

MINBYUN – LAWYERS FOR A DEMOCRATIC SOCIETY AND OTHER KOREAN NGOS

NGO Report under ICERD

Republic of Korea

**81st Session of the Committee on the Elimination of Racial Discrimination on the 15th and 16th
Periodic Report submitted by the Republic of Korea under Article 9 of the International
Convention on the Elimination of all Forms of Racial Discrimination**

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EXECUTIVE SUMMARY

- 1) To date, the Government of Republic of Korea has failed to implement most of the recommendations made by CERD in its concluding observations in 2007 (CERD/C/KOR/CO/14). In particular, the State party has yet to adopt a discrimination prohibition act; there are no specific legislative measures to prohibit and punish racially motivated criminal offences.
- 2) The fundamental problem is a general lack of awareness regarding discrimination so that blatantly discriminatory acts are not even recognized as being discriminatory. Better education and specific training to teach people about discrimination is sorely needed to enlighten both public officials (especially policymakers and law enforcement officers) and also the ordinary public in order to make them more sensitive to race discrimination and become aware of discriminatory practices that are prevalent in the Korean society.
- 3) Discrimination against foreigners continues to be pervasive in Korean society particularly against migrant workers (documented and undocumented), immigrant spouses, and children of inter-ethnic unions.
- 4) Racist hate speech is becoming more widespread and explicit, particularly online, but the State party has not taken any concrete action to address the problem.
- 5) Migrant workers job mobility, already severely limited, is becoming further restricted due to the introduction of new regulations governing foreign workers by the State party from 1 August 2012. Undocumented workers continue to face harsh treatment. The State party has done little to give effective protection to their human rights or offer remedies in case of violation by their employer.
- 6) Foreigners married to Korean nationals are still inadequately protected against possible abuses by their spouses, particularly in cases of migrant women. In many cases, women remain trapped in abusive relationships because they would lose their residence permit if they left the marriage.
- 7) Immigration control regulations are racially discriminatory; even regulations that are neutral on their face are applied in a racially discriminatory manner (eg. crackdowns on undocumented immigrants focus on certain nationalities).
- 8) Immigrant children, children of migrant workers and children of inter-ethnic unions are being discriminated against in schools and their drop-out rate is much higher than that of Korean students.
- 9) Much greater effort is needed to combat trafficking of foreign women for the purpose of sexual exploitation or domestic servitude, including stricter regulation of the issuance of a particular type of visa that is exploited to lure foreign women into sex industries.
- 10) Number of asylum seekers granted refugee status continues to be very low.

I. Introduction

1. In March 2012, the government of the Republic of Korea (ROK) submitted the 15th and 16th periodic reports to the Committee on the Elimination of Racial Discrimination (“the Committee”) in accordance with the article 9 of the *Convention on the Elimination of All Forms of Racial Discrimination* (“the Convention”). This NGO report is to assist the Committee in understanding and examining the reality of racial discrimination in South Korea by pointing out the problems of the government report and explaining the issues that have been paid little attention or entirely neglected in the government report.
2. This report was jointly written by NGOs based in South Korea with the aim to speak for the Korean civil society. We hope that the Committee would examine the issues outlined in this report carefully and reflect them in its meeting with the State party in the upcoming 81st CERD session.
3. This report reviews the issues mentioned in the government reports item by item and suggests the stance of the NGOs in the form of conclusion and recommendation. The Korean NGOs would like to highlight the following six issues among others. Nevertheless, it does not in any way mean that the other issues are of less importance or gravity.
4. First, racist hate speech is becoming widespread and systematic, especially recently, and has become an issue of serious concern, but the government is not taking any concrete action to address the problem. In particular, some anti-multiculturalist groups have been explicitly expressing hatred towards foreigners online and in public discussions since Jasmine Lee, a naturalized Korean citizen of Filipino origin, was unprecedentedly elected to the Korean National Assembly in April 2012. With regards to a racial discrimination case in 2009, the court applied libel (personal contempt) under the Criminal Code, but did not impose any additional penalty for the racially motivated crime. When a similar case occurred in 2011, the National Human Rights Commission of Korea confirmed that it was an act of racial discrimination, but the government did not take any measure to compensate the victims nor to prevent recurrence of similar cases. The NGOs in the ROK hereby urge the State party follow the recommendations by the CERD and to introduce a clear and specific prohibition of racial discrimination in its domestic law and to require the imposition of additional penalty in racially motivated crimes.
5. Under new regulations effective from August 1, 2012, migrant workers will be severely restricted in their job mobility where they leave their workplace because of intolerable working conditions or insufficient wages. Under the new regulations, all migrant workers in search of a job must wait for an employer, selected by the Ministry of Employment and Labor, to hire them. If they are not hired by that employer or is rejected by the workplace of their choice within 3 months, they lose their resident status and face the risk of deportation. These new regulations, which apply to migrant workers solely on the ground that they are foreigners, deprives migrant workers residing in Korea of the labor rights and fundamental human rights. The new regulations mean that the workers must either continue working at their current workplace putting up with the abuse of their human rights or risk compulsory expulsion. The Ministry of Employment and Labor must revoke the enactment of such regulatory provisions that infringe upon the freedom to choose one’s work and basic labor rights. In addition, it must be urged to review or abolish the current EPS that contains numerous elements that threaten or violate human rights.
6. Second, the State party’s immigration control tends to be racially discriminatory. The crackdowns on undocumented foreigners appear to be concentrated on foreigners of certain nationality. Such measures are also problematic in the sense that they could easily become repressive and violent and lead to injuries and deaths of foreigners. The foreigners are being discriminated against in investigation procedures as well. There have been cases where police insulted

foreigners during investigation just because they were foreigners or where foreigners were not properly provided with interpreters for investigation. Again, the government has not taken any disciplinary measure against the responsible law enforcement officers. The NGOs in Korea urge the State party to properly educate the law enforcement officers on the human rights issues and provide appropriate interpretation service to the foreigners during investigation so that no further discriminatory practices occur in the process of immigration control and investigation.

7. Third, recently in South Korea, there has been an increasing concern about the issues of the migrant children's (documented or undocumented) right to education, custody, and social adjustment. Although the recently amended policy allows migrant children to enter school regardless of their legal status in Korea, surveys reveal that the percentage of migrant children's school attendance is fairly low. It is known that many migrant children drop out of school because of implicit or explicit racially discriminatory comments or acts from colleagues and sometimes even from teachers. Hence, the NGOs in Korea urge the State party to take appropriate legal and policy measures so migrant children's right to education and right to stay can be fully realized.
8. Fourth, the legal definition of "racial discrimination" does not exist in Korea. The Committee pointed it out in their concluding observations on the ROK government's 13th and 14th report and recommended the State party to rectify this problem. Yet, the government has not taken any decisive step. In addition, on top of not providing cases and statistical data on racial discrimination, there is not even a proper system to collect such data. The government is insisting that it could recommend stopping discriminatory action through the provision on prohibition of discrimination in the National Human Rights Commission Act¹. However, the practicality of such recommendation measure is highly doubtful, for the measure is not coercive. Inevitably, there has only been one case in the last ten years where a recommendation on racial discrimination was successfully made. The NGOs in Korea urge the State party to respect the Committee's recommendation and legislate a practical legal definition of racial discrimination.
9. Lastly, there is no legal and institutional framework established in Korea to actively punish racially discriminatory comments and acts. The discussion on the legislation against discrimination that bans discriminatory acts of any sort is at a standstill, and there is no provision whatsoever regarding racist acts in the Criminal Code. The State party argues in the report that racially discriminatory comments could be punished under the provisions on general criminal penalty, but such argument not only goes against the fundamental principle of criminal law (*nulla crimen sine lege*, or no crime without law) but also reflects the fact that the government does not in fact perceive racial discrimination as a separate crime, which can be seen from the refusal to impose additional punishment for it. Accordingly, the NGOs in Korea ask the government to legislate an anti-discrimination law that bans discrimination more comprehensively. Moreover, the government should recognize the criminal nature of racial discrimination and amend the Criminal Code to impose additional punishment on racially motivated crimes.

II. General

A. Naturalization

10. Paragraph 4 of the Government Report states that the number of persons acquiring citizenship by naturalization has been on the rise since 2006. In reality, the procedure of naturalization for foreigners is becoming increasingly difficult. According to the Enforcement Decree of the current *Nationality Act*, a foreigner must be recommended by a member of the National Assembly, a head of a local government, a Grade-5 or higher public official, or an executive member of a corporation to apply for general naturalization. An immigrant spouse must submit a personal

¹ National Human Rights Commission Act, section 2(4)

guarantee from their Korean spouse and a proof of sufficient funds of their own or their husband's worth 30 million won or more. Since 2007, the rejection rate of applications for naturalization has increased five times.

Figure 1) Number of rejected applications for naturalization

Year	2006	2007	2008	2009	2010	Total
Number of rejections	368	1,379	2,333	6,973	5,898	16,951

(source: The Ministry of Justice)

11. Paragraph 5 of the Government Report states that the leading countries of origins of naturalized citizens are, China, Vietnam, and the Philippines, in that order. In reality, applicants from socialist countries face discrimination in the screening process of naturalization applications. The Ministry of Justice announced that starting February 2011, applicants must make a pledge in honour of a system of liberal democracy during the screening process. This is a discrimination against migrants from socialist countries and a form of forced proselytization of political ideology, in violation of Article 5(d)(vii) of the Convention concerning the right to freedom of thought, conscience, and religion. In addition, in June 2012, the Ministry of justice held a public hearing on the revision of the *Nationality Act* and presented a revised plan concerning the adoption of a system of 'permanent residency before nationality' in assessing applications for naturalization. The purpose of this revision is to restrict the acquisition of nationality by foreign workers holding the non-professional employment (E-9) visa, immigrant spouses, and overseas Koreans holding the working visit (H-2) visa. In contrast, "outstanding foreign personnel" are not required to hold a permanent residency before applying for naturalization². At the public hearing, the government revealed its discriminatory view towards non-professional foreign workers, migrant spouses, and overseas Koreans holding the H-2 visa (visiting work permit), regarding them as lacking the ability to be financially independent and not equipped with the understanding of the Korean society and culture³.

Conclusions and recommendations

12. The government, under Article 5(d)(iii) of the Convention concerning the enjoyment of the right to nationality, should fulfill its duty to ensure the equal rights of all people before the law without any discrimination based on race, skin color, national or ethnic origin. It should also stop the on-going discussion regarding the amendment of the Nationality Act, which, *de facto*, aims to restrict the acquisition of nationality by migrant workers of certain national origins, immigrant spouses, and overseas Koreans. Furthermore, in light of the fact that under Article 5(d)(vii) of the Convention, the government has the duty to ensure an equal right to freedom of thought, conscience and religion for all, it should abolish the procedure of extracting a pledge honouring liberal democracy that is forced upon migrants from socialist countries during the screening process of naturalization applications.

² Ministry of Justice. "Report on the Public Hearing Regarding the Introduction of the Principle of Permanent Residency." June 6, 2012.

³ The Government states that the Principle of Permanent Residency is necessary: a) due to the concern that the long-term residence of foreigners who provide simple or unskilled labor will cause social problems; and b) in order to regulate the acquisition of citizenship among foreigners, such as migrant workers, immigrant spouses, and overseas Koreans, who are not financially independent and/or lack an understanding of the Korean culture/society (*ibid*, Ministry of Justice).

B. Foreigners residing in the Republic of Korea

13. Paragraph 8 of the Government Report states that the ratio of undocumented foreigners has been steadily declining, but in fact, the number of foreigners who have been apprehended by the authorities for violating the *Immigration Control Act* is on the rise. The diminishing ratio of undocumented foreigners does not represent a positive change through an increase in the number of legitimate foreign residents (for example, through undocumented workers being given work permit), but rather represents a negative development of an increase in arrests and compulsory expulsion (deportation) of undocumented foreigners by the government.
14. The harshness of punishment for violating the *Immigration Control Act* reflects discrimination based on nationality. According to a 2010 report by the Ministry of Justice, of all persons of Chinese origin who were punished for violating the Act, 4,354 were deported; 390 received an order to leave, and 586 a recommendation to leave. Similar ratio of numbers can be seen in orders for Chinese-Koreans, Vietnamese, and Thais accused of violating the Act. In contrast, in the same year, only 35 Americans who violated the Act were deported, 126 were given an order to leave, and 671 a recommendation to leave. A similar ratio of numbers could be seen in Canadians accused of violating the Act. This means that more than 80% of persons accused of violating *Immigration Control Act* who come from underdeveloped countries such as China and Vietnam were compulsorily expelled, whereas less than 5% of those accused of similar violations but who come from Western countries such as U.S.A and Canada were deported. This clearly shows that the implementation of the Immigration Control Act is racially discriminatory and is applied inconsistently according to national origin.
15. In a typical example of racially discriminatory practice of arrest, on November 21, 2007, a naturalized Korean from Bangladesh was, without any explanation, gagged, handcuffed, and forced into an enforcement vehicle by Immigration Control officers⁴. Even after confirming his Korean citizenship, they kept him locked up in the vehicle for one to two hours for reasons that he must be investigated for fake marriage and violation of law. The suspicion of fake marriage and violation of law was founded only upon the fact that he was of Bangladeshi origin.

Conclusions and recommendations

16. To protect the human rights of foreign residents, legislative and institutional regulatory procedures concerning immigration control should be established. Discriminatory practices based on national origin and race during regulatory enforcement including arrests and compulsory expulsion should be prevented.

C. Ethnic Chinese

17. Paragraph 10 of Government Report mentions the number of Taiwanese residing in Korea on long-term stay visas⁵, yet fails to provide the number of ethnic Chinese that have acquired Korean citizenship. Furthermore, as the Korean *Nationality Act* adopts the *jus sanguinis* principle, the only way for the ethnic Chinese to acquire Korean citizenship is either through marriage or naturalization, even if they have lived and worked in Korea for generations. In reality, the acquisition of citizenship through naturalization is extremely difficult due to stringent procedures. As a result, ethnic Chinese who are born and have lived in Korea for generations still face hardship and discrimination in their daily lives. For instance, the *Citizen Registration Act* of Korea excludes foreigners, which means that ethnic Chinese who could not acquire citizenship

⁴ National Human Rights Commission. "File No. 07 Jin-In 4701." October 27, 2008.

⁵ Mainly F-2 (residency) and F-5 (permanent residency) visas.

cannot register under the Act and face difficulties in obtaining employment or accessing public services that require proof of resident registration⁶.

18. In addition, the education system for ethnic Chinese youth in Korea is managed independently, outside the normal Korean education system. Ethnic Chinese in Korea adopt education system similar to that in Taiwan and uses education materials published by the education sector of Taiwan. The Ministry of Education of Korea does not officially recognize such education from ethnic Chinese schools and, as a result, it is difficult for ethnic Chinese youth to fulfill the eligibility requirements for university entrance examinations in Korea.

Conclusions and recommendations

19. To further protect the human rights of ethnic Chinese in Korea, the government should conduct a general survey on ethnic Chinese to gather accurate information regarding the state of their welfare and redress the educational discrimination against ethnic Chinese youth. Furthermore, for those ethnic Chinese who have lived in Korea for generations, it should be made easier to obtain citizenship so that they can participate fully in the society in which they live.

D. Foreigners and their children

20. The Committee, in its Concluding Observations from the 13th and 14th periodic reports (CERD/C/KOR/14), urged the Republic of Korea to consider ratifying the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. However, the government has neither joined nor ratified the Convention. As a result, the legal status of the children of migrant workers in Korea is still uncertain and they are excluded from various social support services.
21. Paragraphs 12 to 14 of the Government Report show the age-specific count and gender ratio of the children of foreign parents or parents of foreign origin and the Korean citizenship status of their parents. However, no statistics are given on the proportion of undocumented foreigners or of low-income migrant families. The current Employment Permit System (EPS) prohibits a foreign worker's family members from accompanying him/her during the period of employment and the *Multicultural Family Support Act* is not applicable to the children of migrant workers if the spouse is not Korean. As a result, in many cases, children of migrant workers enter the country with a tourist or business visa and eventually exceed their stay, ending up as undocumented foreigners. Most of the children of foreign parents or parents of foreign origin suffer economic hardships in Korea. According to a research in 2009 by the Ministry of Health and Welfare, the overall average monthly income of multicultural families is low with the majority (38.4%) earning 1 million to 2 million won and 21.3% in the low-income group earning below 1 million won⁷.

Conclusions and recommendations

22. The Committee should urge the government to ratify the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* and reiterate the recommendation to conduct a thorough survey of the number of children born in inter-ethnic unions in Korea, including the families' economic and social conditions. The government should

⁶ Lee, Yong Jae. "The National Policies for Korea-Chinese and Its Exclusiveness." *The Journal of Chinese Language and Literature*, Vol. 72. 2012.

⁷ Ministry of Health and Welfare, Ministry of Justice, Ministry of Women and Family, "The National Survey on the National Condition of Multi-Cultural Families in 2009."

implement legislative and institutional measures based on such collected data to ensure the legal and economic rights of children of foreign parents or parents of foreign origin.

E. Refugees

23. The refugee acceptance rate is still very low in Korea. Although there is an increase in the total number of people who have been recognized as refugees, granted residency permits on humanitarian grounds, and those who are allowed to stay on family reunion, the statistics provided by the Ministry of Justice does not include the number of applicants for refugee status and those whose applications have been rejected⁸. In 2009, the global average acceptance rate of refugees was around 38%, whereas Korea's acceptance rate of was only about 6.8%. In 2009, Korea granted refugee status to 74 people, double the number of acceptance in 2008, yet 994 refugee applications were rejected in the same year, which is twelve times the amount in 2008⁹. In accordance to the principle of family reunion, family members of recognized refugees who enter Korea are also recognized as refugees, but are not given any administrative support in regards to entry procedures.

III. Information relating to Articles 1 to 7 of the Convention

Article 1: Definition of Racial Discrimination

24. The Committee, in its Concluding Observations from the 13th and 14th Periodic Reports, noted the absence of a definition of racial discrimination in domestic laws and that Article 11(1) of the Constitution on equality and non-discrimination does not include all the prohibited grounds of discrimination referred to in Article 1(1) of the Convention. It 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 and consider reviewing the definition of discrimination set out in Article 11(1) of the Constitution. However, the government has not carried out any of the recommendations.
25. Paragraph 20 of the Government Report lists individual laws that prohibit discrimination based on "race," but it does not present any specific cases or statistics of the application of such provisions.
26. Paragraphs 21 and 22 of the Government Report states that Article 2(4) of the National Human Rights Commission Act prohibits discrimination on the grounds of 'national origin, ethnic origin, race, skin color, etc' and that the National Human Rights Commission has the authority to recommend the actor of discriminatory acts the relief measures, such as suspending discriminatory acts, etc. In practice, cases of racial discrimination that are redressed by the *National Human Rights Commission Act* and the National Human Rights Commission are extremely rare. For 10 years, since the establishment of the Commission in 2001 to 2011, there were only 50 reported cases of racial discrimination, of which 32 were rejected (at application stage), 14 dismissed, and only 1 received a recommendation. The combined total of reported

⁸ According to the information obtained from the Ministry of Justice under freedom of information request, the number of unrecognized refugees in 2006, 2007, 2008, and 2009 were, respectively, 114, 86, 79, and 994.

⁹ In 2009, the number of decisions on refugee applications rapidly increased due to an amendment to the Immigration Control Act in 2008. As it granted work permits to any refugee who had not received a decision within a year, the Ministry of Justice began evaluating all cases that had been pending. Out of the 1,322 people awaiting a decision in 2009, only 324 were new applicants. This is according to information obtained upon freedom of information request to the Ministry of Justice.

cases on the four prohibited grounds of discrimination based on “national origin, ethnic origin, race, and skin color” was only 281, disproportionately small compared to the total 10,747 cases that were reported. Among these cases, only 12 received a recommendation, not a rejection or dismissal, from the National Human Rights Commission. Such statistics show the extremely low accessibility and ineffectiveness of the remedy procedures in Korea for racial discrimination.

Figure 2) Current status of the National Human Rights Commission’s discrimination complaint handling (Nov 26, 2001 – Jun 30, 2011)

Classification	Reported	Concluded	Investigation request	Conciliation	Recommendation	Indictment	Disciplinary recommendation	Settlement agreement	Rejected	Transferred	Dismissed	Suspended inspection
# of cases	10,747	9,603	1	19	690	5	3	325	5,951	89	2,444	76
(%)	–	100.0		0.2	7.2	0.1		3.4	62	0.9	25.5	0.8
National origin	214	209			10			3	127	6	58	5
Ethnic origin	10	10							10			
Race	50	49			1			1	32	1	14	
Skin color	7	7			1				3		3	

(source: Inspection of state administration, Sep 2011)

Conclusions and recommendations

- The government should be urged once again to include a definition of racial definition in Article 11(1) of the Constitution which corresponds to that of Article 1 of the Convention. It must also be recommended to lower the linguistic, social, and cultural barriers, thereby increasing the accessibility, to procedures that can remedy racial discrimination.

Different treatment based on race, nationality, etc. in domestic law

- Paragraph 25 of the Government Report states that foreigners’ rights under the Constitution are equal to those of nationals of the Republic of Korea. The majority opinion of the Constitutional Court recognizes “foreigners of similar status to nationals” as possessing fundamental rights. However, the actual text of the Constitution defines the subjects of fundamental rights as “nationals,” and since “foreigners” are not “nationals”, under a strict interpretation of the text, foreigners are not guaranteed constitutional rights. Justice Jong Dae Kim, one of the nine current judges of the Constitutional Court, rejected constitutional appeals brought by foreigners reasoning that, “It is appropriate that foreigners are denied the possession of fundamental rights, given that our Constitution stipulates the subject of fundamental rights as ‘all nationals’.” In addition, the Constitutional Court further classifies constitutional rights into rights to freedom and social rights and grants the latter, which includes the right to vote, exclusively to nationals, but not to foreigners. The grounds for such a classification are unclear.
- The Committee, in its Concluding Observations from the 13th and 14th Periodic Reports, stated that it “[remained] concerned that strictly in accordance with Article 10 of the Constitution, only citizens are equal before the law and are entitled to exercise the rights set out in Chapter II of the Constitution” and recommended that, under the General Recommendation No. 30 (2004) on Non-

Citizens, the government implement all appropriate legislative measures to guarantee equality between citizens and non-citizens.

30. In 2011, the Ministry of Justice implemented legalization measures that distinguished Koreans from non-Koreans based on national origin or ethnicity. In essence, from Jan 3, 2011 to Jun 2011, among all undocumented foreigners whose stay had exceeded ten years, only overseas Koreans who were deemed to have special reasons were given legal status, while non-Korean foreigners were completely excluded from the legalization measures. This is a violation of Article 1(4) of the Convention in that a distinction was made between Koreans and non-Koreans based on national origin or ethnicity, despite the fact that all shared an identical undocumented status, and benefits were exclusively granted to the former. (Case 0147700, Complaint 11, May 11, 2012, National Human Rights Commission).

Conclusions and recommendations

31. Under the General Recommendation No. 30 (2004) on Non-Citizens, the government should be urged once again to take all appropriate legislative measures, including modifications to the Constitution, to guarantee equality between citizens and non-citizens and to provide equal opportunities of legitimization to undocumented non-Korean foreigners, as granted to overseas Koreans.

Article 2: Government policies for the elimination of racial discrimination

Establishment of the National Action Plan (NAP)

32. Paragraphs 28 to 32 of the Government Report state that the Republic of Korea has established a National Action Plan for the Promotion and Protection of Human Rights (NAP). However, the Ministry of Justice convened the Human Rights Policy Council establishing the first NAP (2007-2011) without the participation of the National Human Rights Commission and did not reflect the Commission's recommendations on the NAP. In addition, the policy lacks effectiveness, since the human rights policy was established without gathering sufficient opinion from the civil society.
33. The first NAP, established with the Ministry of Justice in charge, is disproportionately focused on providing administrative service to immigrant spouses and fails to present concrete ways to implement the Committee's recommendations. For instance, the Committee, in its Concluding Observations from the 13th and 14th Periodic Reports, recommends the Republic of Korea to adopt adequate measures, including an extension of employment contract periods, to ensure that migrant workers may effectively enjoy their labor rights without any discrimination. It also recommends that the rights of all migrant workers be protected regardless of status and that measures be taken to effectively protect and remedy any violation of human rights by the employer. However, the NAP does not contain any of those recommendations. In particular, the section concerning the protection of human rights for undocumented migrant workers, which was recommended by the Commission, is completely omitted.

Conclusions and recommendations

34. It is of concern that the NAP does not adequately reflect the views of the civil society. We recommend that subsequent NAPs must incorporate sufficiently the opinions from the civil society and the National Human Rights Commission before being adopted. In order for the NAP to have a real impact in improving human rights, it is recommended that, as a minimum, concrete implementation plans and methods must be devised to carry out the recommendations of the Committee.

Consideration of the enactment of the Discrimination Prohibition Act

35. The Committee, in its Concluding Observations from the 13th and 14th Periodic Reports, reiterated the concern expressed in its previous Concluding Observations that the existing legislation does not fully satisfy the requirements of Article 4 of the Convention. It recommended the Republic of Korea to adopt specific legislative measures to prohibit and punish racially motivated crimes in accordance with Article 4 of the Convention and urged swift action to draft and adopt an anti-discrimination law. However, to this day, no law that prohibits discrimination or punishes racially motivated crimes has been enacted.
36. Paragraph 33 of the Government Report states that the Ministry of Justice submitted a draft bill of the Discrimination Prohibition Act to the National Assembly in November 2007, but that the bill was discarded when the 17th session of the National Assembly came to an end in May 2008. However, the draft bill that the Ministry submitted to the National Assembly in 2007 had omitted a number of prohibited grounds of discrimination, namely “sexual orientation, skin color, and national origin,” for the reason that certain religious groups opposed, earning much criticism from the civil society. In 2007, the Committee on Economic, Social and Cultural Rights (CESCR) and, in 2011, the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Committee on the Rights of the Child urged the Republic of Korea to rapidly adopt a discrimination prohibition act that clearly specifies all grounds of discrimination.
37. Paragraph 35 of the Government Report states that a Task Force was established in 2008 and 2009 to carefully examine and consider the enactment of the Discrimination Prohibition Act. In reality, such consideration for the enactment has come to a halt due to opposition from business corporations and homophobic Christian groups.

Conclusions and recommendations

38. The government should be recommended to adopt concrete legislative measures to prohibit and punish racially motivated crimes in accordance with Article 4 of the Convention and be urged once again to take immediate action to draft and adopt a law prohibiting discrimination.

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

39. Paragraphs 37 and 39 of the Government Report states that the goal of the *Act on Treatment of Foreigners Residing in the Republic of Korea* is to assist foreigners in Korea to adjust to the Korean society and to foster a social environment in which Korean nationals and foreigners in Korea understand and respect one another. The report also presents major policies on the treatment of foreigners and educational programs for social adjustment, etc. However, policies are limited to education/support programs and events for foreigners in Korea, while no strategies exist to improve the Koreans’ multicultural awareness, understanding, and respect for customs and cultural traditions of foreigners in Korea. As a result, foreigners in Korea are unilaterally forced to adapt to the Korean society.
40. Paragraph 38 of the Government Report states that a Foreigners’ Policy Committee shall be established under the direction of the Prime Minister in order “to deliberate and coordinate major issues concerning policies on foreigners” and develop “a basic plan for policies on foreigners.” However, the policy only specifies the participation of government officials and does not include the participation of civil societies, allowing the government to proceed unilaterally with the coordination and deliberation of policies. From the establishment of the first basic plan for policies on foreigners in 2008 to the following five years of activity, there was no effort to gather the opinion of civil societies.

41. In addition, Article 2(1) of the *Act on Treatment of Foreigners Residing the Korea* defines “foreigners in Korea” as “those with legal residence status” and thus completely excludes undocumented foreigners. As a result, undocumented foreigners are denied not only the basic rights, but also opportunities to access social support systems and to participate in Korean culture and society.

Conclusions and recommendations

42. The government should be recommended to remove the provision that restricts the definition of foreigners in Korea to “legal residents” and to apply the law universally, regardless of the residence status. The Commission on Policy for Foreigners should be recommended to clearly stipulate the participation of the civil society and to institutionalize ways to reflect the latter's opinions in the coordination and deliberation of policies. Furthermore, it should be recommended that government plans and policies target not simply the treatment of foreigners in Korea, but also fostering an increased understanding and respect of cultural traditions of foreigners among Koreans.

Basic Plan for Policies on Foreigners

43. Paragraph 42 of the Government Report states that the Basic Plan for Foreigners was established to eliminate direct discrimination against immigrants, to foster a mature multicultural society through support for their social adjustment, and to promote the multicultural awareness of the public. However, such a plan is focused on reinforcing the management and control of immigrants and encouraging integration through absorption into the Korean society. Classified into “outstanding personnel”, “investors”, “immigrant spouses”, “overseas Koreans”, etc., immigrants are strictly controlled and managed under a system of hierarchy based on their residence status and accordingly receive differentiated treatment. In addition, the emphasis on residential support and adjustment to the Korean society is essentially a demand for integration of foreigners through absorption, rather than a call to “foster a mature multicultural society.”
44. Undocumented foreigners are regulated solely as subjects of arrest and expulsion for reasons of enforcing ‘disciplined legal order.’ This neglects that, in many cases, the occurrence of undocumented foreigners can be traced back to institutional problems that allow violations of fundamental labor rights and forced labor, such as the former Industrial Trainee System and the restriction on changing workplaces under the Employment Permit System. Rather than addressing such institutional issues to solve the underlying problem, the government continues to uphold a strict policy of arrest and deportation. The result is a vicious cycle in which the number of undocumented foreigners remains unchanged, even as the number of deported undocumented foreigners continues to rise.

Figure 3) The number of undocumented, and arrested and deported persons during the past 3 years

Years	Arrested and deported (person)	Undocumented (person)
End of December, 2009	32,624	177,955
End of December, 2010	17,727	168,515
End of December, 2011	23,146	167,780

(source: Korea Immigration Service. Available at www.immigration.go.kr)

Conclusions and recommendations

45. The government should be recommended to ensure the participation of civil society organizations and gather their opinions prior to establishing the second Basic Plan for Policies on Foreigners

and to amend its policy centered toward control and management based on the residence status, thereby providing equal access to public health service, education programs, cultural/sports programs, and protection of labor rights to undocumented foreigners.

Constitutional review of laws

46. Paragraphs 47 and 48 of the Government Report merely set out a general explanation of the adjudication process of questions of constitutionality and do not provide any specific examples of cases or statistics where victims of racially discriminatory laws were successful in obtaining remedies. In fact, as noted earlier, Article 11 of the Constitution of the Republic of Korea, concerning the prohibited grounds of discrimination, does not contain a definition of racial discrimination that is strictly forbidden under the Convention. As a result, the Constitutional Court takes the position that it will provide special protection against the prohibited grounds of discrimination found in the Constitution, but may take a lenient stance on any grounds not explicitly mentioned therein¹⁰. There is also a conflict over whether foreigners should be considered subjects of constitutional rights, expressed as “all nationals” in the Constitution.

Conclusions and recommendations

47. In order to fully guarantee constitutional remedies for victims of racially discriminatory laws, the government should be urged once again to include, in Article 11(1) of the Constitution, the prohibited grounds of discrimination in accordance with Article 1(1) of the Convention and to modify the definition of the subject of constitutional rights from “all nationals” to one that encompasses “non-citizens.”

Multicultural Families Support Act

48. The *Multicultural Families Support Act* was established to contribute to social integration and improving the stability and quality of life for immigrant spouses. However, Article 2 of the Act limits the definition of a multicultural family to a union between a Korean citizen and a foreigner (including naturalized citizens), thereby excluding a marriage where both partners are foreigners (as is the case with most including migrant workers living in Korea with families). This is a law founded on the principles of *jus sanguinis* and nationality which is a violation of Article 1(2) of the Convention that prohibits discrimination based on citizenship.
49. Cases are occurring where the foreign spouse is refused an entry visa or forcibly divorced once the Korean spouse, after getting married abroad, returns home and then arbitrarily changes his mind. If the foreign spouse is in Korea, it is possible to seek a remedy through a lawsuit. But as for foreign spouses not yet in the country and who got married through a marriage agency in an Asian country that does not have a visa waiver program with Korea (which is the case with most of the relevant Asian countries), there is a significantly lack of accessibility to information and support system. Due to the difference in economic, language, and legal systems, foreign spouses, especially women, suffer hardship as a result.

Conclusions and recommendations

50. The government should be recommended to establish a system that issues a temporary visa or provides legal assistance for foreign spouses whose Korean spouse arbitrarily changed his/her mind and ameliorate the discriminatory effect of the existing regulations by broadening the definition of multicultural families under the *Multicultural Families Support Act*.

¹⁰ Constitutional Court of Korea. “Case No. 2008 Hun-Ka 21.”

Article 4: Active countermeasures for the elimination of acts based on racial superiority or hatred

Punishment of racially motivated crimes

51. Despite the Committee's recommendation, the government has not enacted any special legislation, such as the Race Discrimination Act, on the additional penalties for racially motivated criminal offences. In April 2010, the Ministry of Justice established a special sub-committee concerning the adoption of an anti-discrimination law, but all action has effectively been suspended due to "the socio-economic burden" and "the lack of social consent."
52. According to a press release by the National Human Rights Commission in 2011, complaints filed for reasons of discrimination based on race, national origin, religion, etc. have increased two-fold, from 32 cases in 2005 to 64 cases in 2010. There has also been an increase as of 2010 in online activity based upon racial discrimination with over 10 online communities inciting hatred against certain races, such as the group, "The Victims of Crime Committed by Pakistani and Bangladeshi." When the Commission monitored online activity in the month of October 2010, it discovered 210 racially discriminatory comments.¹¹ As such, the general atmosphere of racial hatred is expanding, but the number of complaints remains low. This is not because crimes of racial discrimination are rare, but, as the Committee mentioned in concern in paragraph 13 of its last report, rather due to a lack of relevant laws, and a consequent lack of awareness that racial discrimination is classified and punished as a crime.
53. In July 2009, Mr. Bonojit Hussain from India was subjected to racially discriminatory remarks, such as "[you] smell filthy" from another passenger on the bus. This was the first case filed on a crime of racial discrimination, but was concluded with a mere penalty of 1 million won, which demonstrated that racial discrimination was not taken into account as a ground for additional penalty.
54. In 2011, a naturalized citizen from Uzbekistan was banned from a public bath on the grounds that she might spread AIDS. The woman appealed to the Commission and it concluded, in 2012, that the case fell under a racially discriminatory act that violated the right to equality. However, the enactment of an anti-discrimination act is being delayed and the absence of such a law implies the absence of legal measures to compensate for the humiliation or psychological damage incurred by the woman or to prevent similar cases from happening in the future.

Conclusions and recommendations

55. The government should be take notice of the increase in complaints in the form of appeals to the Commission, despite the lack of relevant legal provisions, and the appearance of cases that have applied the crime of personal contempt in racial discrimination cases. As the Committee has already recommended, the government must be urged to clarify the provisions on racial discrimination in the Constitution; enact a specific legislation prohibiting discrimination; and impose additional penalties for racially motivated crimes.

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

56. Despite the increase in the number of racist online communities and the number of appeals to the National Human Rights Commission against racial discrimination, the government is not committed to the establishment of relevant laws because it does not recognize racial discrimination as a crime. This is also leading to a lack of statistical data, the increasing necessity

¹¹ National Human Rights Commission. "Statement of Opinion on Racist Expressions on the Internet"

of which is evident based on the secondary data of an increase in the number of appeals to the Commission.

Conclusions and recommendations

57. The government should be urged to collect accurate statistical data on racial discrimination, as recommended by the Committee in paragraph 19 concerning recent data on the appeals to the National Human Rights Commission, on cases of racial discrimination, their characteristics, and the conclusions.

Article 5: Equality and prohibition of discrimination in exercising rights

Protection of foreigners during investigation

58. Paragraphs 53 to 57 of the Government Report state that investigation authorities of the Republic of Korea are prohibited from discriminating based on race and that a foreigner's procedural rights are protected during the course of investigation. However, such measures exist in form only and are not implemented in reality.
59. In the case of Mr. Bonojit Hussain on July 10, 2009 described above, the victim reported the incident to the police: but the police refused to acknowledge that the victim suffered any harm, reasoning that "racial discrimination does not exist in Korea,"; and refused to isolate the offender, even though he continued to threaten and verbally attack the victim with racist remarks¹². On May 31, 2010, in deciding the case, the National Human Rights Commission recommended that the policeman involved in the case receive a warning. It was the very first time where a recommendation was made by the Commission on grounds of racial discrimination. However, as the recommendation lacks legally binding force, they have limited value as effective sanctions. Although Mr Hussain's case was the first one to receive a recommendation from the Commission, there are often violations of foreigners' human rights during the course of a police investigation, and remedies to date have been non-existent.
60. On December 19, 2010, plain-clothes policemen from the Kyung Nam District Police Station descended upon a group of Vietnamese migrant workers, notified them of a crackdown on gambling without providing a translation in Vietnamese; and during the process of arrest, two migrant workers died and many were injured. The policemen then tied them up in groups of two to four people even when they needed to use a bathroom, so the victims were humiliated by being forced to unzip the pants and lower the underwear of one another. In addition, during the 17 hours from arrest to release, the victims were only provided a single instant cup noodle. Although this was a clear violation of Article 5(b) of the Convention, the only sanction against the police was a "recommendation for disciplinary measures and on-the-job training" that has no mandatory enforceability from the National Human Rights Commission.
61. The interpretation center operated by the National Police Agency consists of 600 policemen with foreign language skills and 3,000 volunteer interpreters. The compensation for the volunteer interpreters is only 30,000 won (approximately USD26) per case and where volunteers are not available, no service is provided¹³. The "Translator and Interpreter Training Program" by the Ministry of Justice is a part of a vocational education program aimed at on immigrant spouses

¹² National Human Rights Commission. "File No. 09 Jin-In 3104."

¹³ Money Today. "Police Provide Dysfunctional Interpretation Services." URL: <http://www.mt.co.kr/view/mtview.php?type=1&no=2012013012530044047&outlink=1>. (Retrieved online, June 12, 2012.)

and the Government Report reveals its expectation of “promoting social participation and supporting the smooth social integration of immigrants” through such a program. Providing interpretation is critical to ensuring the protection of procedural rights under Article 5(a) of the Convention and it should not be dependent on unprofessional volunteers nor be used as an instrument for a different policy objective, such as the social participation and settlement of immigrant.

Conclusions and recommendations

62. To ensure the protection of the procedural rights of foreigners, the government must provide professional translation and interpretation services. In order to do so, the government must secure a budget for the services, and introduce an interpreter training program to guarantee professional service. In addition, there should be regulations imposing penalties if adequate translation/interpretation is not provided during the course of an investigation.

Protection of a foreigner in the Trial Process

63. Paragraphs 58 to 60 of the Government Report state that “foreigners, like nationals, are ensured equal rights to a fair trial” and provides a lengthy explanation on related laws and provisions, but does not mention any concrete institutional measures of protection. Although foreign defendants have a greater necessity for an attorney’s counsel, Article 33 of the current *Criminal Procedure Act* does not identify cases with a foreign defendant as cases requiring defense counsel. As a result, many foreigners are tried without the assistance of an attorney¹⁴.
64. Under Article 46(1)(3) of the Immigration Control Act, foreigners who are sentenced to a penalty exceeding 2 million won are subject to deportation under the “Guidelines Governing Entry Regulations”. Article 46(1)(13) the same Act also allows immediate deportation of foreigners who receive a sentence of imprisonment without prison labor or heavier punishment. Allowing a compulsory expulsion of a foreign defendant based on the sentence, without an opportunity for an appeal or while an appeal is pending, is an incomplete protection of foreigners’ right of access to courts.
65. The Court’s “Model Rules on the Handling of Cases with Foreigners Including Translation and Interpretation” is limited to criminal cases with a foreign criminal defendant¹⁵ and does not contain any regulations on the support for civil cases, domestic cases, and administrative cases¹⁶. As a result, public interpretation services are provided exclusively during criminal procedures, neglecting all other trial procedures, and even such support is up to the discretion of the “courts of various levels.” This reveals the fundamental problem of inconsistency among the courts of various levels in the treatment of foreign defendants.

Conclusions and recommendations

66. Considering that foreign defendants have an especially strong need to have an attorney present during trial process, all cases with a foreign defendant should be classified as cases requiring defense. The legal provision that allows compulsory expulsion of a foreign defendant based on his/her sentence should be amended to be based on the trial decision. In addition, the application of public interpretation services for foreigners should be extended to all trials and not only to criminal trials.

¹⁴ Court Administration Office. “Report on Strategies to Provide Legal Support to Foreigners Residing in Korea.” p.48. 2008.

¹⁵ *Ibid*, p.43.

¹⁶ *Ibid*, p.35.

Protection of foreigners during the course of imprisonment

67. Paragraph 61 of the Government Report states that the Republic of Korea “has separate provisions for foreign inmates” and “provides for the designation of correction officers wholly responsible for foreign inmates.” However, various treatments of foreign inmates depend on the individual discretion of the facility heads and thus differ across correctional facilities and the Ministry of Justice is not providing any statistical data on the enforcement of measures concerning foreign inmates. Although there exist designated correction officers, no information is available on whether such officers possess the relevant professional and language skills or on how the training of such officers is being carried out.
68. Paragraph 62 of the Government Report states that “acts of violence, including torture, committed during the course of imprisonment are strictly prohibited” and in cases where rights of foreigners are violated, the foreigners can seek remedy under the *Administration and Treatment of Correctional Institution Inmates Act*. However, these are merely general provisions without any specific measures for addressing such violations.

Conclusions and recommendations

69. To ensure that the Ministry of Justice, and not the individual head of each correction or detention facility, is in charge of the institutional measures concerning the treatment of foreign inmates, the *Administration and Treatment of Correctional Institution Inmates Act* as well as the Enforcement Decree for the Act should be amended. In addition, institutional measures should be established to ensure the professionalism of designated correction officers.

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)

70. Paragraph 64 of the Government Report reveals that in order for a foreigner to obtain the right to vote for local council members and heads of local governments, he/she is required to have a permanent resident status in accordance with the *Immigrant Control Act*. However, under the current Employment Permit System, migrant workers may stay in the Republic of Korea for a maximum of 10 years. If a foreigner with a stable residential status that falls short of permanent residency but who pays all his/her taxes and resides in a single area for a certain period of time like a permanent resident for all intents and purposes, he/she must be granted political rights to participate in local government.

Conclusions and recommendations

71. The right to vote for local council members and heads of local governments should be extended to foreigners residing in Korea that fulfill certain requirements.

Right to nationality

72. Paragraph 69 of the Government Report states that less stringent standards are applied to applications for naturalization by foreigners married to Korean nationals but to apply for naturalization according to such lowered standards requires a personal guarantee from the Korean spouse. (Although this requirement is abolished de jure, it is still enforced de facto). The demand for a personal guarantee, in essence, forces the foreign spouse of a Korean national, especially immigrant wives, to be in a subordinate position.
73. The Government Report also states that foreign spouses of a Korean national are exempted from the naturalization test but since 2009, the Social Integration Programme has been instituted in place of the naturalization test. Although participation in the Programme is stated as voluntary, it is *de facto* mandatory for those who wish to acquire citizenship, as it privileges program

participants. Since the beginning of 2011, the Program has become mandatory for recent immigrants. As a result, it has become even more difficult for immigrant spouses, especially women, to acquire citizenship.

74. Paragraph 70 of the Government Report states that it is highly unlikely that the problem of stateless persons will occur in the Republic of Korea. However, Korea adopts the principle of *jus sanguinis* in the determination of citizenship, thereby creating a legal vacuum concerning the Korean-born children of foreigners, whose country of origin adopts the territorial principle, who become *de jure* stateless. The Korean government ratified the *Convention relating to the Status of Stateless Persons* in the 1962, and yet, to this day, it has failed to implement any procedure to identify stateless persons. It also has not ratified the *Convention on the Reduction of Statelessness*.

Conclusions and recommendations

75. The practice of requiring a spousal personal guarantee and participation in the Social Integration Programme should be removed as conditions for expedited naturalization, thereby ensuring a more stable legal and social status for immigrant spouses.
76. In order to give effect to the Convention on Stateless Persons, the government should implement a procedure to identify stateless persons in Korea and also ratify the Convention on the Reduction of Statelessness so that stateless persons can receive practical support and protection.

Freedom of opinion, conscience, religion, etc

77. Paragraphs 76 and 77 of the Government Report state that foreigners enjoy the freedom of speech and press, as well as the freedom of assembly and association. However, under Article 17(2) of the *Immigration Control Act* states that “foreigners residing in Korea shall not engage in any political activities, unless guaranteed by this Act or other laws” and allows the compulsory expulsion of any foreigner that violates this provision. The term, “political activities,” used in the above provision is not clearly defined, yet such activity is prohibited both in principle and in general. As a result, the provision can serve as a broad limitation on foreigners’ freedom of political expression. Such rules under the *Immigration Control Act* denies to foreigners the freedom of political expression, a human right enjoyed by all persons, in direct violation of Article 5(d) of the Convention in light of paragraphs 3 and 4 of the Committee’s General Recommendation.

Conclusions and recommendations

78. The provisions restricting the political activity of foreigners contained in the *Immigration Control Act* are violations of Article 5(d) of the Convention and should be removed immediately.

Right of refugees

79. The procedure for recognition of refugee status also lacks the minimum due process of law and applicants for refugee status experience hardship without access any social services such as, for example, work permit and livelihood support.
80. The Republic of Korea was recommended to implement the procedure for recognition of refugee status in a swift and fair manner. Hence the establishment of the Nationality and Refugee Division, an administrative body, followed, but the number of public officials handling the processing of refugee applications remains low¹⁷. Although the procedure for recognition of

¹⁷ Although at the Seoul Immigration Office there are 8 designated asylum officers for the first round of evaluations, at the Ministry of Justice there are fewer officers handling both the second round of evaluations and policy-related issues.

refugee status did become faster in 2009 and 2010, it still lacks the minimum due process of law. For instance, interpreters are not adequately provided¹⁸ and the Refugee Recognition Committee, which handles appeal procedures, is only operating on a perfunctory level, processing over 100 appeals in the course of 2 hours without conducting any appeal hearings involving the applicants for refugee status¹⁹.

81. Following an amendment of the *Immigration Control Act* in 2008, applicants for refugee status who have not received a status determination decision within 1 year may apply for a work permit. However, in order to do so, they must first submit an employment contract and a business registration certificate and, as a result, the number of applicants that have actually received a work permit is extremely low. Such benefits cannot be enjoyed by those applicants who have been waiting for less than a year or are in the midst of an appeal or a trial²⁰. Although humanitarian status holders must be treated like refugees, there exist no other rules for treatment, except for that concerning the work permit. Those granted refugee status are allowed to work freely, but no employment training or Korean language education is in place. As there is almost no consideration for the human rights of refugees from most developing countries, recognized refugees often end up performing menial tasks or remain unemployed. In addition, the refugee support center in Yeongjong Island is isolated from the local community and may possibly turn into a group detention facility.

Conclusions and recommendations

82. The procedure for recognition of refugee status and the protection of refugees must be in accordance with the Convention Relating to the Status of Refugees as well as other international standards. The government should be recommended to expedite the procedure for recognition of refugee status and to implement it with professionalism and due process of law. During such procedures, the applicant for refugee status should be granted either livelihood support or, alternatively, permission to work in order to guarantee the minimum standard of life. At least one of the two choices must be made into a mandatory provision. In addition, refugee support centers must operate under the model of an open facility that is small, privately-run, and in the central district area to enable greater access.

This results in a serious delay in processing the refugee applications. Pending applications in late-May, 2012, numbered 1,264.

¹⁸ Not only is there a failure to provide proper interpretation services but in some cases of asylum seekers from a minority ethnic group, an interpreter of a different ethnicity is assigned, who in fact does not speak the same dialect as the asylum seeker. In some other cases, a signature was obtained without receiving a confirmation of full acknowledgement of the content of the translated statements.

¹⁹ According to information obtained upon civil appeal to the Ministry of Justice, in 2009, the Refugee Recognition Committee convened six times on April 29, June 18, August 5, September 24, November 12, and December 10. Refugee status was determined for 114, 128, 164, 158, 132, and 91 people, respectively. The rejection statement of refugee status is only available in translation in English, while the right to view and copy information on the interview is not granted. Although women can allegedly request for a female officer, in some cases female asylum seekers who had to testify on the threat of sexual violence/abuse were assigned male officers. In such cases, prior to the interview, the interviewee's consent to have a male interpreter must be sought but in reality, it is difficult for female asylum seekers to raise any objection.

²⁰ The Refugee Act, which passed last December, stipulates that the resident status of all asylum seekers, including those in the process of an appeal or trial, must be recognized and granted permission to receive life and housing support, as well as a work permit after 6 months. However, it is problematic that all such measures “depend the ability of the asylum seeker.”

Deportation and expulsion of foreigners

83. Foreigners, including refugees, are being unjustly subjected to compulsory expulsion or long-term detention.
84. Although a foreigner, upon receiving the compulsory expulsion order, may appeal and/or file an administrative appeal, Article 63(1) of the *Immigration Control Act* allows indefinite imprisonment when the deportation order is not carried out. In fact, one foreigner was detained for over 3 years. In the case of refugees, under Article 62(4) of the same Act, the Minister of Justice can forcibly deport those who are deemed to be a threat to the security of the Republic of Korea, thereby leaving a significant exception to the principle of non-refoulement. Recently, an applicant for refugee status from Uzbekistan was deported immediately after given notice of rejection although an appeal was possible within 14 days of the decision. He has gone missing since his forced return. There are also many cases of compulsory expulsion or imprisonment on grounds of illegal employment where applicants of refugee status, who have no other means of support, got a job without work permit.

Conclusions and recommendations

85. Compulsory expulsions of refugees undergoing the process for recognition of refugee status must be stopped, as they risk persecution in their country of origin. In case of return, an institutional measure must be in place to evaluate the possibility of torture in accordance with the Convention against Torture or the International Covenant on Civil and Political Rights. There should be a limit to the length of detention of foreigners who are given a compulsory expulsion order and a periodic judicial review must be introduced.

Protection of foreign women

86. In the previous report (CERD/C/KOR/15-16), the Committee recommended that, in cases of separation or divorce, the legal resident status of foreign female spouses should not depend entirely on the proof that the relationship ended due to the Korean spouse. No improvements have been made in this regard, while the number of foreign spouses who have been denied resident status after separation or divorce has increased. This was the case even if the foreign spouse has the right of access to her children and show proof certified by authorized women's NGOs that the divorce or separation was due to fault on the part of the Korean spouse. In particular, migrant women who are subjected to domestic violence, sexual violence, and sex trafficking bear the burden of proof that they were victims of such offences. In the event that the women do not actively report their victimization to the police or trigger a criminal prosecution, it is deemed that such offences cannot be proven and the victims' legal resident status is either revoked or is not renewed. Even in cases that result in successful criminal prosecution, the victim's rights are not being fully protected due to the absence of an institutional measure for compensation.
87. It is also problematic that most programs under the government's social integration or multicultural policies are focused on immigrant spouses or their families, with the result that migrant workers, foreigner couples, and their families are either excluded or receive little attention under such programs.

Conclusions and recommendations

88. A foreigners married to Korean national, when applying for naturalization, should not be required to furnish a personal guarantee from the Korean spouse. This requirement has been repealed in the statute but is still enforced in practice. Furthermore, the foreign applicant in such cases must be accompanied by the Korean spouse. Both of these practices, which are discriminatory against

foreigners, must be stopped immediately. After two years of marriage, the foreign spouse should be automatically entitled to receive a residence permit, without having to comply with these additional discriminatory conditions.

89. A professional migrant women support center must be established to handle cases of violence against migrant women and victims must be guaranteed stay until they are fully recovered. In such cases, their visa status should be changed in the interim to allow their stay in Korea and they should be granted an option for to remain in Korea afterwards on a valid residency permit.

Human trafficking and preventative measures

90. Migrant women are lured into the sex industry through various routes, including the E-6 visa.²¹ However, very few human traffickers are prosecuted and punished and victims do not receive adequate support, care, and protection.
91. Reporting that the government is preventing human trafficking through cooperation among government agencies and participation in international conferences can only be seen as a mere lipservice. A more accurate measure of the government's commitment to resolve human trafficking issue would be the actual conviction rate of the culprits, yet the number of cases in which traffickers are prosecuted or punished remains extremely low. This continues to be the case despite the fact that for over a decade migrant women have been lured to the industry through various means including the E-6 art/entertainment visa and despite continual criticisms from the international community.
92. The Support Center for Female Victims of Forced Prostitution, established and operated by the government, is indeed providing legal assistance. However, penalizing human trafficking in accordance with the Trafficking Protocol remains difficult with the existing *Criminal Code* and the *Anti-Prostitution Act*. If there is any sign of voluntary intent on the part of the victim, the act in question does not constitute a crime and prosecution or punishment of human traffickers rare. In some cases, victims drop the charge due to appeasements and threats from the perpetrators; in other cases, they endure hardships during the course of the prosecution due to the fact that the conditions of their visa do not allow them to engage in economic activities; and they run the risk of being deported as soon as the case is closed. As such, in reality, they do not receive adequate support and protection. Although the Ministry of Justice attempted to revise the provisions in the Criminal Code related to human trafficking, the revisions are inconsistent with the Trafficking Protocol and insufficient to punish human trafficking that occurs through various methods and with various purposes. The trafficking of foreign women fails to be recognized or highlighted as an important issue, shadowed by domestic and sexual violence issues where victims are Korean nationals.

Conclusions and recommendations

93. The Trafficking Protocol (Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children) must be ratified. A comprehensive law on human trafficking must be established to include criminal law revisions consistent with the Trafficking Protocol and provisions on the punishment of human trafficking, as well as on victim support and protection. In order to ensure proper execution of the law and increase conviction rates, investigation authorities should be encouraged to investigate with increased commitment and required to educate their forces. The E-6 art/entertainment visa must be reviewed and revised, while the supervision of related groups, including private businesses, must be carried out with utmost severity.

²¹ The E-6 visa is a category of visa issued for people who work in the arts and entertainment industry. Many foreign women are lured to Korea on the promise of work as models, actresses or singers and then are coerced into the sex industry.

Protection of migrant workers

94. Paragraph 107 of the Government Report states that the Employment Permit System (EPS) prohibits discrimination against migrant workers and applies the Labor Standards Act equally to migrants and nationals. However, the law on its face discriminates against migrant workers by limiting them in their job mobility and allowing only 3 months to search for a job, among other restrictions.
95. As an effort to protect worker rights, Article 6 of the *Labor Standards Act* on equal treatment stipulates that “an employer cannot discriminate against an employee... based on nationality, religion, or social status.” Article 16 of the same Act stipulates that, “labor contracts may not exceed one year unless the period of the contract is not strictly determined or is set by the amount of time needed for project completion.” The original intent of this provision was to prevent employees from becoming indentured or being forced into a long term contract with an employer limiting their job mobility. However, the EPS revokes this intent of the *Labor Standards Act* by allowing labor contracts with migrant workers to be extended up to 3 years, in place of 1 year. It was implemented mainly in response to the complaints by employers that it is too costly to train a replacement foreign worker if one leaves after only 1 year. This law therefore forces migrant workers, who are awaiting entry to Korea, to agree to a 3-year contract as proposed by their employers in order to enter the country. In most cases, this deprives migrant workers job mobility for 3 years, effectively restricting them from changing workplaces and forcing them to work for a single business while working in Korea. The problem occurs where the migrant workers are ill-treated by their employers. There have been many cases where migrant workers are forced to work in inhuman conditions and yet are unable to quit because they are bound by their contract.
96. Paragraph 108 of the Government Report states that, to ensure the effectiveness of the Act, labor inspections are conducted on a regular basis to discover if employers commit any violation of labor laws, including a breach of the terms of employment contracts, overdue wages, and discrimination. In reality, however, labor inspections are not properly taking place and workplace visits are carried out to identify undocumented migrants, encourage migrant workers to adapt, and discourage them from demanding a change of workplace rather than to ensure that employers comply with the Act.
97. Paragraph 111 of the Government Report states that the EPS allows migrant workers may be reemployed for a further 1 year and 10 months after the initial 3-year period ends if their employer applies for their reemployment. It also states that migrant workers are allowed to change employers 3 times during their stay in Korea where they are deemed unable to continue to work because of: a temporary shutdown or closure of business; or working conditions that are inconsistent with the terms and conditions of their labor contract. However, as the right to apply for reemployment rests exclusively with the employer, employers often use this right to prevent the migrant worker from changing jobs and force them to continue working under harsh conditions. In addition, the revised EPS, in effect since July 2012, allows migrant workers who have worked for the maximum of 4 years and 10 months in Korea to be re-employed for another 4-years-and-10-month period after staying outside of the country for 3 months. As this only applies to migrant workers who have never changed their workplace during the initial 4 years and 10 months, this revision not only lacks practicality, but also serves as another way to limit migrant worker’s job mobility.
98. Also, the reason why the maximum employment period of a migrant worker is 4 years and 10 months (not counting the re-employment period) must be noted. This is to ensure that they do not become eligible to apply for permanent residency, which requires 5 years of continuous physical residence in Korea. This is also the reason why a migrant worker must stay outside of Korea for 3 months after the initial period of 4 years and 10 months before being allowed back into the country for re-employment.

99. Paragraph 112 of the Government Report states that the government and various local governments are operating Migrant Workers Support Centers to assist migrant workers. However, such services are limited to migrant workers with legal resident status. Undocumented workers do not have access to interpretation or counseling services even in cases of overdue wages, violence/abuse, and other infringement of rights. They are also unable to participate in educational/cultural programs or use emergency shelters.
100. Currently, the EPS controls both the non-professional employment (E-9) visa, which targets non-compatriot foreigners and the visiting employment (H-2) visa, which targets Overseas Koreans from China and former Soviet Union countries. These Overseas Koreans from China and former Soviet Union, like “foreigners,” are regulated by provisions of the EPS, instead of under the *Law on Overseas Koreans*, but unlike “foreign migrant workers”, are allowed complete freedom regarding change of employers and job search period. It is clearly a form of racial discrimination to consider these two groups of Overseas Koreans as part of the “foreign labor force” under a separate system, while limiting the change of workplace for “foreign migrant workers”. In addition, it is a form of discrimination based on nationality to allow Overseas Koreans from America or Japan (or other developed Western countries) to freely travel and obtain employment under the *Law on Overseas Koreans*, while limiting that of Chinese or former Soviet Union Overseas Koreans through the visiting employment (H-2) visa.

Conclusions and recommendations

101. The discriminatory clauses in the EPS that contradicts the intent of the *Labor Standards Act* must be amended. The restrictions on the freedom of workers, such as allowing 3-year contracts with migrant workers, limiting their change of workplace, and exclusively granting the right of choice for reemployment to the employer, must be revised. The restrictions on changing workplaces must be abolished. In addition, employers and workers should be encouraged to enter into free labor contracts in accordance with the *Labor Standards Act*.
102. Since July 2012, it has become possible for migrant workers to stay in Korea for a maximum of 9 years and 8 months. The *Immigration Control Act* should be revised so that migrant workers entering the country under the EPS may invite and be accompanied by their families to guarantee their right to family union. In addition, the government should ratify the UN’s “International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families” to ensure the right of migrant workers and their families to lead decent lives.
103. Under new regulations effective from August 1, 2012, migrant workers who leave their previous place of employment because of intolerable working conditions or inadequate wages will be severely restricted in their ability to look for a new job. Such migrant workers must wait for an employer, selected by the Ministry of Employment and Labor, to hire them. If they are not hired by that employer or is rejected by the workplace of their choice within 3 months, they lose their resident status and face the risk of deportation. These new regulations, which apply only to foreign migrant workers, deprive them of their fundamental human rights including the right to work. The new regulations mean that the workers must either continue working at their current workplace putting up with the abuse of their human rights or risk compulsory expulsion.
104. The Ministry of Employment and Labor must revoke the enactment of such regulatory provisions that infringe upon the freedom to choose one’s work and basic labor rights. In addition, it must be urged to review or abolish the current EPS that contains numerous elements that threaten or violate human rights.

The Right to Organize and Join Labor Unions

105. The government report does not provide any information on the right to organize and join labor unions. This is probably due to the fact that the government denies that migrant workers, especially of those who are undocumented, have such a right, notwithstanding a higher court ruling to the contrary.
106. In June 2005, the government rejected the report of union establishment of the Seoul-Gyeonggi-Incheon Migrants Trade Union (MTU) on the grounds that most of the union's members and executives were undocumented. A lawsuit demanding a recantation of the government's rejection was filed and, in February 2007, the High Court of Justice ruled in favor of the MTU recognizing the rights of undocumented workers to organize and join labor unions. However, the government appealed to the Supreme Court of Korea, which has yet to pass a ruling on this case, even after 5 years. NGOs are suspecting that the court is delaying its final judgment for political reasons. This case is currently the longest pending administrative case in the court.

As a continued attempt to deny recognition of the MTU as a legitimate organization, the government has been oppressing the chairman and executives of the organization. Its various executive committee members, including the first, third and fourth chairpersons, were all victims of a "targeted crackdown" by the government. The National Human Rights Commission expressed strong regrets in 2007 and 2008 that these MTU officers were expelled out of the country during the Commission's investigation and court trial, in violation of their right to trial. Recently, the government ordered deportation of Michel Catuira, the fifth and sixth chairperson, who in fact had a valid residence visa, after cancelling her visa on the ground that she obtained employment under false pretenses.

107. International human rights covenants, such as the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social, and Cultural Rights*, recognize the freedom of assembly and association and the right to organize and join a labor union, regardless of one's nationality or status of residence. In 2009, the Committee on Economic, Social, and Cultural Rights recommended the government to respect the ruling of the High Court and ensure the legitimate status of members of migrant worker labor unions.²² In light of the provisions of the international human rights covenants and Article 30 (2), (3), and (35) of the Committee's General Recommendations, the government's conduct in denying undocumented migrant workers their right to organize unions is in clear violation of Article 5 of the Convention.

Conclusions and recommendations

108. Under Article 5 of the Convention, the government should be recommended to ensure the right of migrant workers to organize and join unions and to immediately proceed with the legal registration of the MTU.
109. The government should be recommended to practically ensure the activities of migrant worker labor unions. It should not, however, carry out targeted crackdowns or oppress the members and executives of such unions for their involvement.

²² CESCR, Concluding Observations from the 3rd Periodic Report (E/C.12/KOR/CO/3), paragraph 21.

"The Committee is concerned that migrant workers are subject to exploitation, discrimination and unpaid wages.

The Committee recommends that the employment permit system that has already recognized migrant workers as workers entitled to labour law protection be further reviewed. It also recommends that particular attention be paid to the fact that the three-month period stipulated for a change in job is highly insufficient. This is especially true in the current economic situation, in which migrant workers often have little choice but to accept jobs with unfavourable work conditions just to retain a regular work status. The Committee further recommends that the State party uphold the High Court's decision to grant legal status to the Migrants' Trade Union."

Right to education of immigrant children, including irregular immigration

110. In its Concluding Observations from the 13th and 14th periodic reports (CERD/C/KOR/14), the Committee encouraged the State party to ratify the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. However, the right to education of immigrant children, including those of undocumented migrants, is still severely restricted.
111. Paragraph 115 of the Government Report states that the Enforcement Decree on the Primary and Secondary Education Act permits all immigrant children, including children of undocumented immigrants to enter primary and secondary school, thereby ensuring their right to education. However, this decree does not include any regulatory enforcement provisions in case of a violation and thus has no legal force.
112. In reality, the school enrolment rate of children of inter-ethnic (between a foreign spouse and a Korean national) union is significantly lower than that of ethnic Korean students. In 2009, 24.5% of (or 6,089 out of 24,867) children of school age from inter-ethnic marriage families were outside of the general education system. This gap becomes greater at higher levels of education, with the drop-out rate for such children reaching 69.6% for high school, compared to 15.4% for primary school and 39.7% for middle school. Unsurprisingly, the school enrolment rate of children of migrant workers is also very low. In 2009, the count for migrant worker children of school age (age 7-18) in Korea was about 31,635, which is a 13.6% increase or an increase of 3,791 children from 2008. Among them, about 2,200 were outside of the general education system, excluding the 7,400 that are attending international schools according to numbers in September, 2008, and the 1,748 – a 37.6% increase from 2009 – that are attending regular schools according to numbers in April, 2010. In contrast, the enrolment rate of Korean students in primary and secondary (middle and high schools) education is over 99%.

Conclusions and recommendations

113. To improve this educational inequality, the government should be recommended to implement legal and institutional measures to ensure the right to education, stay, and medical treatment for immigrant children, including those of undocumented migrant workers.

Article 6: Protection and remedies for foreigners

Remedy procedures for foreign victims of human rights violations

114. In paragraph 18 of its Concluding Observations from the 13th and 14th periodic reports (CERD/C/KOR/14), the Committee recommended that the government ensure the right of all migrant workers, regardless of residency status, to access effective protection and remedy procedures, in cases of human rights violations. However, the government has not taken any action in response.
115. Paragraphs 118 to 122 of the Government Report list the various remedy procedures available to foreign victims. However, they are listed on a perfunctory level. In reality, foreign victims, especially in the case of undocumented migrant workers, are severely limited in their use of such remedy procedures to protect their rights.
116. Article 84 of the *Immigration Control Act* stipulates that a public official has a duty to report immediately to the head officer the discovery of any person who is a potential target for deportation. In 2012, the Act was amended to include a saving clause, which states that any exceptions to such a duty shall be determined by a presidential decree. However, as long as the duty to report is the regulatory principle, undocumented migrant workers fearful of deportation

will be reluctant to apply for remedy procedures even in cases of overdue wages, sexual abuse, and other violence, fearing that instead of getting the remedy they were seeking, they become a target for deportation. On May 8, 2008, an appeal was filed to the National Human Rights Commission concerning violence during a targeted crackdown on and arrest of migrant workers. The Commission recommended the Chief of the Seoul Immigration Office to take emergency relief measures, such as postponing the execution of the compulsory expulsion order until the investigation was over. The Seoul Immigration Office ignored the recommendation and proceeded with the deportations. As such, the effectiveness of remedy procedures is severely impaired by a public official's duty to report and ruthless executions of the compulsory expulsion order.

Conclusions and recommendations

117. A public official's duty to report must be suspended in cases where undocumented workers are seeking a remedy for violation of their rights as it would otherwise render access to remedy procedures practically impossible for undocumented migrant workers. For victims undergoing remedy procedures, the execution of any compulsory expulsion order must be postponed, as a measure to establish a system that ensures remedies for any violation of rights in Korea even to subjects of arrest or deportation.

Aid procedures for foreign victims

118. Paragraph 123 of the Government Report states that the government financially supports foreign victims through a reduction of litigation costs or offering free legal assistance. While such measures are helpful, providing high-quality translation/interpretation services are more important to ensure the effectiveness of remedy procedures for foreign victims.

Currently, the Court officially runs several projects for foreigners, including the enactment of the "Established Rule of Processing Foreigner-Related Cases" and publishing the "Foreigner Trial Manual." In addition, various courts publish litigation guides, provide civil complaint services as well as interpretation services for legal advice with the aid of volunteer interpreters. The Established Rule stipulates regulations on supporting high-quality translation/interpretation services during trial, such as the delivery of translated trial documents and operating translator and interpreter training programs. However, such provisions are limited to criminal cases, excluding civil, domestic, and administrative cases in which foreigners are direct subjects. In addition, the Trial Practice Manual, which is most often referred to by judges, has not been updated even after the enactment of the Established Rule. As a result, in some cases, trial documents, including the bill of indictment, are sent without the translated versions attached.

Conclusions and recommendations

119. The government should be recommended to implement measures to provide translation/interpretation services for all cases, including civil, domestic, and administrative cases, along with criminal cases.

Article 7: State responsibility regarding education, culture, and information

Education of law enforcement officers

120. Regular basis. However, every year, officers continue to display racially discriminatory behavior. For instance, apart from the case of Mr. Bonojit Hussain that occurred on July 10, 2009, on April 8, 2008, the Joong-Do Daily News captured and reported the video of two Chinese migrant women being and beaten on the throat area, after their arrest, by officers from the Daejeon Immigration Office. This gave rise to a public outcry. On November 12, 2008, hundreds of police officers and immigration officers perpetrated violence during the process of arresting about 120

undocumented migrant workers. 10 were injured and women were dragged by their hair; some had to relieve their bladder on the streets with their hands cuffed. On July 9, 2010, a Chinese immigrant was arrested and, during the investigation, was punched and kicked by officers from the Suwon Immigration Office.

121. Every year, migrant workers are injured or killed during a crackdown on undocumented migrant workers by immigration officers. As immigration officers execute the crackdowns without any regard for the safety of the migrant workers, accidents are frequent. A typical scenario is a migrant worker falling from a great height while trying to flee – an inevitable outcome in a country full of apartment blocks and high-rise buildings.

Conclusions and recommendations

122. Law enforcement officers lack an understanding of racism and racially discriminatory acts, resulting in racial discrimination during investigation procedures. Hence, education and promotional activities targeting investigation bodies must be actively implemented to raise awareness on racism and racial discrimination, as well as increase human rights sensitivity. In particular, human rights groups interested in migrant rights should be included in the planning and implementation of the human rights education of law enforcement officers.

IV. Conclusion

123. More than a decade ago, a Korean government representative informed the Committee that the authors of the Korean Constitution had deemed it unnecessary to include provisions on racial discrimination “because the composition of Korean society had been virtually ‘monolithic’ (*sic.*)²³ It was acknowledged that “[s]ince the Republic of Korea was ethnically homogenous, the question of racial discrimination had never been an issue”²⁴. As a result of living in such an ethnically homogenous society, there is a woeful lack of understanding among the ordinary public as well as public officials as to what constitutes racial discrimination. This ignorance leads to casual violation of human rights of foreigners and immigrants. Educating the people about discrimination to raise their awareness is critical.
124. The State party’s view is that the grounds of discrimination specifically mentioned in the Constitution are merely illustrative and that the Constitution prohibits discrimination on racial grounds.²⁵ However, there are numerous instances of glaring evidence that the failure of the government: 1) to define discrimination in line with the Convention; 2) to enact a law that specifically prohibits discrimination; and 3) to require the imposition additional penalties in cases of racially motivated crimes has resulted in gross violations of human rights caused by racial discrimination – the victims receive no remedy, the perpetrators no punishment. As the Committee has recommended repeatedly, this failure should be rectified without delay.

²³ CERD, Summary Record of the 1308th Meeting (CERD/C/SR.1308) at 2.

²⁴ CERD, Summary Record of the 1159th Meeting (CERD/C/SR.1159) at 5.

²⁵ CERD Summary Record of the 1593rd Meeting (CERD/C/SR.1593) at 2.