

**INTERNATIONAL
CONVENTION
ON THE ELIMINATION
OF ALL FORMS OF
RACIAL DISCRIMINATION**



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

Fourth periodic reports of States parties due in 1986

Addendum

REPUBLIC OF KOREA 1/

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1/ For previous reports submitted by the Government of the Republic of Korea and the summary records of the meetings of the Committee at which those reports were considered, see:

- Initial report - CERD/C/61/Add.2 (CERD/C/SR.505-SR.506),
- Second periodic report - CERD/C/86/Add.1 (CERD/C/SR.564),
- Third periodic report - CERD/C/113/Add.1. (CERD/C/SR.681).

Introduction

1. The fourth periodic report of the Government of the Republic of Korea is submitted in accordance with article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination.
2. As the policy of the Government of the Republic of Korea to eliminate racial discrimination in all its forms and specific information on the legislative, judicial, administrative or other measures taken by the Government to give effect to the provisions of the Convention were already explained in the previous reports submitted by the Government, this report mainly contains information supplementing that in previous reports as well as information on measures taken since the submission of the third periodic report.
3. Although most questions raised during the consideration of the third report by the Committee on the Elimination of Racial Discrimination were answered (see CERD/C/SR.681), attention will be paid in particular to articles 4, 5, and 6 of the Convention, because some members of the Committee wanted additional information.
4. In preparing the fourth periodic report, due attention has been paid to the revised general guidelines concerning the form and contents of reports by States parties (CERD/C/70/Rev.1).

PART I: GENERAL

5. The historic background of the Korean people and the political and social structure of the Republic of Korea preclude any political, economic, social, legal or other conditions conducive to the emergence or existence of racism or racial discrimination.

6. For 5,000 years the homogeneous Korean people have been a single ethnic family sharing a single language and a single culture. The Government of the Republic of Korea regards peace and good neighbourliness with other peoples as the foundation of foreign policy.

7. The Constitution of the Republic of Korea recognizes as supreme principles of State the guarantee of fundamental human rights based on respect for human dignity and the worth of the individual and the equality of individuals before the law. These constitutional principles are strictly and consistently applied in all national legislation as well as in the political, economic, social, cultural and other fields of public life.

8. Although the status of aliens in the Republic of Korea is specifically governed by the relevant provisions of the Constitution, international law, treaties, and municipal law, the principle of the guarantee of fundamental human rights and the principle of the equality of individuals before the law enshrined in the Constitution are, as a general rule, applied to aliens, including stateless persons, who reside in the Republic of Korea.

9. Since its creation in 1948, the Republic of Korea has pursued, in accordance with the basic principles of the Constitution, a strict and consistent policy against racial discrimination in all forms. In this connection, it should be noted that no cases or complaints of racial discrimination in any form have so far been brought before any court, tribunal or administrative authority.

10. Under article 5 of the Constitution, treaties concluded by the Republic of Korea and generally recognized international law have the same effect as domestic law without specific legislative measures to incorporate them into domestic law.

11. The Convention on the Elimination of All Forms of Racial Discrimination, ratified by the Government of the Republic of Korea with the consent of the National Assembly, therefore became part of domestic law and can be invoked before the courts of the Republic of Korea and be directly enforced by them.

12. It can also be reported that the Convention on the Prevention and Punishment of the Crime of Genocide, to which the Republic of Korea acceded on 14 October 1950, is part of domestic law.

13. It is presumed that there is no further need for information concerning the demographic composition of the Republic of Korea (see CERD/C/86/Add.1, part I.(c)).

PART II: INFORMATION IN RELATION TO ARTICLES 2 TO 7

Article 2

14. During the period under consideration, no new law has been enacted which has a bearing on the Convention. It should be understood that, as already explained in detail in previous reports, the existing legislation and practice seem to be sufficient for a complete implementation of the Convention. In this connection, it should be stressed once again that the Convention is part of the domestic law of the Republic of Korea as mentioned earlier.

15. As regards the implementation of article 2, it should be noted that, in an effort to promote and protect fundamental human rights, the Government of the Republic of Korea ratified the Convention on the Elimination of All Forms of Discrimination against Women on 27 December 1984.

16. Furthermore, the Government is expected to ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights during 1986. The Government is also taking necessary measures to ratify the Protocol relating to the Status of Refugees.

17. These Covenants and the Protocol are now being submitted to the National Assembly of the Republic of Korea for its consent to their ratification.

18. There is no denying that the measures already taken or being taken by the Government bear witness to its commitment to the observance of and respect for human rights as a whole.

Article 3

19. As already stated in previous reports, the anti-apartheid policy of the Republic of Korea at the national and international levels has been firm and consistent. Since the submission of the third periodic report there has been no change in that policy.

20. During the period under consideration, exchanges with South Africa in the political, military, economic, cultural and other fields have been suspended.

21. The Republic of Korea has once again strongly condemned apartheid and reaffirmed its determination and support for the efforts of the international community to eradicate all forms of racial discrimination and the system of apartheid.

22. H.E. Won-Kyung Lee, Minister for Foreign Affairs of the Republic of Korea, stated, in a message on the occasion of the International Day for the Elimination of Racial Discrimination on 21 March 1985, that discrimination on the grounds of race, colour or ethnic origin was an offence to human dignity, and that the system of apartheid in particular not only constituted a grave challenge to the spirit of the Charter of the United Nations but was a constant threat to international peace and security. He also renewed, on behalf of the Government and people of the Republic of Korea, their pledge to extend full support to the efforts for the complete eradication of apartheid.

23. On Namibia Day on 23 August 1985, the Republic of Korea also reaffirmed its full sympathy and support for the legitimate struggle of the people of Namibia for freedom and independence under the leadership of the South West Africa People's Organization (SWAPO), the sole and authentic representative of the people of Namibia.

24. Since 1978 the Republic of Korea has made contributions to the United Nations Trust Fund for South Africa, the United Nations Educational and Training Programme for southern Africa, the United Nations Fund for Namibia and the United Nations Institute for Namibia.

25. Furthermore, the Republic of Korea has decided to provide financial assistance for the Namibian people, specially for the Namibian refugees in Angola, during 1986. Discussions with the United Nations Council for Namibia for the implementation of the aid plan are now under way.

Article 4

26. As already stated in part I of this report (see para. 7) and in previous periodic reports, the guarantee of fundamental human rights, based on respect for human dignity and the worth of the individual and the equality of individuals before the law, constitute the supreme principles of the Constitution. These constitutional principles are reflected in a concrete and detailed way in various domestic laws.

27. It is, therefore, considered that the existing constitutional safeguards and domestic legislation are generally sufficient for a complete implementation of article 4 of the Convention.

28. During the consideration of the third periodic report by the Committee, however, some members of the Committee requested further information about whether any legal measures existed in the Republic of Korea for enforcing the provisions of article 10 of the Constitution, in connection with the statement that the provisions of article 4 of the Convention were endorsed by article 10 of the Constitution (see A/39/18, paras. 389 and 395).

29. The argument was that under article 4 of the Convention there was an absolute obligation of the State parties to enact certain legislation, and that, since article 10 of the Constitution of the Republic of Korea itself contained no penal sanction, it could not be sufficient for a complete implementation of article 4 of the Convention.

30. The general approach, adopted in the presentation of the previous periodic reports of the Republic of Korea in relation to the implementation of article 4 of the Convention, was to demonstrate how the Constitution embodied, secured and protected the fundamental human rights of individuals.

31. Article 10 of the Constitution itself can be invoked before the courts and can be directly enforced by them. When any person has sustained damages through legislation or administrative measures which run counter to article 10 of the Constitution, he may challenge the constitutionality of the law or administrative decrees or dispositions, and may contend that the legislation

or administrative measures should be void. Furthermore, he may make a claim against the State or public agency for just compensation in accordance with the relevant provisions of law.

32. When any person has sustained damages by another's act, which runs counter to the provisions of article 10 of the Constitution, he may contend that the act is illegal and unconstitutional, and make a claim against the person for compensation.

33. In this connection, the Civil Code in article 750 provides that "any person who causes damage to or inflicts injuries on another by an unlawful act intentionally or negligently is bound to make compensation for damages arising therefrom." Furthermore, paragraph 1 of article 751 of the Civil Code, entitled "Compensation for damages other than those to property," stipulates that "a person who has injured another person, his liberty or reputation, or has inflicted any mental anguish on another person, shall be liable to make compensation for damages arising therefrom as well as damages to property."

34. Since the convention is part of domestic law (see para. 10 of this report), the explanation given in paragraphs 32 to 33 of this report applies automatically to article 4 of the Convention. Therefore, any person who has sustained damages as a result of administrative decrees or measures or an act of another individual, which run counter to the provisions of article 4 of the Convention, may contend the illegality of those decrees or measures or other person's act and make a claim for compensation in accordance with the relevant provisions of law.

35. As regards the implementation of the Convention, the Criminal Code contains various provisions to give effect to the provisions, including article 10 of the Constitution, regarding human rights as well as the provisions of article 4 of the Convention.

36. Chapter XXXVIII of the Criminal Code, entitled "Crimes against reputation", stipulates that:

"Article 307 (Defamation) (1) A person who defames another by publicly alleging facts shall be punished by penal servitude or imprisonment for not more than two years or by a fine not exceeding 15,000 won.

...

"Article 309 (Defamation through printed materials) (1) A person who commits the crime of paragraph (1) of article 307, by means of newspaper, magazine, radio, or other publication with intent to defame another, shall be punished by penal servitude or imprisonment for not more than three years or by a fine not exceeding 25,000 won.

Article 311 (Insult) A person who publicly insults another shall be punished by penal servitude or imprisonment for not more than one year or by a fine not exceeding 15,000 won."

37. Acts which violate the provisions of article 4 of the Convention shall be punishable in accordance with the above-mentioned provisions of the Criminal Code.

38. Freedom of speech and the press is vital to a democratic country. On the other hand, the press has major social responsibilities to fulfil. So paragraph (2) of article 20 of the Constitution provides:

"Neither speech nor the press shall violate the honour or rights of other persons or undermine public morals or social ethics. Should speech or the press violate the honour or rights of other persons, claims may be made for the damage resulting therefrom."

The clause on the social responsibility of the press is intended better to protect the rights of citizens in the light of the fact that, in the past, the public has often fallen victim to unjustifiable behaviour by the press.

39. In view of the importance of the mass media for the protection of human dignity and the elimination of racial discrimination, the Basic Press Act provides as follows:

"Article 3 (Public responsibility of the press)

(1) The press shall respect human dignity and values, and democratic fundamental order.

(2) Through its contribution to moulding democratic public opinion by means of covering, reporting and commenting on matters of public interest or by other means, the press shall perform its public mission.

(3) The press shall not infringe upon the honour or right of other people, nor shall it violate public morals and social ethics.

(4) The press shall not encourage or praise illegal acts that disturb public order, including acts of violence.

...

Article 31 (Public mission of broadcasting)

(1) Broadcasting shall respect the ethical and emotional sentiments of the people and serve to spread social justice, promote fundamental civil rights and increase goodwill among nations.

(2) Reporting by broadcasting must be fair and objective.

(3) Broadcasting shall not endorse or support a certain special interest, group, belief or ideology."

40. The Public Performance Act and the Film Act also contain provisions similar to those of the Basic Press Act.

41. The Constitution recognizes the right to petition of individuals as a fundamental human right. Article 25 of the Constitution provides that "all citizens shall have the right to petition in writing any State agency in accordance with the provisions of law", and that "State agencies shall be obligated to examine all such petitions".

42. The Petition Act, in article 4, entitled "Matters for petition", stipulates that any person may submit petitions in the following cases:

- "1. Redress of damages;
2. Demand for correction of irregularities committed by a public official, or for disciplinary action against or punishment of a public official;
3. Enactment, amendment or repeal of laws, orders or regulations;
4. Operation of public institutions or facilities; and
5. Any other matters which fall under the authority of public organization".

43. Therefore, any person, including aliens who reside in the Republic of Korea, may submit petitions to any State agency concerning the Convention and, if necessary, the enactment of new legislation in particular.

44. It is the view of the Government of the Republic of Korea that the existing constitutional safeguards and legislation fully satisfy the purposes of article 4 of the Convention. Accordingly, it is doubtful whether any further purpose would be served by additional legislation to implement the provisions of article 4 of the Convention.

45. However, the Government is now studying the revision of the Criminal Code and also considering the necessity of introducing into the Criminal Code new provisions to give more specific effect to article 4 of the Convention.

Article 5

46. Although comments and questions regarding this article made by some members of the Committee during the consideration of the third periodic report were fully answered by the representative of the Republic of Korea (see A/39/18, paras. 393-395), additional information is given herewith.

47. The Constitution, based on the principle of human dignity and value and the principle of the equality of individuals before the law, explicitly guarantees fundamental human rights - essential to any free and democratic society - by stipulating in detail various provisions regarding the freedoms and rights of individuals in political, judicial, economic, social and cultural fields. (See CERD/C/61/Add.2, part II.)

48. Furthermore, the Constitution emphasizes the inviolability of basic human rights by providing that:

"It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals" (art. 9, second sentence);

"Freedoms and rights of citizens shall not be neglected on the grounds that they are not enumerated in the Constitution" (art. 35, para. (1)).

49. The Constitution guarantees the right to freedom of movement and residence by providing that "all citizens shall enjoy freedom of residence and the right to move at will" (art. 13).

50. The right to freedom of movement of the citizen of the Republic of Korea is construed to include the right to leave his country. Therefore, any citizen of Republic of Korea may leave the country in accordance with the provisions of the Passport Act and the Exit and Entry Control Act. The right to freedom of movement and residence is also interpreted to include the right to change nationality.

51. The right of the citizens of the Republic of Korea to leave their country may be restricted by the Military Service Act (see A/39/18, para. 393) and the Exit and Entry Control Act. On the prohibition of exit of nationals of the Republic of Korea, article 4 of the Exit and Entry Control Act provides that:

"The Minister of Justice may prohibit the exit of any person who falls under any of the following subparagraphs:

1. A person whose exit is considered extremely detrimental to the interests of the Republic of Korea;
2. A person who is under criminal investigation."

52. The right to freedom of movement and residence of nationals of the Republic of Korea is without doubt construed to include the right to return to that country. The right to return to one's country means that everyone has the right to be finally protected in his own country. In the Republic of Korea, therefore, it is understood that the right of any national to return to his country may, under no circumstances, be restricted even by law.

53. Aliens may, in principle, leave the Republic of Korea freely at any time, and exist visas are not necessary. Aliens include refugees who are staying in the country.

54. However, the exit of any alien who falls under any of the following categories may be suspended in accordance with article 25 of the Exit and Entry Control Act:

- "1. An alien who is under criminal investigation on suspicion of having committed a crime to endanger national security or to disturb the social order of the Republic of Korea or any other grave crime;
2. Delinquent of tax or any other public disposition;
3. An alien whose exit is considered particularly improper for protection of the interests of the Republic of Korea".

55. In the Republic of Korea, every citizen has the right as well as the duty to work. The Constitution provides that "all citizens shall have the right to work", and "all citizens shall have the duty to work". The Constitution also guarantees the right to choose work by providing that "all citizens shall enjoy freedom of occupation".

56. As regards wages for workers, it is stipulated in the Constitution that the standards of working conditions shall be determined by law in such a manner as to assure the human dignity of workers, and that workers shall be guaranteed optimum wages. The Constitution also reflects the State's strong determination to carry on vigorous social welfare policies, including medical insurance, on the basis of sustained economic growth, in order that all the people can fairly share the benefit of growth. These clauses are aimed at furthering national economic progress, while boosting the morale of workers and protecting their right to a decent life.

57. Any foreigner who has a pertinent status of sojourn in accordance with the relevant provisions of the Exit and Entry Control Act may freely engage in work within the period of stay permitted.

58. The right to form trade unions is also guaranteed in the Republic of Korea. The Constitution guarantees the autonomous rights of labour to association, collective bargaining and collective action, except that the right to collective action shall be exercised in accordance with the relevant provisions of law.

59. In the Republic of Korea, trade unions are principally organized on an enterprise-by-enterprise basis. As of June 1983, there were 2,195 enterprise-based unions with a total membership of about 988,000 which represented approximately 20.3 per cent of all the legally organizable labour force in the country. Each trade union is affiliated with one of 16 industrial federations, which make up the Federation of Trade Unions.

60. Collective bargaining is generally conducted between management and the union of each enterprise. The representative of a trade union is entitled to negotiate a collective agreement with an employer or an employers' organization.

61. The magnitude of the refugee problem in recent years has resulted in the need for a sustained high level of response from the international community, and thus the Republic of Korea has joined in the effort of the international community to solve the refugee problem.

62. A total of 911 Indo-Chinese refugees arrived in the Republic of Korea by boat between 1977 and 1985 and 696 departed for permanent resettlement abroad. As of November 1985, 215 are accommodated at the Pusan Refugee Centre, administered by the National Red Cross.

The Government of the Republic of Korea subsidizes the care and maintenance costs of the refugees.

Article 6

63. As mentioned in previous reports, everyone in the Republic of Korea is entitled without discrimination to equal protection of the law. The right to an effective remedy by competent courts or tribunals for acts violating the freedoms or rights of individuals is guaranteed by the Constitution and by law (see CERD/C/113/Add.1, paras. 25-26).

64. Therefore, citizens and aliens are accorded the right to lodge complaints against any activities of racial discrimination in criminal civil or administrative courts in accordance with the relevant provisions of the law.

65. As for damages resulting from an unlawful act committed by public officials in the course of their official duties, the victim may make a claim against the State or public agency for just compensation in accordance with articles 27 and 28 of the Constitution and the relevant provisions of law (see paras. 31 and 34 of this report).

66. Article 27 and article 28, paragraph 1, of the Constitution provide that:

"In case the accused under detention is acquitted, he shall be entitled to a claim against the State for just compensation in accordance with the provisions of law." (art. 27)

"In case a person has sustained damages by unlawful acts committed by public officials in the course of their official duties, he may make a claim against the State or public agency for just compensation in accordance with the provisions of law, however, the public officials concerned shall not be immune from liabilities." (art. 28, para. 1).

67. As for the damages resulting from an unlawful act committed by a private person, the victim may make a claim to the person for compensation in accordance with the provisions of law (see paras. 32-34 of this report).

Article 7

68. The overriding objectives of the national educational system are, inter alia, to teach the importance of human dignity and the worth of human beings, to realize a genuinely democratic State, guaranteeing the public welfare, and to promote international understanding, co-operation and peace.

69. As for the purposes of education, the Education Act provides that "education shall, under the great ideal of Hong'ik In' gan (benefits for all mankind), aim to assist all people in perfecting individual character, developing the ability for an independent life and acquiring the qualifications needed for development into a democratic citizen, and for the realization of human co-prosperity", and that "the educational system, facilities, teaching materials and methods shall always respect individuality and take a serious view of personality".

70. The Education Act also emphasizes that "education shall be administered and carried out in accordance with its original educational purposes and shall not be appropriated as a means of propaganda for any political, sectarian or individual prejudice", and that "national and public schools shall not be allowed to carry on religious education in a specific religion".

71. In the general section of the Plan for teaching during the nine years of compulsory education (a set of guidelines for teachers issued by the Ministry of Education in 1981), the following is part of what is said concerning "the consciousness of the co-prosperity of mankind", which is one of the objectives of the six-year primary school and the three-year secondary school:

"The consciousness of co-prosperity of mankind is a mental attitude of sharing prosperity with all other people, and of recognizing that everyone has human dignity and worth as a human being irrespective of nationality, culture, race, etc. The consciousness comes from the awareness that every individual, as a human being, has solidarity with every other, and that all have the right to sustain and develop their own traditional cultural heritage and the right to enjoy happiness, free from suffering resulting from war, poverty, institutional defects, etc."

72. In December every year, the Republic of Korea observes Human Rights Week to propagate the purposes and principles of the Universal Declaration of Human Rights.

73. In 1985, the Republic of Korea observed Human Rights Week (7-13 December). During the period, various events were held to remind the nation once again of the absolute proposition that basic human rights should be guaranteed by all possible means.

74. All mass media, including newspapers and television stations in the Republic of Korea joined in observance of Human Rights Week by campaigning for human rights.
