



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

Distr.
GENERAL

CERD/C/426/Add.2
17 January 2003

Original: ENGLISH

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

**REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 9 OF THE CONVENTION**

Twelfth periodic reports of States parties due in 2000

Addendum

REPUBLIC OF KOREA*

[4 October 2002]

* This document contains the eleventh and twelfth periodic reports of the Republic of Korea, due on 4 January 2000 and 2002 respectively, submitted in one document. For the tenth periodic report of the Republic of Korea and the summary records of the meetings at which the Committee considered that report, see documents CERD/C/333/Add.1 and CERD/C/SR.1307 and 1308.

CONTENTS

| | <i>Paragraphs</i> | <i>Page</i> |
|--|-------------------|-------------|
| Introduction | 1 - 3 | 3 |
| I. GENERAL | 4 - 22 | 3 |
| A. Population | 4 - 5 | 3 |
| B. Respect for human rights | 6 - 12 | 3 |
| C. Foreigners | 13 - 21 | 4 |
| D. Refugees | 22 | 6 |
| II. INFORMATION RELATING TO ARTICLES 2 TO 7 OF THE CONVENTION | 23 - 91 | 6 |
| A. Article 2 | 23 - 50 | 6 |
| B. Article 3 | 51 - 55 | 10 |
| C. Article 4 | 56 - 59 | 11 |
| D. Article 5 | 60 - 65 | 12 |
| E. Article 6 | 66 - 80 | 13 |
| F. Article 7 | 81 - 91 | 15 |
| List of annexes | | 19 |

Introduction

1. In accordance with the provisions of article 9, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, the Republic of Korea submits its eleventh periodic report as an update addressing all the points raised by the Committee on the Elimination of Racial Discrimination with respect to the previous report (CERD/C/304/Add.65).
2. The information contained in this report is set out in accordance with the revised general guidelines concerning the form and contents of the reports submitted by States parties adopted by the Committee on the Elimination of All Forms of Racial Discrimination in July 1993 (CERD/C/70/Rev.3).
3. This report deals mainly with the legislative, judicial, administrative and other measures taken by the Government of the Republic of Korea in the practical implementation of the provisions of the Convention and the progress achieved during the period from 1999 to 2001.

I. GENERAL

A. Population

4. The Republic of Korea is an ethnically homogeneous country with a total population of 47,676,000 as of July 2001. However, the ethnic composition of the population is not clearly documented since the Republic of Korea does not conduct an ethnic census.
5. The total number of naturalized Korean citizens was 1,510 as of the end of 2000. Statistics show that 149 persons were naturalized in 1998, 156 in 1999, and 278 in 2000. Such persons are defined as ethnic minorities in the Republic of Korea, and their numbers are relatively small.¹

B. Respect for human rights

6. The Government of the Republic of Korea (hereinafter referred to as “the Government”) has undertaken a variety of measures to promote democratization and human rights. In line with these efforts, and in recognition of the promotion of human rights as a major foreign policy objective, the Government has actively participated in international endeavours to improve human rights under the astute leadership of the United Nations. The Government has also made strenuous efforts to meet international standards and live up to increasing global expectations in the area of human rights.
7. The system for the protection and promotion of human rights in the Republic of Korea was outlined in paragraphs 4 and 5 of the second periodic report on the International Covenant on Civil and Political Rights, submitted on 20 August 1998 (CCPR/C/114/Add.1). The Republic of Korea is a democratic republic that is governed under a presidential system based on the principle of checks and balances. Sovereignty rests with the people, and the National Assembly,

the Administration and the courts are vested with legislative, executive and judicial powers, respectively. The Government strives to provide full protection of the basic human rights of all citizens, in observance of international treaties.

Respect for human rights in the Constitution

8. The Constitution of the Republic of Korea (hereinafter referred to as “the Constitution”) upholds the precepts of fundamental human rights based on respect for human dignity, the worth of individuals, and equality of all before the law. These constitutional principles are consistently incorporated into national legislation as well as into the political, economic, social, cultural and other fields of life in the country.

9. Article 11, paragraph 1, of the Constitution provides that “all citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of gender, religion or social status”. Even though the Constitution does not make specific reference to racial discrimination, the subject is covered under the comprehensive terms of article 37, paragraph 1, of the Constitution, which provides that the “freedom and rights of citizens shall not be neglected on the grounds that they are not enumerated in the Constitution”.

10. Article 6, paragraph 1, of the Constitution provides that “treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea”. The International Convention on the Elimination of All Forms of Racial Discrimination was ratified and promulgated by the Government with the consent of the National Assembly. As such, it has the authority of domestic law without requiring additional legislation.

11. The principle of the respect for human rights and the principle of equality of individuals before the law, as enshrined in the Constitution, also apply to foreigners. Foreigners residing in the Republic of Korea are guaranteed fundamental human rights. The exceptions are those rights which, by their nature, are regarded as being applicable only to Korean nationals. It is generally accepted that citizenship is the premise for the exercise of certain rights. Thus, the right to vote, the right to hold public office, as well as the right to carry out official duties are reserved for Korean nationals.

Establishment of the National Human Rights Commission

12. The National Human Rights Commission Act was passed on 24 May 2001. The Act does not make specific reference to racial discrimination, but deals with the matter in the broader context of “discriminatory acts in violation of the right of equality”. Details of the Act are given in paragraphs 23-26 of the report.

C. Foreigners

13. During the last decade, the Republic of Korea has been experiencing a rapid growth in its foreign population, migrant workers in particular. As of the end of 2000, the number of resident

foreign nationals in the Republic of Korea stood at 481,611 (approximately 1.0 per cent of the total population).² By nationality, Chinese are the most numerous (33.1 per cent of the total), followed by Americans (10.3 per cent), Filipinos (5.8 per cent) and Japanese (5.35 per cent).

**Foreigners residing in the Republic of Korea
(as of December 2000)**

| Total | Legal sojourners | | Illegal sojourners |
|---------|------------------|--------|--------------------|
| | Registered | Others | |
| 481 611 | 210 249 | 82 367 | 188 995 |
| | 292 616 | | |

14. The Republic of Korea maintains a system of immigration whereby status of sojourn serves as the basic framework for foreigners' entry and stay in the country. The Government controls the entry and length of sojourn of foreigners according to the provisions of the "Immigration Control Act" and the "Enforcement Decree of the Immigration Control Act", which determine the status of sojourn according to categories of activities which foreigners are authorized to engage in. Foreigners are not allowed to enter or stay in the Republic of Korea unless they satisfy the requirements of status of sojourn as provided for in the immigration laws, except in cases where other laws provide otherwise.

15. All foreigners who stay more than 90 days are requested to register at local immigration offices in accordance with article 31 of the Immigration Control Act and article 40 of the Enforcement Decree of the Immigration Control Act.

16. The number of registered foreigners in the Republic of Korea is on the rise. Ministry of Justice statistics show that the number of foreigners registered in the country as of the end of 2000 was 210,249 (0.43 per cent of the country's total population). By nationality, Chinese are the most numerous (39 per cent of the total), followed by Americans (10.8 per cent), Indonesians (7.9 per cent) and Japanese (6.66 per cent).³

17. As of December 2000, 21,806 ethnic Chinese, generally referred to as "Hwakyō",⁴ were residing in the Republic of Korea.⁵ Most of the "Hwakyō" population reside in major cities, including approximately 8,000 in Seoul, 2,000 in Incheon and Busan, 1,000 in Daegu and 800 in Daejeon. In addition, as most of them, although eligible, have not applied for naturalization, the majority of "Hwakyō" remain foreigners in the country.

18. The total number of foreigners who overstay in violation of the immigration law of the Republic of Korea has steadily increased, as shown in the table below. At the end of 2001, a total of 255,206 foreigners were overstaying their permitted term of sojourn, marking a 35 per cent increase over the 188,995 of the previous year.⁶ Among the total 255,206 illegal sojourners, Chinese accounted for the largest portion with a total of 130,291,⁷ followed by Thais at 17,330, Filipinos at 16,843, Bangladeshis at 15,538, Mongolians at 15,458, and Vietnamese at 12,611.

Number of illegal sojourners by year

| Year | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 |
|-------|---------|---------|--------|---------|---------|---------|
| Total | 129 054 | 148 048 | 99 537 | 135 338 | 188 995 | 255 206 |

19. Most of the illegal sojourners in the Republic of Korea are undocumented migrant workers who are usually engaged in difficult and hazardous jobs. As of 31 December 2001, about 71 per cent of the total illegal sojourners were people who had entered the country with either a tourist or business visa and had overstayed the permitted period of sojourn. Furthermore, 18 per cent of the illegal sojourners were those who had entered the country as foreign industrial trainees.

20. The number of industrial trainees totalled 116,931 as of the end of December 2000. Currently, foreign nationals from 14 countries, including China, Viet Nam and Mongolia, are eligible for the trainee system. Chinese account for the highest portion (41 per cent of the total), followed by Indonesians (16.7 per cent) and Vietnamese (13.4 per cent).

21. The school registration system in the Republic of Korea was abolished in February 1999 and schools for foreigners are now freely established and operated. Under the current educational system of the Republic of Korea, schools for foreigners are classified and accredited as a separate category. As of the end of 2001, a total of 25 schools for foreigners were accredited in the Republic of Korea, in which about 6,000 students are enrolled, thereby meeting various educational needs for foreigners. In addition, there are 35 non-accredited schools for which student enrolment numbers are not available.⁸ The rights of autonomous decision-making on school management including curriculum, credits for graduation and tuition fees, are fully exercised by the schools.

D. Refugees

22. A total of 133 foreigners applied for refugee status in the Republic of Korea as of the end of 2001. The applicants comprised 26 Congolese, 21 Myanmar nationals, 18 Algerians, 13 Iranians, 10 Pakistanis, and 45 from other nations. As of December 2001, the Republic of Korea had recognized one person as a refugee. Twenty-eight persons withdrew their applications and 56 persons were not granted refugee status due to insufficient grounds for their applications. The remaining 54 applications for refugee status are still being examined.

II. INFORMATION RELATING TO ARTICLES 2 TO 7 OF THE CONVENTION

A. Article 2

National Human Rights Commission Act

23. The National Human Rights Commission Act of the Republic of Korea was passed on 24 May 2001. The Government has duly noted the Committee's suggestions and

recommendation that the Act explicitly prohibit discrimination on the basis of race, colour, descent, or national or ethnic origin, declare such acts illegal and penalize them, as prescribed in article 4 of the Convention.

24. Article 30, paragraph 2, of the National Human Rights Commission Act states that “the term ‘discriminatory acts in violation of the right of equality’ means any acts of unreasonable discrimination on the grounds of gender, religion, disability, age, social status, regional, national or ethnic origin, physical conditions such as features, marital status, pregnancy or child delivery, family background, race, skin colour, thought or political opinion, criminal record for which the effective term of punishment has expired, sexual orientation, or history of diseases”.

25. Article 19 of the Act prescribes the Commission’s duties of investigation and remedy with respect to the above-mentioned discriminatory acts. The Act also prescribes methods of investigation (art. 36), recommendation of remedies (art. 44), indictment and recommendation for disciplinary action (art. 45), request for legal aid for the victim (art. 47), and recommendation of urgent relief measures (art. 48).

26. As requested by the Committee, the full text of the National Human Rights Commission Act is attached herewith as annex 1.

Ethnic Chinese

27. Through the revision of relevant laws, the status and conditions of the ethnic Chinese have improved. Most of them have obtained long-term residence sojourn status. Since 1997, foreigners, including the ethnic Chinese, have been allowed ownership of stocks and real estate. A survey shows that their main occupation remains the restaurant business.⁹ In addition, under the revised Nationality Law of the Republic of Korea, ethnic Chinese who are married to Korean nationals are able to give their offspring the choice of opting for Korean citizenship.

28. The sojourn status for ethnic Chinese has further improved as the “Enforcement Decree of the Immigration Control Act” and other relevant regulations were revised in April 2002 in order to newly implement the option of permanent residence status (F-5 visa).¹⁰ Long-term residence (F-2) visa holders who have resided in the Republic of Korea for more than five years have since become eligible for permanent residence status in the Republic of Korea.¹¹ As of 31 May 2002, 258 ethnic Chinese were granted permanent residence status and 21,515 ethnic Chinese remain as long-term residents (F-2 visa holders).¹² It is no longer necessary for holders of permanent residence status to obtain permission for an extension of their period of sojourn every five years.

29. In addition, as a result of the implementation of permanent residence status, sojourn status and conditions of long-term foreign residents including ethnic Chinese in the Republic of Korea have been substantially improved. For example, under the newly revised immigration law, no employment restrictions are imposed on holders of permanent residence status (F-5 visa holders).

30. The Government has been working towards the revision of relevant laws to grant certain suffrage rights, such as the right to vote in local elections, to foreigners who have resided in the Republic of Korea for more than five years after they obtained the sojourn status of long-term residence (F-2 visa). Once revised, these election-related laws will further contribute to the enhancement of the civil and political rights of the ethnic Chinese.

Foreign migrant workers

31. The Republic of Korea has recently been experiencing a rapid increase in the population of migrant workers. The majority of foreign migrant workers are undocumented. The absence of legal status in the country makes it difficult for the Government to implement the provisions of the Convention on their behalf.

32. The Government has taken various measures to minimize the number of undocumented migrant workers, including the tightening of screening procedures upon entry at the airport and the granting of a “pardon” period during which overstayers can depart the country without paying a fine imposed for violation of immigration laws.

33. Amidst the steady influx of foreign migrant workers, protecting their human rights has become a serious social concern. The Government has examined the situation of insecurity facing migrant workers, duly noting the Committee’s concerns. It has come to the Government’s attention that undocumented migrant workers live and work in fear of being arrested and expatriated. It was also found that they suffer from multiple forms of discrimination due to language barriers, cultural differences, and prejudice based on skin colour.

34. Noting that undocumented migrant workers are more likely to be victims of discriminatory and unjust treatment as well as human rights violations due to their illegal status, the Government has bolstered institutional measures to protect them from discrimination on the basis of nationality or race. In October 1998, the Government issued a directive, entitled “Guidelines on the Protection of Foreign Workers”, which brought foreign migrant workers, including undocumented workers, within the scope of labour-related laws concerning labour standards, a minimum wage and industrial safety.

35. Due to humanitarian considerations, the Government has also extended industrial accident compensation and the necessary legal protection to undocumented migrant workers. In addition, the Republic of Korea recently ratified ILO Convention No. 19 concerning Equality of Treatment for National and Foreign Workers as regards Workmen’s Compensation for Accidents.

36. In applying the Immigration Control Act to its violators, the Government has implemented the principle of “first remedy, then punishment”, by which measures are taken to remedy any violation of rights suffered by foreign migrant workers before the violation is dealt with. This is to guarantee the effectiveness of protective measures for undocumented migrant workers.

Industrial trainees

37. The Government recognizes that many problems have arisen since the introduction of an industrial trainees system in 1994, including irregularities concerning the selection of industrial trainees and their desertion from designated workplaces. The Government has therefore overhauled the industrial trainees system, duly noting the Committee's suggestions and recommendations concerning the status of foreign industrial trainees.

38. On 20 December 2001, the Government introduced a set of measures in order to improve the industrial trainee system. Accordingly, foreign industrial trainees are allowed to work in the country for two years following the completion of a one-year training programme. During the two-year working period, foreign industrial trainees are fully covered by labour-related laws, including the Labour Standards Act. Prior to the introduction of the new measures, they could work for one year after two years of training.

39. As of November 2001, about 49,000 industrial trainees had abandoned their designated workplaces, and consequently, their status was reduced to that of undocumented migrant workers. To discourage industrial trainees from deserting their workplaces for higher pay, the Government is considering the introduction of a new system whereby the trainees are requested to pay a portion of their earnings into a retirement insurance scheme, which will be reimbursed when they return to their countries.

40. To better protect the human rights of industrial trainees, including against racial discrimination, the Government conducts on-site investigations within seven days of receiving complaints.

41. The Government believes that these measures, including the doubling of the legal employment period, will help to reduce the discriminatory or unjust treatment of undocumented migrant workers.

42. It is recognized that the continued increase in the number of undocumented foreign migrant workers and the consequent abuses of their human rights are mainly due to the fact that unskilled foreign workers have little opportunity for legitimate employment in the country. The Government is, therefore, discussing the introduction of a new system whereby employers facing workforce shortages would be able to employ foreign workers through legitimate procedures.

Ethnic minorities

43. Duly noting the Committee's concerns, the Government has closely examined the alleged discrimination against people of foreign origin who were born and have settled in the country. It finds that there is no institutional discrimination against them, including with respect to the acquisition of citizenship and employment. However, racial prejudice and verbal abuse against them are considered to still exist.

44. Sentiments and prejudice against children of mixed marriages, particularly Amerasian children, and Korean women married to foreigners, including asylum-seekers, remain another area of concern for the Government. The homogeneity of the Korean people and the relative lack of multi-ethnic experiences have been conducive to such sentiments and prejudice against foreign cultures and people.

45. The Government notes that discriminatory and prejudiced attitudes towards ethnic minorities have been steadily decreasing in recent years with growing tolerance, respect for cultural diversity, and openness. Nevertheless, the Government continues to pay close attention to any possible discrimination or prejudice against ethnic minorities and undertakes awareness-raising campaigns and other necessary measures to counter them.

Refugees

46. With regard to the issue of asylum-seekers in the Republic of Korea, the “Enforcement Decree of the Immigration Control Act” prescribes provisions on the following refugee-related issues: recognition of refugee status (art. 88-2), cancellation of refugee recognition (art. 88-3), appeal (art. 88-4), issuance and reissuance of refugee travel documents (arts. 88-5 and 88-6), extension of validity of refugee travel documents (art. 88-7), and return of refugee travel documents (art. 88-8).

47. Every application for refugee status has been carefully reviewed by the Refugee Recognition Council, which comprises representatives from seven government ministries and the Korean Red Cross. The 1951 Convention relating to the Status of Refugees, the 1967 Protocol relating to the Status of Refugees and the relevant domestic laws serve as guidelines in granting refugee status without any discrimination on the grounds of race or country of origin.

48. For greater transparency in the procedure for consideration of refugee status, regulations for the enforcement of the Immigration Control Act were amended to include representatives of civic groups such as the Korean Federal Bar Association, the Korean Association of International Law, and the Korean Women’s Association as board members of both the Refugee Recognition Council and the Working-Level Refugee Recognition Council.

49. There is a range of administrative and legal action that may be taken by refugee-status applicants after being denied refugee status. Applicants may file a formal appeal with the Minister of Justice pursuant to article 76 (4) of the Immigration Control Act. Should this appeal be denied, the applicant may then file a suit in a court of law.

50. Applicants who are denied refugee status are granted a certain period of time in which to prepare for voluntary departure. Furthermore, the Immigration Act has been amended to extend the time span between entry into Korea and application for refugee status from 60 days to 12 months.

B. Article 3

51. Article 3 requires States parties to condemn racial segregation and apartheid and to undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

52. Racial segregation and discrimination do not exist in the Republic of Korea. They are prohibited in accordance with article 11, paragraph 1, of the Constitution, which guarantees equality before the law without racial or any other form of discrimination. The Republic of Korea has consistently maintained a firm position against racial discrimination and constantly opposed apartheid, which contravenes the principle of racial equality and respect for fundamental human rights enshrined in the Charter of the United Nations and the Universal Declaration of Human Rights.

53. Since the 1960s, the Republic of Korea has actively joined the efforts of the international community in condemning the racist policies and practices of apartheid in South Africa and actively participated in economic and related sanctions, in accordance with the decisions of the United Nations.

54. Once democratization in South Africa developed so far as to result in the abolition of apartheid, the Republic of Korea, together with the international community, responded appropriately to the developments in South Africa by lifting all sanctions.

55. Since the establishment of diplomatic relations between the Republic of Korea and the Republic of South Africa in 1992, there have been frequent exchanges of visits and economic cooperation and trade between the two countries have steadily developed. The volume of trade between the two countries totalled US\$ 1,436 million in 2000 and US\$ 1,111.5 million in 2001.¹³ It is estimated that about 1,500 Korean nationals were residing in the Republic of South Africa as of December 2000.

C. Article 4

56. The Constitution condemns any notion or theory of superiority of one race or ethnic group over another, and denounces any attempt to justify or promote racial hatred or discrimination in any form. Article 11 of the Constitution stipulates as follows:

“(1) All citizens shall be equal before the law, and there shall be no discrimination in any fields of political, economic, social or cultural life on account of gender, religion or social status.

“(2) No privileged caste shall be recognized or ever established in any form.”

57. These constitutional principles are elaborated upon in concrete and detailed terms in various domestic laws, which pursue the implementation of article 4 of the Convention. For example, an act of racial discrimination can be punished under the present Korean Penal Code, pursuant to articles 307 and 309, which concern defamation, and article 311, which deals with libel. If the situation so requires in the future, the Government will endeavour to initiate legislative measures for the further effective implementation of article 4 of the Convention.

58. As noted by the Committee during the consideration of the ninth and tenth periodic report, the Labour Standards Act has been applied to all migrant workers. The Act has been

effective in combating all acts of racial discrimination in employment. Article 115 of the Labour Standards Act, for example, stipulates that employers who discriminate against foreign workers on the grounds of nationality be punished by a fine of up to 5 million Korean won, equivalent to US\$ 4,000 (US\$ 1 = 1,250 won).

59. In acceding to the Convention, the Republic of Korea had made reservations about article 14. As stated in the previous periodic report to the Committee, the Government made a declaration on 3 March 1997 that the Republic of Korea recognizes the competence of the Committee to receive and consider communications under article 14 of the Convention. Since then, however, no communication has been received by the Committee from individuals or groups of individuals within the jurisdiction of the Republic of Korea claiming to be victims of a violation of any of the rights set forth in the Convention.

D. Article 5

60. Article 5 of the Convention obliges States parties to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law. The protection provided by the Constitution and related laws meets this fundamental requirement. The policy and objectives of the Government at all levels are also consistent with these provisions.

61. The Constitution, rooted in the principle of the equality of individuals before the law, positively guarantees fundamental human rights by stipulating various provisions regarding the freedom and rights of individuals in the political, judicial, economic, social and cultural fields. The principle of equal protection under the law is observed in all legislative, judicial and administrative acts of the State. Under articles 107 (1) and 111 (1) of the Constitution, the Constitutional Court adjudicates whether a particular law is in violation of the principle of equal protection under the law.

62. The basic human rights guaranteed by the Constitution apply equally to foreigners. With the generally recognized exceptions of voting rights and electoral eligibility, which clearly are based on the assumption that a person is a Korean national, the protection of the rights of foreign nationals residing or sojourning temporarily within the territory and subject to the jurisdiction of the Republic of Korea, is equal to those of Korean nationals.¹⁴

63. Discriminatory treatment of foreigners on the basis of nationality is prohibited by law. Article 5 of the Labour Standards Act states that “an employer shall not discriminate against workers on grounds of gender, or take discriminatory treatment in relation to the conditions of employment according to nationality, religion or social status”. Employers who treat foreign workers in a discriminatory manner on the grounds of their nationality are punished with a fine of up to 5 million Korean won, equivalent to US\$ 4,000 (article 115 of the Labour Standards Act).

64. Concerning the right to form or join trade unions, the Republic of Korea has no system or practice that restricts such rights on the grounds of race. Article 9 of the Trade Union and Labour Relations Adjustment Act stipulates that a member of a trade union shall not be discriminated against due to his/her race.

65. The Government of the Republic of Korea offers opportunities for foreign children to attend Korean public elementary schools regardless of their parents' status under immigration law. A certified record of entry into the country or a certificate of alien registration is the only requirement.

E. Article 6

66. The Constitution and the relevant laws of Korea ensure everyone within its jurisdiction effective protection and remedies against any acts of racial discrimination through competent national tribunals and other State institutions.

67. Under the relevant provisions of the laws, foreign nationals as well as Korean citizens are entitled to receive protection, remedies and compensation in case of acts of discrimination, including racial discrimination committed by a person, a group of persons, or central and local government agencies.

68. Articles 12, 26, 27, 28 and 29 of the Constitution refer to the protection and remedies for damage suffered as a result of such aforementioned acts of discrimination. Other basic laws which can be invoked for protection and remedy against racism and racial discrimination are the Civil Code, the Criminal Code, the Code of Civil Procedure, the National Compensation Act, the Administrative Litigation Procedure Act and the Criminal Compensation Act.

69. As mentioned in previous periodic reports, remedies are available in case of an infringement of rights by government agencies. They include the following: (i) petition (article 26 of the Constitution; articles 4, 6, 7 and 8 of the Petition Act), (ii) appeals (article 1 of the Administrative Appeals Act), (iii) litigation (article 107 (2) of the Constitution, Administrative Litigation Procedure Act), (iv) review of administrative decrees and regulations (article 107 (2) of the Constitution), (v) remedies through a petition to the Constitutional Court, and (vi) compensation for damages (article 29 (1) of the Constitution, National Compensation Act).

70. Remedies available in case of an infringement of fundamental human rights by an individual include: (i) complaint or accusation, (ii) civil lawsuit for compensation, and (iii) remedies available to the victims of a crime.¹⁵

71. Concerning the rights of foreign migrant workers, the Supreme Court ruled in September 1995 that the purpose of the Immigration Control Act is to provide for matters concerning control over the immigration of all nationals and foreigners who enter or depart from the Republic of Korea and control over the sojourn of foreigners who stay in the Republic of Korea, and that the provisions of the Act must not be invoked in order to nullify the rights of migrant workers who entered into the country and were employed during their overstay in violation of immigration law. It follows from the Court's decision that undocumented migrant workers are eligible for industrial accident compensation insurance. In addition, the Supreme Court ruled in August 1997 that employers should pay a retirement allowance to undocumented migrant workers in accordance with the provisions of the Labour Standards Act, despite their illegal status as defined by immigration laws.

72. In the Committee's concluding observations of the previous report, it was recommended that the Republic of Korea provide legal aid to victims of acts of racial discrimination and facilitate access to recourse procedures by vulnerable groups. With a view to providing consultation services to foreign workers, the Government has plans to establish a "Consultation Centre for Foreign Workers" at regional labour offices by the end of 2002. Specialists capable of effective communication with foreign workers will be hired and placed at these centres. Free legal advice is also being provided to foreign workers, including illegal residents, by such organizations as the Korean Legal Aid Corporation and the Seoul Bar Association.

73. The Immigration Office, under the Ministry of Justice, operates a counselling centre for foreigners, which in 2001 alone provided relief in a total of 4,831 cases of varying nature, including cases of back pay (amounting to 2.7 billion Korean won, equivalent to about US\$ 2.16 million), work injuries (13 cases), and medical disputes (164 cases).

74. Within each District Prosecutor's Office, a prosecutor is designated to deal with matters related to foreign workers. The prosecutor is responsible for overseeing the working conditions of foreign workers in collaboration with labour and immigration authorities. Foreign workers may also file complaints via the Internet at the web sites operated by the Ministry of Justice and the Supreme Prosecutor's Office.

75. Any person who suffers from racial discrimination or any person or organization that comes to know of racial discrimination may file a petition with the National Human Rights Commission, which was established on 26 November 2001. By conducting information campaigns and producing educational materials to enhance public awareness of human rights, the National Human Rights Commission has significantly contributed to facilitating access to existing recourse mechanisms dealing with relevant provisions of the Convention, including the procedures set out in its article 14.

76. As of June 2002, a total of 2,065 petitions were filed with the National Human Rights Commission, of which 15 petitions were related to racial discrimination.¹⁶ Four of these cases have been terminated for reasons of withdrawal or recovery of damages, and the remaining petitions are still under investigation. All petitions submitted to the Commission are dealt with according to the procedures set out in the National Human Rights Commission Act.

77. The Government has conducted inspections of enterprises employing foreign migrant workers and taken criminal proceedings or remedial action with the aim of protecting their working conditions, safety and health. In June 2000, the Ministry of Labour established within each regional labour office a "Task Force for the Education of Foreign Workers". Each task force has distributed handbooks on the safety in workplaces to foreign workers, and educated them. In August 2000, the Ministry of Justice also established the "Committee on Human Rights of Foreign Workers" with a view to protecting the human rights of both registered and undocumented migrant foreign workers in the country.

78. Non-governmental organizations, religious and civic groups in particular, play an important role in providing legal aid to victims of racial discrimination and facilitating access to recourse procedures. For example, the "Council on Foreign Workers", established in 1995 on

the initiative of NGOs, has been engaged in activities to protect the human rights and labour rights of migrant workers, with particular attention given to undocumented migrant workers. The Government has provided non-governmental organizations with financial assistance and tax incentives in accordance with the provisions of the “Act on Support for Non-Profit Organizations”, which was enacted in January 2000.

79. As of the end of June 2001, the total number of claims filed by documented foreign workers was 738, of which a considerable number were related to overdue wages. Of these, 541 cases (73.3 per cent) have been resolved, and the remaining cases are in the process of being considered. Of the resolved cases, 376 cases (69.5 per cent) were remedied through corrective measures, and the remaining 165 cases (30.5 per cent) were taken to competent courts. As a result, overdue wages amounting to a total of 468 million Korean won (equivalent to US\$ 374,400) were paid to 415 migrant workers. In 2000, 405 cases out of a total of 602 claims filed were resolved, and 197 cases were taken to competent courts. Overdue wages of 554 million Korean won (US\$ 443,200) were paid in 2000.

80. The Korean Federation of Small Business (KFSB) and other related organizations have dealt with matters regarding industrial trainees, including education, medical examinations, and assistance in handling grievances and filing civic and criminal suits. In this regard, the KFSB created the “Committee on the Protection of Rights of Industrial Trainees” in September 2001.

F. Article 7

81. It is important to raise public awareness of the human rights of every individual, and promote human rights education to combat and eliminate racial prejudice and discrimination. In the areas of education and publicity, the measures taken by the Government, as set out in the fifth to tenth reports, remain in place.

82. With a view to promoting understanding, tolerance and friendship among nations and racial or ethnic groups, the Government has, as already stated in previous reports, included the following subjects in elementary and secondary school curricula:

- (a) The diverse characteristics of different races and ethnic groups;
- (b) Respect for human dignity, regardless of race, colour, sex, religion and belief;
- (c) Measures and efforts to eliminate racial prejudices and discrimination.

83. The original text and Korean translation of major human rights treaties have been compiled into a single publication and widely distributed.

84. The Government notes the Committee’s recommendations that it take appropriate steps to widely disseminate its report with the concluding observations of the Committee. Reports submitted by the Government on the implementation of all six major human rights treaties and the concluding observations of the competent Committees are disseminated through various channels, including the Government’s web sites.

85. The Government has also published and distributed English translations of major human rights laws of the Republic of Korea, entitled “Current Laws on Human Rights”, in an effort to

provide foreigners with greater opportunities to understand the country's human rights protection system. The Government has also provided the Office of the United Nations High Commissioner for Human Rights (OHCHR) with an English version of major human rights law of the Republic of Korea with a view to assisting OHCHR in establishing a human rights law database.

86. With respect to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, in September 2001, the Government published and distributed a report on the Conference, which contains the text of the documents produced and major statements delivered during the Conference. This was done to raise public awareness of the significance of the Conference and its follow-up measures.

87. Seminars, workshops and symposia are frequently held on various topics related to the protection of human rights, including the rights of migrant workers. For example, the Government organizes a Human Rights Symposium during the annual Human Rights Week, which ends on Human Rights Day (10 December), the anniversary of the adoption of the Universal Declaration of Human Rights. A seminar on "Human Rights Education and Law in the Asia-Pacific Region", organized by the Asia-Pacific Center of Education for International Understanding, was also held on 17 December 2001.

88. Between November 2001 and March 2002, the Public Service Advertising Committee carried out a public campaign against colour-based racism in poster ads in subways, trains and magazines. A largely homogeneous nation in the past, Korean people used to refer to the light-toned beige colour as *salsaek* ("skin color"). The recent increase in migrant workers and foreign residents in the Republic of Korea, however, has brought issues of diversity to the fore. Thanks to the Committee's activities, it is now recognized that the use of *salsaek* to refer only to a light-toned beige colour could be discriminatory against people of other skin colours.

89. The Government notes that non-governmental organizations and other civic groups have contributed greatly to the promotion and protection of human rights. For example, the Joint Committee for Migrant Workers in Korea (JCMK), a non-profit organization working for migrant foreign workers, published and distributed two reports under the titles "Report on Migrant Workers in Korea" in November 2001 and "Report on Oppressed Human Rights of Migrant Trainee Workers" in March 2000. In addition, the Medical Mutual-Aid Union for Migrant Workers under the JCMK distributed a report on the health of migrant workers in the country in October 2001.

90. The Government provides non-governmental organizations and other civic groups with project-based financial subsidies. In the year 2001, a total of 7.5 billion won (equivalent to US\$ 6 million) was provided in grants for 216 projects organized by 166 NGOs. Among the 216 projects, 5 projects directly related to foreign migrant workers were granted 200 million won (equivalent to US\$ 160,000).¹⁷

91. The Government plans to distribute this report with the concluding observations of the Committee to relevant ministries and make it widely available to the general public.

Notes

- ¹ Since it is difficult to count the exact number of persons deceased after naturalization, information on the ratio of naturalized people to the country's total population is not available.
- ² This number of foreign nationals includes both long-term residents and short-term visitors as well as both legitimate and illegal stayers.
- ³ Most of the registered foreigners who are not American or Japanese are foreign industrial trainees or foreigners born and settled in the Republic of Korea.
- ⁴ "Hwakyō" refers to ethnic Chinese who now have long-term sojourn status in the Republic of Korea. The history of "Hwakyō" on the Korean Peninsula dates back over a century. During the 1882 military uprising in Korea (Choson) when soldiers of a traditional unit rebelled against discriminatory treatment in favour of a newly-formed modern unit, about 40 Chinese merchants followed the army of General Wu Changching sent by the Qing (Ching) dynasty to Korea (Choson). These merchants are the origin of the "Hwakyō" in the modern history of the country. In the same year, the door opened for the "Hwakyō" to come to Korea as Choson signed a trade treaty with the Qing (Ching) dynasty. Most of them were from the Shandong region across the Yellow Sea.
- ⁵ There were as many as 120,000 ethnic Chinese residents in the Republic of Korea during the early 1970s. Since then, the number has continued to decrease as many of them have emigrated to other countries such as mainland China, Taiwan, the United States, Canada and South America. In the last three decades, approximately 100,000 ethnic Chinese have left the country.
- ⁶ The total number of overstayers in violation of the immigration law has been steadily increasing since 1995, with the exception of a 32.8 per cent decline in 1998 when the IMF financial crisis hit the nation.
- ⁷ This total number of 130,291 includes 72,332 ethnic Koreans in China and 500 Taiwanese.
- ⁸ Some of the foreign schools have not applied for accreditation, claiming that they are open solely to their own nationals.
- ⁹ A survey on the jobs of 700 parents of students attending "Hwakyō" schools as of June 2000 revealed that 489 were running restaurants or working as cooks. There are about 500 Chinese restaurants run by "Hwakyō" throughout the Republic of Korea.
- ¹⁰ Article 12 of the "Enforcement Decree of the Immigration Control Act" prescribes the sojourn status of foreigners under article 10 (1) of the "Immigration Control Act".
- ¹¹ These revised decrees and relevant regulations came into effect from 1 May 2002.

¹² As of April 2002, the total number of foreigners with long-term sojourn status (F-2 visa holders) amounted to 22,825. Amongst these, there is a total of 21,624 who have resided for a period of more than five years. By nationality, there are 20,614 ethnic Chinese, 772 Japanese, 67 Americans and 621 others.

¹³ The volume of trade between the two countries peaked (at a total of US\$ 3,097 million) in 1997. Since then, however, the trade volume has gradually decreased, mainly due to the decrease in Korean imports of South African products. This was an inevitable result of the economic contraction triggered by the financial crisis of 1997 and of the reform measures implemented to restructure the impaired economy.

¹⁴ Article 11, paragraph 1, of the Constitution provides that “all citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status”. Specific types of discrimination for reasons of sex, religion or social status are enumerated as examples only, and discrimination on the basis of other factors such as race, colour, language, political affiliation, etc., are to be prohibited.

¹⁵ Article 30 of the Constitution provides for State aid to the victims of a crime, by stipulating that: “Citizens, who have suffered bodily injury or death due to criminal acts of others, may receive aid from the State under the conditions prescribed by law.” The “State Aid for Victims of Criminal Acts”, promulgated on 1 July 1988, set forth detailed means and procedures for payment of State aid.

¹⁶ Among these petitions, a total of 798 were filed for the period from 26 November 2001 to 31 December 2001.

¹⁷ For example, the Medical Mutual-Aid Union for Migrant Workers was granted 100 million won (equivalent to about US\$ 80 thousand) for its annual project.

List of annexes*

- I. National Human Rights Commission Act
- II. Immigration Control Act
- III. Enforcement Decree of the Immigration Control Act

* Available for consultation in the files of the secretariat.