of Correction Institution Inmates Act. They can also file a petition to the Human Rights Violation Hotline Center of the Ministry of Justice under the Rule on Investigation and Treatment of Human Rights Violation Cases.

### **Political rights (the right to vote and to stand for election, the right to take part in the Government and the right to equal access to public service)**

63. There is no racial restriction for naturalized foreigners in taking part in the Government or becoming employed in state-owned companies. Foreigners can become public servants in public bodies, including law enforcement authorities, if they satisfy certain requirements in the same way as other Korean nationals. Having recognized that language skills are crucial for the work of immigration officers, since 2005, the Ministry of Justice has been conducting special recruitments of people with high language proficiency.

As a result, a naturalized foreigner from Mongolia passed the civil service examination and became an immigration officer and was employed through the special recruitment process.

64. Political rights, such as the right to vote and the right to take part in the Government, which used to be enjoyed only by Korean nationals, are now also available for foreigners who meet certain requirements through the revision of the relevant laws. With the newly inserted article 26, paragraph 3 of the State Public Officials Act on 28 March 2008, foreigners, who used to be appointed only to contractual positions, can now be appointed to political or privileged positions. In accordance with article 5 of the Local Referendum Act, foreigners aged 19 or above have the right to vote in the elections of local council members and head of the local government in the district, after three years from the acquisition date of the qualification for permanent residence under article 10 of the Immigration Control Act.

65. As mentioned in paragraph 46, foreigners can work as members of the Policy Monitoring Group for the Social Integration to monitor discriminatory elements in social phenomena and government policies.

#### **Right to move**

66. Foreigners are guaranteed the right to move and reside freely within the territory of the Republic of Korea. However, pursuant to article 36 of the Immigration Control Act, if a foreigner changes his or her place of residence, he or she shall report the move to an immigration office, etc within fourteen days from the date of moving.

67. Foreigners in the Republic of Korea have the right to depart for their home countries or other countries without restrictions unless their departure is suspended on the grounds of criminal investigation, ongoing trial, etc. If there are concerns that the suspension of departure of a foreigner could significantly harm friendly relations between the Republic of Korea and the foreign country, the suspension can be lifted to guarantee the right of consular assistance of the country.

#### **Right to nationality**

68. Foreigners can attain the nationality of the Republic of Korea by resorting to the naturalization procedure or by restoring their nationality if they used to be a national of the Republic of Korea. Except on particular occasions, the Ministry of Justice gives permission for the naturalization or the restoration of the nationality to foreigners when they meet certain requirements. Every non-national of the Republic of Korea is subject to the acquisition of nationality, and there are no discriminatory regulations on specific groups.

69. In cases that foreigners have resided in the Republic of Korea for a long time, the Government can grant the permission for their naturalization, even if they have no special relations to the country. Foreigners married to Korean nationals require a shorter period of residence in the country than other foreigners applying for naturalization.<sup>5</sup> In addition, they are exempt from the naturalization test (writing test and interview), and in some cases the requirement to prove the ability to support oneself is alleviated.

70. The Nationality Act has adopted *jus sanguinis* as the principle of determining nationality and has added some *jus soil* elements as exceptions. Thus, it is highly unlikely that the problem of stateless persons will occur. Having revised the relevant domestic laws to replace the paternal lineage system with the paternal and maternal lineage system, a child

---

<sup>5</sup> Applicants must participate with Korean spouse and prove that the normal marriage status is maintained.

gains the nationality of the Republic of Korea if the child's father or mother is a national of the Republic of Korea at the time of the child's birth. Abandoned children are granted Korean nationality when both parents of the children have unclear nationalities or are stateless.

71. If a foreigner becomes a holder of multiple nationalities by attaining the Korean nationality and does not renounce the other nationality within 1 year, they will lose their Korean nationality pursuant to article 10 of the Nationality Act.<sup>6</sup> If he or she later renounces the other nationality, they become stateless persons. In such cases, they are allowed to have their nationality restored by reporting to the Ministry of Justice in accordance with article 11 of the Act. This is part of the Government's measures to reduce the number of the stateless persons.

### **Civil rights**

72. Foreigners can freely exercise general civil rights in accordance with article 23 of the Constitution. Not to mention such fundamental private right as the right to marriage, the property rights are also guaranteed to foreigners. Accordingly, foreigners can own property either independently or jointly and can also inherit it.

73. However, land cannot be considered as ordinary property since land is national territory. For this reason, the Foreigners' Land Acquisition Act stipulates certain restrictions based on the principle of reciprocity and describes procedures applied in cases of foreigners' acquisition of land. Article 3 and 4 of the Act, which were revised on 26 December 2008, provide for the non-application of the principle of reciprocity where it is necessary to implement a treaty concluded in accordance with the Constitution or to abide by the principle of Most Favored Nation (MFN) of the World Trade Organization. In addition, the land acquisition procedures for foreigners have been simplified by substituting the real estate transactions report, etc with the foreigners' land acquisition report.

74. On 29 November 2002, the Pusan Eastern District Court ruled that the bylaw of a golf club was discriminatory against its foreign members, who had obtained the membership for an equal admission fee as the Korean members, by prohibiting them from transferring or bequeathing their membership, and thus violated article 6, paragraph 1 of the Regulation of Standardized Contract Act. The Court ruled that such practice goes against the principle of good faith and infringes on the essential aspects of the foreigners' property rights without due cause and was therefore null and void. In essence, the court acknowledged the right of foreigners to transfer and bequeath their membership notwithstanding the provision of the standardized contract.

### **Freedom of opinion, conscience, religion, etc**

75. The Constitution of the Republic of Korea guarantees the freedom of thought, conscience and religion for Korean nationals and foreigners alike (arts. 19 and 20). As for the freedom of religion, in particular, the exclusion or persecution of religions is highly unlikely to take place since article 20 of the Constitution stipulates that no state religion shall be recognized, and church and state shall be separated. In addition, the Government is operating 'the Report Centre for Religious Discrimination by Public Officials,' which receives reports on religiously discriminatory acts in the service of public officials and keeps a database of reported cases.

---

<sup>6</sup> However, with the amendment of the Nationality Act in May 2010, foreigners who meet certain criteria set out in Article 10 paragraph 2 of the Act could hold Korean nationality and their foreign nationalities if they make a pledge not to exercise their rights as foreigner in Korea.

76. Foreigners can enjoy the freedom of speech and press, as well as the freedom of assembly and association in accordance with article 21 of the Constitution, and therefore, can freely express their opinions, and join or make temporary or permanent communities.

77. According to article 37 of the Constitution, however, such freedom may be restricted when it is necessary for purposes of national security, maintenance of law and order, and the public welfare. Even if such a restriction is imposed, no essential aspect of the freedom or right of the foreigners shall be violated.

### **Refugees**

78. In its consideration of the thirteenth and fourteenth periodic reports, the Committee recommended that Korean legislation on refugees and asylum-seekers be reviewed in accordance with the 1951 Convention relating to the Status of Refugees and other recognized international standards, and that asylum-seekers and persons granted humanitarian protection be allowed to work. The Committee also recommended that the process of determining refugee status be carried out in a fair and expeditious manner (CERD/C/KOR/CO/14, para. 15).

79. Abiding by the recommendations of the Committee, the Government has revised the relevant domestic laws in accordance with the 1951 Convention relating to the Status of Refugees and other recognized international standards. Article 76, paragraph 4 of the Immigration Control Act, revised on 19 December 2008, extended the period for the appeal for non-recognition or cancellation of refugee status from seven days to fourteen days, in order to facilitate an application to appeal. In addition, the newly added article 76, paragraph 8 of the Act made it possible for the applicant to seek a temporary work permit if no decision is issued within one year from the date of application. A foreigner under humanitarian stay may also be given a temporary work permit. Article 76, paragraph 9 of the Act established a legal basis for creation of the facilities for refugees and asylum seekers, which will provide them with language education, job counselling, medical assistance and essential training necessary to adapt to life in Korea.

80. For a more expeditious process in determining refugee status, organizational structure and system have been streamlined with the establishment of the Nationality and Refugee Division in the Ministry of Justice in February 2006, which was provided with additional personnel in May 2009 and the establishment of the Division of Nationality and Refugee Affairs in the Seoul Immigration Office. In addition, with the introduction of the on-line refugee review system, coupled with such an increase in manpower, the refugee review period was considerably shortened from 42 months at the end of 2008 to 12 months at the end of 2009.

81. In order to ensure a professional and fair determination of refugee status, an outside legal expert was appointed as the head of the Division of Nationality and Refugee Affairs in June 2006. The Refugee Recognition Council, comprised of the same number of representatives from the Ministries and private organizations concerned, has also been established. Judges were appointed as new members of the Council in August 2008, and a reasonable determination standard was set in cooperation with relevant bodies such as the UNHCR.

82. In the course of interviews, the characters and privacy of the applicants for refugee status are respected. In particular, female applicants can be investigated by female officers upon request. Respecting the spirit of the Convention, refugee status is also granted to the spouses and minor children of recognized refugees under the principle of the unity of the family.

83. The Government grants F-2 visa status to recognized refugees to allow them to work without restrictions and also grants citizenship where the requirements for naturalization

under the Nationality Act are satisfied. It also provides those recognized as refugees with financial assistance for basic living expenses, in accordance with the National Basic Living Security. In addition, the refugees can receive favorable treatment in public education, social insurance and medical care, etc.

84. From 1992 to 2002, the Government granted refugee status to a total of two foreigners. Since then, however, a total of 222 foreigners have been recognized as refugees by December 2010, which is the result of the strengthened refugee policy. A total of 136 foreigners, who do not meet the requirements for recognition of refugee status, have been granted permission to stay in the country on humanitarian grounds.

#### **Deportation and expulsion of foreigners**

85. Foreigners against whom a deportation order has been issued are entitled to file an objection with the Minister of Justice within seven days of the receipt of the order under article 60 of the Immigration Control Act. They can also file an administrative appeal to the Administrative Appeals Commission under the Prime Minister or an administrative complaint with a court, seeking revocation of the order within 90 days of being informed of the order. In the case of an administrative complaint to a court, the deportation procedure ceases if the court rules the suspension of the order.

86. With regard to article 33 of the Convention Relating to the Status of Refugees, the Immigration Control Act specifies ‘the principle of non-refoulement’ in article 64, paragraph 3. Accordingly, those who apply for recognition of refugee status will not be forcibly repatriated until the process of determining their status is completed. Even if a foreigner does not meet the requirements for refugee status under the Convention, he or she will not be repatriated where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion. This shall not apply in case where the Minister of Justice deems that it might be detrimental to the interest or security of the Republic of Korea.

87. In order to guarantee long-term residents’ rights to family life, those with a permanent residence visa are not subject to deportation unless they are sentenced to imprisonment of five years or more. Since there are no provisions to stipulate collective deportation of foreigners, the Government reviews and decides upon the deportation of foreigners on an individual basis.

88. Even if a foreigner is legitimately subject to deportation, the Minister of Justice may grant a stay permit on humanitarian grounds in accordance with article 61 and article 76, paragraph 8 of the Immigration Control Act, when it is deemed inappropriate to repatriate him or her in consideration of particular situations in the country of origin which might put him at risk of torture or other dangers.

#### **Protection of foreign women**

89. In its consideration of the thirteenth and fourteenth periodic reports, the Committee recommends that the Republic of Korea adopt appropriate measures to strengthen the protection of the rights of foreign female spouses, inter alia by ensuring that their legal resident status in cases of separation/divorce does not depend entirely on the proof that the end of the relationship is to be attributed to the Korean spouse. It also suggested a range of appropriate measures be adopted to facilitate the integration of foreign female spouses into Korean society (CERD/C/KOR/CO/14, para. 17).

90. In cases of divorce attributable to the Korean spouse, a foreigner retains his or her stay permit, and the burden of proof alleviated by allowing them to submit a written confirmation of divorce from a certified women’s group as well as their divorce decree from the court to prove the reasons attributable to their Korean spouses. In addition, even if

a divorce is attributable to a foreigner, his or her stay permit continues in the case that it is necessary for such reasons as child-rearing and supporting their parents-in-law.

91. The Korean Government enacted the Act on the Management of International marriage agencies in 2007 to protect foreign women married to Korean nationals from having their rights violated by international marriage agencies. In April 2010, the law was revised to strengthen protection of clients of international marriage agencies by including new provisions such as mandating the agencies to provide key information on potential Korean spouses, such as marriage history, criminal record,<sup>7</sup> health status and occupation.

92. Additionally, in order to reinforce regulation and monitoring of illegal acts of international marriage agencies, the Government expanded the scope of foreign laws and regulations to be complied by the international marriage agencies from criminal laws to administrative ones. Since 2009, monitoring international marriage agencies is also being carried out annually, and administrative and other measures are taken on unregistered and illegal agencies.

93. In 2008, the Government began operating overseas programmes in four countries. These programmes provide information to marriage migrants before they enter Korea, in order to help Korean and non-Korean couples understand the lifestyle and cultures of one another's countries. The Government also operates the International Marriage Program, which provides men or married couples of different nationalities with guidance on interracial understanding and successful international marriages. This nationwide programme assists them with important issues related to international marriage, such as living in a multi-cultural society, gender equality, relationships and communication, and relevant laws and regulations.

94. In Korea, there are 159 Multi-Cultural Family Support Centers. These centres provide marriage migrants with courses on the Korean language and culture, each tailored to the individual's level of language proficiency and understanding. The centres also provide home visit education, online education and broadcast education. Consultation and education is also provided to the Korean spouse and family of marriage migrants in order to assist them to fully integrate into Korean society.

95. The Government also operates an Emergency Support Center for Migrant Women. This emergency line is provided in eight languages and operates 24 hours a day. Women of different nationalities work as counselors in collaboration with hospitals, shelters and the police. In 2009, four local service centres opened to provide better service.

96. Currently, 18 shelters for female immigrants operate nationwide to help those who suffer from domestic violence. These shelters provide victims with temporary residence, as well as medical and legal support. They also offer assistance to individuals who wish to return to their home country.

#### **Human trafficking and preventive measures**

97. While acknowledging the efforts undertaken by the Government to combat the trafficking of foreign women, the Committee expressed concern that the practice continues to be widespread. In this respect, the Committee recommended in its consideration of the thirteenth and fourteenth periodic reports that the Republic of Korea increase its efforts to combat trafficking of foreign women for the purpose of sexual exploitation or domestic servitude and provide adequate information, assistance and support to foreign women who become victims of human trafficking (CERD/C/KOR/CO/14, para. 16).

---

<sup>7</sup> With the amendment of the Act in February 2012, the international marriage agencies are obliged to provide with the criminal record related to procuring prostitution and associated acts.

98. The Government has been providing free legal services in relation to civil cases involving human trafficking of foreign females residing in the country, as referred to in paragraph 85 of the thirteenth and fourteenth periodic reports (CERD/C/KOR/14, para. 85).

99. In addition, as part of the efforts to prevent human trafficking of foreign females, a joint investigation team was established in May 2007 involving the collaboration among the Prosecution, the Police and the National Intelligence Service. Since December 2006, the Government convened several meetings of the relevant bodies to establish countermeasures for the prevention of human trafficking. In the meetings, the Ministry of Justice, the Ministry of Foreign Affairs and Trade, the prosecution and the police, and officials from embassies concerned were engaged in discussions on various issues, ranging from the exchange of information on human traffickers and collaborative investigations to crackdown measures for the prevention of human trafficking.

100. The Government established the Support Center for Female Victims of Forced Prostitution to help female immigrant victims of forced prostitution. This centre helps victims by providing shelter, medical and legal support. The Center also helps victims return to their home countries, if they so wish, by providing assistance with plane tickets and necessary documents such as passports and alien registration cards.

101. Since 2009, the Public Prosecutors Office has been keeping statistics on foreigner-related human trafficking so as to effectively monitor foreign female victims of human trafficking. The statistics are expected to be of value in the prevention and consistent control of human trafficking.

102. The Government also actively participates in relevant international conferences on human trafficking, such as the ASEAN+3 Ministerial Meeting on Transnational Crime and the Conference of the Parties to the United Nations Convention against Transnational Organized Crime.

103. In addition, the Government is planning to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the United Nations Convention against Transnational Organized Crime. As a prerequisite for ratification of the Optional Protocol, the United Nations Convention against Transnational Organized Crime should first be ratified. As the convention entrusts many parts to domestic law, the Ministry of Justice is pursuing the introduction of relevant legislation to this end.

#### **Protection of migrant workers**

104. Based on its unique experience of both sending and receiving workers, the Korean Government has been developing its policy on migrant workers in consideration of domestic labour demand and the protection of migrant workers' human rights.

105. The Industrial Trainee System (ITS) first introduced in December 1993 revealed several problems including the infringement of human rights of migrant workers, a massive increase in the number of undocumented workers, and irregularities in the placement process, including excessive sending costs paid by migrant workers to enter Korea, occurred due to the intervention of private brokers. In order to address the problems identified in the ITS, the Employment Permit System (EPS) was introduced on 17 August 2004, as referred to in paragraph 34-36 of the thirteenth and fourteenth periodic reports (CERD/C/KOR/14, paras. 34-36).

106. In its consideration of the thirteenth and fourteenth periodic reports, the Committee recommended that the Republic of Korea adopt several measures, including extending the length of employment contracts, to ensure the effective employment by migrant workers of their labour rights without any discrimination based on nationality. The Committee also requested the Republic of Korea include in the next periodic report detailed information on

the measures adopted to ensure the equal and effective enjoyment by all migrant workers of their rights under articles 5(e) and 6 of the Convention (CERD/C/KOR/CO/14, para. 18).

107. Article 22 of the Act on the Employment of Foreign Workers prohibits discrimination against migrant workers, stating that “an employer shall not give unfair and discriminatory treatment to foreign workers on grounds of their status.” Labor-related laws, including the Labor Standard Act, the Minimum Wage Act, and the Occupational Safety and Health Act, are also applied equally to both migrant and native Korean workers. Indeed, article 6 of the Labor Standard Act prohibits discriminatory acts based on ‘nationality’ and article 9 of the Trade Union and Labor Relations Adjustment Act prohibit discriminatory acts on the basis of ‘race’.

108. In order to ensure the effectiveness of the Act, the Government has been conducting labour inspections on a regular basis to discover if employers commit any violation of labour laws, including a breach of the terms of employment contracts, overdue wages, and discrimination. At the same time, the Government has conducted surveys to identify trends in illegal hiring and employment. In this way it is making efforts to entrench legitimate employment practices. In 2009 alone, labour inspection was conducted for 4146 workplaces and 5036 violations of labour laws were reported among which 2106 cases were addressed through judicial procedures, thereby remedying breaches of the rights of migrant workers.

109. In addition, the public sector has been put in charge of the entire process of sending and receiving migrant workers, including preparing job seekers’ roster and placing migrant workers in jobs in Korea, to prevent irregularities in the sending process and to keep the procedures for selecting and receiving migrant workers transparent.

110. The Government sets labour quota for migrant workers every year based on domestic labour market conditions and labour supply and demand by industry in order to protect employment opportunities for native workers and to receive migrant workers who satisfy market demands. As of December 2010, the Government signed an MOU with 15 sending countries, including Vietnam and Thailand, and received 276,293 migrant workers. Among them, 89.5 per cent (247,369 workers) are employed in the manufacturing industry.

Table 12

**Number of migrant workers received by industry from 2004 to 2010 (unit: person)**

| <i>Year</i>               |             |             |             |             |             |             |             |              |
|---------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|
| <i>Industry</i>           | <i>2004</i> | <i>2005</i> | <i>2006</i> | <i>2007</i> | <i>2008</i> | <i>2009</i> | <i>2010</i> | <i>Total</i> |
| Sub total                 | 3,167       | 31,659      | 28,976      | 33,687      | 75,024      | 63,222      | 40,457      | 276,293      |
| Manufacturing             | 3,124       | 31,115      | 28,182      | 30,181      | 65,871      | 55,351      | 33,545      | 247,369      |
| Construction              | -           | 84          | 42          | 740         | 3,326       | 4,296       | 2,498       | 10,986       |
| Agriculture&<br>livestock | 43          | 419         | 700         | 2,298       | 4,482       | 2,324       | 3,153       | 13,419       |
| Service                   | -           | 41          | 52          | 48          | 48          | 54          | 53          | 296          |
| Fisheries                 | -           | -           | -           | 420         | 1,297       | 1,298       | 1,208       | 4,223        |

111. As a short-term labour mobility system, the EPS allows migrant workers to stay for a maximum of three years and a migrant worker may be reemployed after the end of that period if his/her employer applies for the reemployment. In these cases the worker must leave Korea for one month and then reenter. However, the mandatory requirement for migrant workers to stay outside of Korea for one month before re-employment was causing the burden of flight costs on workers and a vacuum in employment. In response to this problem the Government abolished the mandatory requirement and allowed migrant

workers to be reemployed for an additional two years, by amending the Act on the Employment of Foreign Workers in October 2009. In addition, foreign workers are allowed to change workplaces three times during their stay in certain cases where they are deemed unable to continue to work because of temporary shutdown or closure of business or where the working conditions of the workplace are not consistent with the terms and conditions of the labour contract.

112. To assist migrant workers adapt to life in Korea, as of December 2011 the Government is directly operating Migrant Workers Support Centers, which provide interpretation services, Korean language education and counselling service, in six cities, including Seoul, Incheon, Daegu, and Kimhae, where migrant workers are concentrated. More centres are due to be established in other locations and the services they provide will be diversified. In addition to the support centres, there are around 100 shelters for migrant workers run by NGOs. The Government also holds various cultural events to help migrant workers adapt to life in Korea and to promote and maintain their cultural diversity.

113. Migrant workers, like native Korean workers, are covered by Industrial Accident Compensation Insurance and National Health insurance. In addition, in order to protect migrant workers' rights and interests and guarantee support for their return to their home country, it is mandatory to take out Return Cost Insurance to cope with their departure costs such as air fare, and Casualty Insurance to insure them against diseases not related to work.

114. According to an assessment conducted in 2007, three years after the implementation of the EPS, migrant workers' rights and interests have rapidly improved in a relatively short time in Korea as shown in the table below.

Table 13

**Accomplishment of the EPS (Assessment made in 2007) (unit: %, \$)**

| <i>Classification</i> | <i>AWOL (%)<br/>(Absent without leave from workplace)</i> | <i>Overdue wage<br/>(%)</i> | <i>Average sending cost<br/>(\$)</i> |
|-----------------------|---|-----------------------------|--------------------------------------|
| ITS                   | 50-60   | 36.8                        | 3,509                                |
| ↓                     | ↓   | ↓                           | ↓                                    |
| EPS                   | 3.3   | 9.0                         | 1,097                                |

**Rights to education of immigrant children, including irregular immigration**

115. The Government has streamlined procedures so that children of migrant families, regardless of their immigration status, are guaranteed a primary and secondary education. The Enforcement Decree on the Primary and Secondary Education Act was amended on 22 February 2008 and 27 December 2010 to permit all immigrant children, including children of irregular immigrants to enter primary and secondary school by simply submitting a certificate of residence. They need not submit any other document such as certificates on immigration status or certificates of alien registration.

116. In addition, the Government provides educational support for children of migrant families by developing learning materials and diverse programmes and assists healthy development of their identity. Similarly, programmes for understanding Korean language and cultures such as customized education programme, after-school programmes, mentoring by college students for children of immigrants, are offered to facilitate immigrant children's smooth integration into Korean society.

## Article 6

### Protection and remedies for foreigners

#### Remedy procedures for foreign victims

117. As indicated in article 75 of the thirteenth and fourteenth periodic reports, the Constitution and the relevant laws of the Republic of Korea ensure everyone within its jurisdiction effective protection and remedies against any acts of racial discrimination through competent national tribunals and other State institutions. Foreigners are entitled to receive protection from, remedies and compensation for acts of discrimination, including racial discrimination committed by a person, a group of persons, or central and local Government agencies (CERD/C/KOR/14, para. 75).

118. In civil cases relating to racial discrimination, the party who makes an allegation, regardless of whether he or she is a foreigner or a national of the Republic of Korea, bears the burden of proof. In other words, the claimant has the responsibility to adduce evidence in support of the allegation at trial under the principle of “he who asserts must prove.” Such a system operates on the premise that both of the conflicting parties have equal and complete competency to stand trial. In case that inequality arises between parties, some legal systems for ensuring substantial equality have been put in place, such as the right to inquiry for clarification system, the own-initiative investigation system and the attorney appointment system. In case that a foreigner, who is a party to litigation, finds it difficult to stand trial, he or she can resort to such systems.

119. Foreign victims, regardless of nationality, can not only claim compensation for damage arising from a tort, but can also apply to the Government for relief aid in accordance with the Crime Victim Assistance Act if it is possible under the principle of reciprocity between States. On the condition that victims or their families meet certain requirements, the Government grants relief aid from the budget on a supplementary basis.

120. Foreigners who have suffered damage from racial discrimination can file a compensation claim to a court in the case of acts of private individuals, an administrative litigation suit in the case of acts of administrative bodies, and a civil petition to the Anti-Corruption and Civil Rights Commission in the case of illegal or unjust administrative dispositions.

121. Foreigners can also file a petition to the National Human Rights Commission, which has jurisdiction over various kinds of discriminatory acts by individuals or state bodies. At the same time, the Commission has the authority to conduct an investigation on its own initiative if there is a reason to believe that human rights violations or discrimination occurred, and can recommend that the respondent or the head of the organ or organization to which the respondent belongs perform relief measures such as suspending discriminatory acts, restitution, compensation for damages and prevention measures for recurrence. The petitions filed to the National Human Rights Commission from 1 January 2006 to 31 December 2009 are as below.

Table 14

#### **Petitions filed to the National Human Rights Commission (January 2006-December 2009) (unit: cases)**

| <i>Cases Received</i> | <i>Cases in Progress</i> | <i>Cases Closed</i> |             |           |                             |
|-----------------------|--------------------------|---------------------|-------------|-----------|-----------------------------|
|                       |                          | Affirmed            | Turned down | dismissed | Closed during Investigation |
| Total (482)           | 27                       | 31                  | 312         | 156       | 5                           |

| <i>Cases Received</i>     | <i>Cases in Progress</i> | <i>Cases Closed</i> |             |           |                             |
|---------------------------|--------------------------|---------------------|-------------|-----------|-----------------------------|
|                           |                          | Affirmed            | Turned down | dismissed | Closed during Investigation |
| Violation of Rights (361) | 20                       | 20                  | 235         | 123       | 3                           |
| Discrimination (118)      | 7                        | 11                  | 73          | 33        | 2                           |
| Others (3)                | -                        | -                   | 4           | -         | -                           |

122. When a foreigner whose basic rights have been violated by the exercise of public power has exhausted all other domestic remedies, but has not yet obtained legal relief, he or she can file an appeal with the Constitutional Court.

#### **Aid procedures for foreign victims**

123. Article 128 of the Civil Procedure Act stipulates that the court shall grant aid to those who cannot afford lawsuit costs, on their application or on its own initiative. This system is designed to ensure the economically underprivileged the right to trial in a substantial manner by alleviating lawsuit costs such as those incurred for documentary stamps, collecting evidence and hiring attorneys. The Korean Legal Aid Corporation's provision of legal services to foreigners is as indicated in paragraph 84 of the thirteenth and fourteenth periodic reports. (CERD/C/KOR/14, para. 84)

Table 15

#### **The Korean Legal Aid Corporation's Provision of Legal Services to Foreigners (Unit: Number of cases, million won)**

| <i>Year</i> | <i>Number of cases</i> | <i>Civil cases</i>                                 |   |              |               |     | <i>Criminal cases</i> |
|-------------|------------------------|--|---|--------------|---------------|-----|-----------------------|
|             |                        | Aid before trial (Settlement before filing a suit) | Aid for filing (writing legal documents for lawsuits for a claim of a value of ten million won or less) | Aid in trial | Amount of aid |     |                       |
| 2006        | 171                    | 2  | 63  | 106          | 3,018         | 61  |                       |
| 2007        | 1,050                  | 3  | 76  | 971          | 6,452         | 102 |                       |
| 2008        | 2,165                  | 5  | 111   | 2,049        | 13,433        | 116 |                       |
| 2009        | 3,407                  | 0  | 121   | 3,286        | 21,912        | 75  |                       |
| Total       | 6,793                  | 10   | 371   | 6,412        | 44,815        | 354 |                       |

124. Statewide Centers for Victims of Crime provide legal consulting, guidance on judicial relief emergency relief, economic assistance, medical assistance, financial assistance for living expenses and tuition fees, etc for foreigners. In addition, the Government endeavors to offer protection and assistance to victims of crime by publicizing Vietnamese, Chinese and English editions of "A Guide for Victims of Crime", outlining the aid and support provided by centres designed to assist victims of crime such as Centers for Victims of Crime and the Korean Legal Aid Corporation and other relevant bodies and distributing them to nationwide counselling centres for victims of crime, Centers for Victims of Crime, local governments, police stations, etc.

125. Immigration control officers provide support to facilitate the adjustment of married immigrants to the country, providing them with one-to-one counselling services on a variety of possible difficulties they may encounter while staying in the country. Such counselling services cover matters such as legal consulting, counselling on sexual violence and counselling on child education.

Table 16

**Claims filed by documented foreign citizens (Unit: cases, 1000 Korean won)**

|      | <i>Overdue payment</i> |              |                                  |                           |                              | <i>Disaster compensation</i>   |               |
|------|------------------------|--------------|----------------------------------|---------------------------|------------------------------|--------------------------------|---------------|
|      | <i>Number of cases</i> | <i>Cases</i> | <i>Amount (1,000 Korean won)</i> | <i>Medical assistance</i> | <i>Disaster compensation</i> | <i>Prosecuted by</i>           |               |
|      |                        |              |                                  |                           |                              | <i>Immigration Control Law</i> | <i>Others</i> |
| 2005 | 15,839                 | 12,969       | 13,031,984                       | 305                       | 4                            | 673                            | 1,888         |
| 2006 | 11,810                 | 5,763        | 6,261,182                        | 326                       | 2                            | 4,235                          | 1,484         |
| 2007 | 11,054                 | 5,540        | 6,158,082                        | 543                       | 3                            | 1,097                          | 3,871         |
| 2008 | 20,218                 | 8,074        | 10,800,792                       | 998                       | 3                            | 2,449                          | 8,694         |
| 2009 | 15,530                 | 3,831        | 7,738,390                        | 882                       | 112                          | 642                            | 5,522         |

126. The Government has established an effective support system for foreign female spouses by concluding Memorandums of Understanding (MOUs) with 56 nationwide Centers of Victims of Crime, counselling centres on sexual violence, and counselling centres on domestic violence in various areas in a bid to provide substantial assistance for the injury relief and human rights protection of foreign female spouses, such as those who are the victims of domestic violence. In addition, the Government has established and operated emergency relief centres and shelters for immigrant women to facilitate their access to relief measures.

## Article 7

### State responsibility in lectures, education, culture and information

#### Human rights and multicultural education to eliminate racial prejudice

127. In its consideration of the thirteenth and fourteenth periodic reports, the Committee recommended that the Government adopt appropriate measures to overcome the image of Korea as an ethnically homogeneous country and to include in school curricula and textbooks human rights awareness programmes aimed at promoting understanding, tolerance and friendship among all racial, ethnic and national groups (CERD/C/KOR/CO/14, para. 12).

128. Recognizing the importance of establishing social understanding and integration of diverse cultures as a key element in the country's future progress, the Government has taken various measures to strengthen education in human rights, stressing the importance of respecting human integrity regardless of race, colour of skin, sex, religion, etc. and to overcome racial prejudice and discrimination. As part of these efforts, the Government has designated human rights education and multicultural education as pan-curricular subjects for primary and secondary education. The Government has also published and distributed teaching materials to supplement primary and secondary textbooks, helping students get a better understanding of human rights and the history and culture of diverse ethnic groups.

129. In addition, the Government has expanded teacher training programmes to improve teachers' understanding of children from multicultural backgrounds and to raise their awareness of multicultural education. It has been developing and distributing related education materials and inviting parents of multicultural backgrounds to give lectures on multicultural understanding.

#### **Education of law enforcement officers**

130. In its consideration of the thirteenth and fourteenth periodic reports of the Republic of Korea, the Committee recommended providing public workers engaged in the criminal justice system with special training on existing legal systems and procedures with regard to the elimination of racial discrimination (CERD/C/KOR/CO/14, para. 20).

131. The Legal Research and Training Institute and the Human Rights Bureau of the Ministry of Justice provide law enforcement officers with various forms of human rights education depending upon their office and rank, covering such issues as understanding of a multicultural society and the elimination of racial discrimination, on a regular and consistent basis. In particular, more intense training is provided for investigation officers to ensure no discrimination on the grounds of race in the course of their investigations and for immigration officers working at foreigner protection facilities or conducting relevant work on the human rights of foreigners to promote their multicultural understanding and to prevent the infringement of their human rights.

132. In this regard, four lectures on areas such as foreign female spouses and multicultural society were provided to a total of 220 officers in 2007, nine lectures on such areas as multicultural policy and assistance to the families of foreign female spouses to 395 people in 2008, ten lectures on multicultural families, consultation techniques, etc, including lectures presented by workers in the relevant field to 82 people up to 31 August 2009.

#### **Efforts to promote cultural diversity in the field of culture**

133. As Korea is rapidly developing into a multicultural society, the Government has pursued various cultural programmes and projects to heighten the awareness and understanding of multiculturalism.

134. For example, in 2008, the Government produced a special documentary "Korea speaks of hope and co-existence" in order to improve the general public's awareness on multiculturalism, to eliminate racial prejudice, and thereby to contribute to creating the social conditions where people with different ethnic and cultural backgrounds live together in harmony. The documentary was broadcast in Korean and English across the country and the world, and DVD copies were distributed to public institutions, public and university libraries, and Korean cultural centres abroad. In 2009, "Multicultural Success Story – My Korea, My Korean," a documentary which depicted the life and success story of the migrants living in Korea, was broadcast on Arirang TV to 72 million households in 188 countries.

135. In addition, in 2009, a musical "Love in Asia" with a story of conflicts and reconciliation between a married migrant woman and her mother-in-law was first launched its road touring performance, and offered an opportunity to local people and migrants in 11 provinces to watch the show together for free. This show was very effective in delivering the strong message that multicultural families are our close neighbors, while also providing people a chance to enjoy a cultural event.

136. The Government has also developed a first-stage Korean language programme for children from multicultural families to improve their Korean. This programme was designed to help the children from the multicultural family learn the Korean language and

culture with ease and fun, while helping ordinary Korean children of the same age group expand their understanding of different cultures. The Government developed the second-stage programme (playing with words) in 2010 and the third stage in 2011.

137. In April 2010, the Government ratified the Convention on the Protection and Promotion of the Diversity of Cultural Expressions to join the international efforts to promote understanding of and tolerance toward diverse cultures. The ratification of the Convention is expected to contribute to raising the awareness on protection and promotion of cultural diversity among the general public.

---