



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

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Summary record of the first part (public)* of the 2186th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 21 August 2012, at 10 a.m.

Chairperson: Mr. Avtonomov

Contents

Informal meeting with non-governmental organizations

Information relating to the fifteenth and sixteenth periodic reports of the Republic of Korea

* The summary record of the second part (closed) of the meeting appears as document CERD/C/SR.2186/Add.1.

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The meeting was called to order at 10.20 a.m.

Informal meeting with non-governmental organizations

Information relating to the fifteenth and sixteenth periodic reports of the Republic of Korea (CERD/C/KOR/15-16)

1. *At the invitation of the Chairperson, the representatives of non-governmental organizations took places at the Committee table.*

2. **Ms. Cho** Hee-Kyoung (MINBYUN – Lawyers for a Democratic Society) said that her country had gone from being a labour-exporting country to a labour-importing country in a short period of time. That rapid transformation in an ethnically homogeneous population with little experience in accepting minorities had resulted in some serious manifestations of racial discrimination. According to the 2012 report of the National Human Rights Commission, there were some 1.39 million foreigners currently living in the Republic of Korea, of whom about 720,000 were migrant workers.

3. The largest group of non-ethnic Korean migrant workers had been granted E-9 visas under the employment permit system (EPS), which was available to citizens of the 15 countries that had signed memorandums of understanding with the Government. While the EPS had improved the recruitment process for migrant workers, relative to the previous industrial trainee system, it had not put a stop to the abuse and exploitation of migrant workers and the severe limitations placed on their employment mobility. EPS workers were allowed to go to the Republic of Korea for an initial period of up to three years and their permits had to be renewed annually, at employers' discretion. If their contracts were not extended, they had three months to find a new job in the same employment sector before facing deportation. Workers under the EPS could change jobs a maximum of three times in the initial three-year period. Under a rule that had entered into force in August 2012, if migrant workers left their jobs because of ill-treatment by their employer, they were not allowed to seek work elsewhere, but were placed on a Ministry of Labour waiting list until a registered employer made them an offer. If no offer was received within three months, they had to leave the country, failing which they would be deported.

4. Two other categories of foreign migrant workers suffered exploitation in the Republic of Korea. E-10 visas were available to migrant workers who were hired to work on fishing boats in coastal waters; many of them were from Cambodia, China, Indonesia and Viet Nam. Since 2011, there had been some 8,000 migrant workers in that category, most of whom had reported being made to work an average of 20 hours a day with no rest days. Moreover, they were often subjected to extreme verbal, physical and even sexual abuse by Korean sailors and they were usually paid significantly less than the minimum wage. E-6 visas were almost exclusively granted to women who were lured to the Republic of Korea from the Philippines, countries of the Commonwealth of Independent States and Thailand on the promise of jobs as singers, actresses and models. On arrival, they were forced to work in bars and in the sex industry and little was done to protect them as victims of human trafficking and to prevent their exploitation and abuse. The police and the Public Prosecutors Office focused exclusively on the prostitution aspect of human trafficking and had little or no awareness of the issues that arose in the trafficking process. Current legislation made it difficult for women who were victims of trafficking to be recognized as victims.

5. Owing to such harsh conditions, many migrant workers left their jobs without their employers' consent and therefore became undocumented workers. According to the National Human Rights Commission, about 10 per cent of EPS workers had been undocumented since 2011 and that number was expected to increase. About 30 per cent of E-6 and E-10 workers were undocumented, making them more vulnerable to exploitation as

they depended entirely on their employer not reporting them to the authorities, or faced deportation. The authorities conducted frequent raids to catch undocumented workers, which often culminated in violence. Many workers had been seriously injured while trying to escape such raids or had been told to flee by their employers. The authorities also used racial profiling in their attempts to identify undocumented workers. While the Government claimed that undocumented workers were entitled to equal rights and protection under the law, they had been prevented from forming a trade union since 2007, despite a Supreme Court ruling in their favour. The Government's appeal against that decision had been pending before the Supreme Court for five years. The officials of the undocumented workers' union had all been forcibly deported, including the last union leader who had held a valid work permit. The families of migrant workers were not allowed to accompany the workers at any time during their stay in the Republic of Korea. If a migrant worker married while in the country, the union was not recognized under Korean law and any children from that union were not recognized. The children therefore had no entitlement to social benefits, including education. The children of undocumented migrant workers faced significant discrimination; of the estimated 8,200 such children living in the country as of 2011, only 148 attended school. Since the different ministries responsible for the legislation regulating foreign migrant workers failed to coordinate on that issue, she called on the Committee to urge the Government to make a concerted effort to protect the rights of migrant workers.

6. There were about half a million ethnic Korean migrant workers from overseas. While they easily obtained work permits in the Republic of Korea, many of them faced racial discrimination in the form of a hierarchy based on nationality. Some 90 per cent of the overseas ethnic Koreans were from China and the countries of the Commonwealth of Independent States and were granted H-2 visas which allowed them to stay for five years and to work in 36 low-skilled jobs. In contrast, the F-4 visa, which was issued to overseas ethnic Koreans from countries such as Japan and the United States of America, enabled recipients to remain in the Republic of Korea for an unlimited period of time and to seek employment freely. She asked the Committee to call on the Government to put an end to such discriminatory treatment.

7. As of 2011, the 211,000 spouses of migrants had constituted about 17 per cent of all foreigners living in the Republic of Korea. There were about 151,000 children of those unions, constituting about 12 per cent of the foreign population. Most of the spouses of migrants came from China (57 per cent), South-East Asia (29 per cent) and Japan (5 per cent). Under domestic legislation, a "multicultural family" was defined as the union between a Korean citizen and a foreigner who had the legal right to reside in the country. The Government pursued a policy of assimilation of the foreign spouses, requiring them to attend compulsory Korean language and culture classes. There was no policy to ensure that the Korean spouses understood their partner's culture. The children of those families were also instructed in the culture and traditions of Korean society, but had scant opportunity to learn about their migrant parent's country of origin. Government policies and support systems were focused almost totally on that type of multicultural family, to the exclusion of other types of unions of foreigners. Most of the foreign spouses in those multicultural families were women who were almost entirely dependent on their Korean spouse. In order to apply to extend their stay or for Korean citizenship, they had to obtain the personal guarantee of their spouse. Moreover, the foreign spouse's stay in the country was dependent on the continuation of the union; if they separated or divorced, they were forced to leave unless they could prove that the Korean spouse was at fault. The only exception was when the foreign spouse was granted leave to care for the Korean spouse's parents. The children of multicultural families faced significant discrimination at school and their enrolment rate was much lower than among children of two Korean parents.

8. Between 1994 and 2012, the Republic of Korea had received 4,500 asylum applications, of which only 290 had been granted. The Korean acceptance rate stood at 6.8

per cent, in stark contrast to the global acceptance rate of about 38 per cent. About half of asylum seekers whose applications were accepted were given leave to remain on humanitarian grounds. They were granted a temporary permit that had to be renewed every three to six months. In theory, they were allowed to work, but employers were unwilling to hire them owing to the temporary nature of their permits. They therefore tended to become undocumented workers, with no health insurance or other social benefits. While the Government claimed to respect the principle of non-refoulement, numerous asylum seekers had been forcibly deported despite the fact that their appeals had been pending. They had only 14 days to appeal and their right to be heard was not respected during that period. The one support centre for asylum seekers and refugees in the country was in an isolated location and, in practice, was used more as a detention centre. It was difficult for refugees to obtain assistance.

9. While the Government insisted that racial discrimination was prohibited under the Constitution and legislation, in reality the existing legal framework was completely inadequate for that purpose. An ordinary interpretation of the Constitution did not provide protection for foreigners' fundamental rights and there was disagreement among Constitutional Court judges on that issue. In addition, since racial discrimination was not specifically prohibited under the Constitution, judges attributed less importance to it than discrimination on other grounds, such as religion. The Criminal Act did not provide for punishment for racially motivated crimes. The Government claimed that judges could increase the severity of their judgements for such crimes, but that was a poor deterrent. She therefore requested the Committee to reiterate its call for the Government to include a general anti-discrimination law in its domestic legislation.

10. **Ms. Crickley** requested an update on the new measures that had been introduced to include migrant workers in the efforts to screen people for HIV/AIDS in a non-discriminatory manner. It would be useful to know whether any changes had been made regarding the death penalty for foreigners. She also asked whether the Government planned to amend the provision that foreign spouses who divorced could stay in the State party provided they cared for their parents-in-law and the provisions on inheritance law in such cases. It would be useful to learn whether migrant workers and foreign spouses had the right to own property in the State party.

11. **Mr. Kut** requested clarification that overseas ethnic Koreans were bearers of passports of the foreign country in which they were normally resident. He requested additional details of the multicultural families and the reasons why few children from those families attended school. It would also be useful to have an explanation of the basis for granting the different types of visa to different migrant workers.

12. **Mr. de Gouttes** asked whether the representative of Lawyers for a Democratic Society could comment on the results of the National Action Plan for the Promotion and Protection of Human Rights. He also wished to know whether the National Human Rights Commission received complaints concerning racial discrimination and, if so, how many had been lodged to date and how effective the Commission had been in resolving them. It would be useful to have additional information on the status of the Commission, its composition and whether it had sufficient resources to be truly independent.

13. **Mr. Ewomsan** asked whether there were any African citizens among the migrant workers in the Republic of Korea and, if so, whether any of them had been granted Korean citizenship.

14. **Mr. Murillo Martínez** requested additional details on the institutional framework that existed in the State party to combat racism and racial discrimination. Given that so few children of multicultural families attended school, he asked whether there was any legislation in place that promoted access to education up to a certain age. It would be

interesting to know whether there were data on marriage fraud that might explain the limitations that had been placed on the rights enjoyed by the foreign spouses of Korean citizens.

15. **Mr. Calí Tzay** said that he would appreciate further details of the employment policies of Korean multinational corporations abroad, for example in the textile and apparel industry. He wished to know whether such companies' treatment of workers abroad was worse than the treatment of migrant workers at home that had just been described.

16. **Mr. Amir** asked whether the State party had a notion of native peoples and, if so, whether there were foreigners residing in the country who claimed to belong to native peoples but were not recognized as such.

17. **Ms. Cho Hee-Kyoung** (MINBYUN – Lawyers for a Democratic Society) said that the Republic of Korea did not have a notion of native peoples analogous to the aborigines of Australia or the Ainu of Japan, to take two examples. Nevertheless, the concept of a homogeneous society had been derived from such a notion. In previous appearances before the Committee, the State party had indicated that there was no racial discrimination in the country because it was ethnically homogeneous. However, that was certainly not the case at present, as at least 2 per cent of the population was of foreign origin.

18. There were quite a number of such Korean transnational corporations engaged not only in textile production but also the heavy manufacturing and chemical industries, including Samsung Electronics, the Hyundai Motor Company, LG Electronics, and others. They had factories in countries such as India where serious human rights abuses had been reported. While there had been efforts to hold the corporations to account at home and abroad, little progress had been made.

19. As the necessary institutional framework to combat racial discrimination was lacking in the Republic of Korea, the Government had had to rely on one constitutional provision and an insufficient patchwork of laws for that purpose. She therefore urged the Committee to encourage the Government to put in place an appropriate framework.

20. Among the 8,200 children of undocumented migrant workers, there were only 148 attending school. Although the Government claimed that the children were entitled to the same kind of support and benefits as Korean children, in reality it provided no institutional support to enrol them. Furthermore, as the parents feared deportation if they enrolled their children in school, which required some proof of residence, few children of migrant workers received schooling.

21. Regarding foreign migrant spouses, she said that most marriages were initiated by the Korean spouse. As there were very few Korean women who wished to marry Korean men in rural farming communities, in the early 1990s the Korean local authorities had launched a programme to recruit immigrant brides for those men. Most of the international marriages were contracted between women from South-East Asia or China and Korean men in rural areas.

22. The school enrolment rate of children from such unions was about 80 per cent, whereas the rate for children of two Korean parents was near 100 per cent. For the children of undocumented migrant workers, the number of those not enrolled in school was even greater. One reason for the lower enrolment of the children of multicultural families was that they experienced discrimination and bullying in school. Some 25 per cent of multicultural families were from a poor social and economic background. Education was compulsory and free up to tenth grade. However, many of the poorest families were unable to afford the school fees for higher secondary education.

23. There were far fewer migrant workers from Africa than from Asia. While there had been a handful of cases of Africans who had sought asylum in the Republic of Korea and

had subsequently been naturalized, they were very few in number. Migrant workers who came to the country under the EPS were entitled to work for an initial period of three years. They could then be granted a 22-month extension, which was designed to ensure that migrant workers could never meet the 5-year continuous residency requirement for citizenship in the Republic of Korea. After 4 years and 10 months, EPS workers must leave the country for at least a month. They were then allowed to return if they obtained employment and a permit. In reality, a migrant worker with a non-professional employment (E-9) visa could never hope to obtain citizenship through naturalization.

24. As to the prohibition of discrimination, she said that, while the Government had made repeated reference to article 11 of the Constitution, the provision protected only Korean citizens and prohibited discrimination only on the grounds of religion, gender and social status. It did not mention race specifically. In her delegation's view, the provision was simply inadequate, a view that conservative judges on the Constitutional Court shared.

25. She regretted that little genuine progress had been made in implementing the National Action Plan for the Promotion and Protection of Human Rights instituted by the Ministry of Justice in 2007, particularly in recent years. The issue was also related to the weakening of the National Human Rights Commission. The Commission had almost no independent power. There was significant controversy over the current Chairperson of the Commission, who had been reported as saying: "Korea has become a multicultural society. Niggers are living with us." Committee members could well imagine the direction in which such a person was steering the work of the Commission. While the Commission had provided some useful studies, they had been the result of previous groundwork that had been laid down. The Commission had proved to be almost a hindrance in promoting the rights of migrant workers and eliminating racial discrimination.

26. Ethnic overseas Koreans had a long history. Many Koreans had been forcibly sent to China and the current territory of the Commonwealth of Independent States, including Azerbaijan, Kazakhstan and other countries, during the colonial occupation of the country by Japan between 1910 and 1945. Preferential treatment had been granted to ethnic Koreans under the law on the basis of blood ties and ethnicity.

27. The Republic of Korea issued various types of visas, because the country required foreign labour. At the same time, the Government sought to regulate labour flows very strictly and avoid providing migrant workers with the kind of social protection to which Korean workers were entitled. Korean workers tended not to work for small enterprises. About 80 per cent of EPS workers were employed in businesses with fewer than 10 employees, which were likely to pay lower wages than bigger companies. In some cases, such small businesses neglected to pay the migrant workers, who had very little recourse. The new E-9 visa scheme was an improvement over the previous one. However, while it had improved the recruitment process, it had not helped to protect migrant workers from exploitation. The E-10 visa was granted to foreign fishermen, as Koreans avoided such work. The E-6 visa had been put in place to meet the demand for workers in the sex industry, as Korean women could not be recruited.

28. HIV screening had been introduced for migrant workers with various categories of visa, including E-2, E-6 and E-9. In the Government's efforts to globalize Korean society, it provided E-2 visas for English-language instruction in schools to native speakers of English from English-speaking countries, in particular Canada, the United States, the United Kingdom, Ireland, New Zealand, Australia and even South Africa. However, the Government refused to issue E-2 visas to nationals of the Philippines even when they were native speakers of English, which was clearly based on racial discrimination.

29. There had been no new developments in legislation concerning the death penalty since the previous universal periodic review. A case on the death penalty had been brought

before the Supreme Court, which had upheld its constitutionality by a narrow margin. Although there was a moratorium on the death penalty, it could be invoked at any time.

30. Divorce by foreign spouses was a serious issue of concern. While Koreans were entitled to no-fault divorce by consent, foreign spouses must be able to prove that the Korean spouse was at fault if they wished to stay in the country following divorce. An exception was made if they had custody of the children, although that was rare, as Korean courts were reluctant to give custody of children to the foreign spouse, notwithstanding the fact that custody was usually given to the mother. Another exception was when a foreign spouse was needed to look after the elderly parents of the Korean spouse.

31. The law granted foreigners certain property rights, including the right to own real estate. That right was not extended, however, to persons with visas limiting their length of stay. Ethnic Korean Chinese with an H-2 visa for working visits would have greater difficulty owning property, for example, than persons with an F-4 visa for overseas Koreans.

32. **Mr. Thornberry**, noting that the draft Discrimination Prohibition Act of 2007 had not been passed because of the objections of religious groups, asked whether those objections were limited to the provisions on sexual orientation or included grounds of colour and national origin. In a previous criticism of a report of the State party, the Committee had raised questions about the use of terms such as “pure blood” and “mixed blood” and expressed concern that such terminology and the idea of racial superiority that it might entail continued to be widespread in Korean society. He wished to know the extent to which such language was prevalent in social or even official discourse. The presentation suggested that it might indeed be prevalent. In the light of the country’s strong sense of homogeneity, and the time required to make a transition from being a society of emigration to one of immigration, he would appreciate hearing about any elements of progress in bringing the country into closer conformity with the standards set in the Convention, particularly since the submission of the previous periodic report.

33. **Ms. Cho Hee-Kyoung** (MINBYUN – Lawyers for a Democratic Society) said that the Government had made no further efforts to reintroduce the anti-discrimination legislation since 2007. The main objection to the legislation had been the inclusion of sexual orientation as a prohibited ground for discrimination. Race or colour had not been mentioned as grounds for objecting to the bill. Terms such as “pure blood” or “mixed blood” were no longer heard very often in public discourse. The Government’s attempt to introduce neutral terminology to describe inter-ethnic unions had led to the use of the term “multicultural family”, but it was frequently employed in a derogatory way. Children from such families were often teased with the term. There had also been an increase in hate speech and racially motivated discriminatory discourse, particularly on the Internet, and a rise in racist groups active in the country. Her delegation attributed such increases to the absence of an anti-discrimination law. Furthermore, the Criminal Code did not make such conduct illegal.

34. Some, although very small, improvements had been made in eliminating discrimination. Nevertheless, there continued to be a general lack of awareness and sensitivity with regard to what constituted racial discrimination. For example, every Korean resident was required to carry a national registration card with a 13-digit registration number. The first six numbers represented the date of birth. The next seven began with 1 for Korean men, 2 for Korean women, 5 for foreign men and 6 for foreign women. The registration card was needed for all kinds of tasks, including having one’s phone connected. Thus, people were immediately aware of a foreigner’s status. More should be done to raise awareness that such policies were discriminatory, particularly among policymakers, law enforcement officers and the authorities in general.

35. **Ms. Crickley** said that she would appreciate information on any discrimination against persons in the Republic of Korea who had come from the Democratic People's Republic of Korea.

36. **Ms. Cho Hee-Kyoung** (MINBYUN – Lawyers for a Democratic Society) said that the issue was indeed important. North Koreans were not considered to be refugees by the Government. In theory, there was no discrimination against them. However, there was an increasing number of North Koreans who had come to the country and subsequently left for a third country, as they could not tolerate the discrimination that they had experienced within Republic of Korea society. They had faced great hardships merely in trying to get to the Republic only to experience discrimination by their fellow citizens because they had come from the north. The Government system of support for persons coming from the north amounted to de facto detention centres, in which some persons were incarcerated for years.

37. **Mr. Lindgren Alves** said that in reading the periodic report he had been struck by the fact that the State party no longer referred to the Republic of Korea as a homogeneous society. Instead, it was described as a multicultural society and it was stated that multiculturalism was one of the Government's concerns. He wished to know whether the Republic of Korea was a signatory of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. If not, the Committee should raise the issue with the State party.

38. **Mr. Kemal** said that he had served as Country Rapporteur when the Republic of Korea had last appeared before the Committee. The Committee had discussed the ethnic composition of Korean society with the delegation and had made a corresponding recommendation (CERD/C/63/CO/9). The trend towards multiculturalism was a positive development but it was nonetheless a complex issue. Police officers could not be expected to monitor people's conversations. Certain social values had been instilled in the Korean people and they took pride in their nationhood. On the other hand, there might be a tendency to denigrate those who were different. He asked how the authorities prevented acts of racial discrimination in practice and whether there had been any cases in which such acts had been prosecuted. If there was a certain reluctance to prosecute, foreign workers would presumably have no choice but to tolerate regular insults. The Committee could not insist that the State party should accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It could only make a recommendation. He would welcome, however, any additional advice that Lawyers for a Democratic Society could offer in that regard.

39. **Mr. de Gouttes** said that Ms. Cho Hee-Kyoung had provided some very interesting information on issues that had not been addressed in the State party report, for instance the increase in xenophobic discourse and hate speech, the ill-treatment of children born of mixed marriages, and the registration number that indicated whether a person was a foreign national. He asked whether the xenophobic discourse stemmed from racist organizations, the media, certain political figures or other sources.

40. **Mr. Kut** enquired about the reasons for the perceptible increase in racist discourse. He also wished to know whether racial violence ever occurred in the State party and, if so, who was responsible.

41. **Ms. Cho Hee-Kyoung** (MINBYUN – Lawyers for a Democratic Society) said that the significant increase in racist discourse in recent years was mainly attributable to the greater visibility of foreign nationals in Korean society. The conservative Saenuri Party had nominated a naturalized Filipina, Jasmine Lee, as a candidate in the last general elections. She had been used as a symbol of the party's ostensible support for multiculturalism. There had subsequently been a marked rise in hate speech and xenophobic discourse in the media and political organizations.

42. There had not been many reported cases of racial violence. The media usually highlighted violence committed by foreigners against Koreans and were less likely to report cases in which foreigners were victims.

43. Mr. Kemal had raised a difficult and important question about measures to prevent racial discrimination. In her view, the solution lay basically in education and awareness-raising. Koreans traditionally practised positive discrimination towards foreigners who were white, nationals of Western countries and socioeconomically advantaged, while they adopted negative attitudes to foreigners of darker skin colour from developing countries. A fundamental change in such attitudes could be achieved only through basic human rights education.

44. Racially motivated acts were not specifically characterized as offences under the Criminal Code. Complaints concerning racial discrimination could be filed with the National Human Rights Commission, but the Commission had to date heard only one successful case involving a foreigner. An Indian national, Bonojit Hussain, had been racially abused on a bus. The culprits had assumed that he was an illegal migrant on account of his skin colour. He had been detained by the police, verbally abused and released on proving that he was a university lecturer. Mr. Hussain had complained to the Commission and had been awarded compensation of less than US\$ 1,000. The police officers had simply been reprimanded. The police and prosecutors were not sufficiently motivated to pursue such offences, although she did not believe that the general public considered that they should remain unpunished. Moreover, the National Human Rights Commission was only empowered to make recommendations and its decisions were not binding.

The public part of the meeting rose at 11.55 p.m.