

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

Initial reports of States Parties due in 1980

REPUBLIC OF KOREA

[24 June 1980]

I. Introduction

Racial discrimination is in contradiction with the basic principles of the Constitution of the Republic of Korea. Furthermore, there has never existed any practice or experience of racial discrimination in Korea since the country has maintained its racial homogeneity throughout its history. In Korea, there do not exist any ethnic or linguistic minorities.

It was, therefore, found unnecessary, in connexion with the accession of the Republic of Korea to the International Convention on the Elimination of All Forms of Racial Discrimination, to introduce into the domestic legal system any new legislation of a general nature against such discrimination. Furthermore, it was judged that adequate protection against racial discrimination could be fully satisfied with the respective legal provisions already in force.

The Republic of Korea made the Convention on the Elimination of All Forms of Racial Discrimination fully applicable within its territories. The Constitution of the Republic of Korea stipulates in Article 5 that treaties duly ratified and promulgated in accordance with the Constitution shall have the same force and effect as that of the domestic laws of the Republic of Korea. Upon the basis of this provision, it was not deemed necessary to legislate new laws or decrees against racial discrimination and segregation.

The Korean Government will not fail, however, to take additional measures, when required, in order to ensure the observance of the Convention.

II. Information on Implementation of Articles 3, 5 and 6 of the Convention

A. Article 3 of the Convention

1. All forms of racial discrimination, including segregation, exclusion, restriction or preference, are condemned by the Constitution of the Republic of Korea, Article 8 of the Constitution which constitutes the basis for all derived basic human rights, states as follows:

"Article 8

All citizens shall be assured dignity and value of human beings, and it shall be the duty of the state to guarantee such fundamental rights of the people to the utmost."

2. Article 9 of the Constitution forbids racial segregation and discrimination as follows:

"Article 9

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

(2) No privileged caste shall be recognized, nor ever be established in any form.

(3) The awarding of decorations or distinctions of honour in any form shall be effective only for the recipients, and no privileged status shall be created thereby."

The social status stipulated in the above-mentioned Article 9 is interpreted to include race, colour and national origin.

B. Article 5 of the Convention

The laws in force of the Republic of Korea do not contain any provision recognizing racial discrimination in any form. Accordingly, there was no necessity to take measures of annulling or amending any provisions of the existing laws. In compliance with the fundamental obligations stipulated in Article 2 of the Convention, the Republic of Korea guarantees the enjoyment of the respective rights stipulated in the Convention to its people without distinction as to race, colour, national or ethnic origin as follows;

1. The right to equal treatment before the tribunals and all other organs administering justice is guaranteed to everyone irrespective of his race, colour or nationality in Article 24 of the Constitution which reads:

"All citizens shall have the right to fair trials in conformity with the laws by judges qualified under the Constitution and laws."

2. The right to security of person and protection by the State against violence or bodily harm is guaranteed by Article 10 of the Constitution.

Article 10

(1) All citizens shall enjoy personal liberty. No person shall be arrested, detained, seized, searched, interrogated, punished, subjected to involuntary labour, or placed under probationary supervision except as provided by law.

(2) No citizen shall be tortured nor be compelled to testify against himself in criminal cases.

(3) Warrants issued by a judge upon request of a prosecutor shall be presented in case of arrest, detention, search or seizure. However, in case a criminal is apprehended flagrante delicto, or in case where there is danger that a criminal may escape or destroy evidence, the investigating authorities may request an ex post facto warrant.

(4) All persons who are arrested or detained shall have the right to prompt assistance of counsel. When a criminal defendant is unable to secure a counsel by his own efforts, the State shall assign the same for the defendant as provided by law.

3. Political rights, in particular the right to participate in elections on the basis of universal and equal suffrage and the right to take part in government at any level and to have equal access to public service, are guaranteed regardless of his race, origin or colour in Articles 21 and 22 of the Constitution.

Article 21

All citizens who have attained the age of twenty and over shall have the right to vote, in accordance with the provisions of law.

Article 22

All citizens shall have the right to hold public office in accordance with the provisions of law.

4. The guaranteeing of other civil rights enumerated in Article 5, paragraph (d) of the Convention is well manifested in the Constitution and relevant laws:

(a) The right to freedom of movement and residence is contained in Article 12 of the Constitution.

Article 12

No citizen shall be subject to restriction of freedom of residence or moving except as provided by law.

(b) This right includes in principle the free movement from one state to another and the right to establish residence in any community within the boundary of the Republic.

(c) As to the right to nationality, the Nationality Law, which strictly stipulates requirements for the loss of citizenship, makes it impossible to deprive a citizen of his nationality on the ground of his race. Under the provision of Article 5 of the Nationality Law, any alien who satisfies certain requirements may obtain citizenship irrespective of his race or nationality.

(d) The right to marriage and choice of spouse is also guaranteed in Article 31 of the Constitution. In addition, Article 807 of the Civil Code also affirms the freedom of marriage.

(e) The right to own and inherit property is guaranteed by Article 20 of the Constitution. The right of inheritance is regulated and guaranteed by the Civil Code (Chapter II: Succession to Property).

(f) The right to freedom of thought, conscience, and religion is safeguarded in Articles 16 and 17 of the Constitution.

Article 16

- (1) All citizens shall enjoy freedom of religion.
- (2) No state religion shall be recognized, and religion and politics shall be separated.

Article 17

All citizens shall enjoy freedom of conscience.

(g) The right to freedom of opinion and expression is embodied in Articles 15 and 18 of the Constitution.

Article 15

Privacy of correspondence of all citizens shall not be invaded except as provided by law.

Article 18

No citizen shall be subject to restriction of freedom of speech and press,, except as provided by law.

(h) The right to freedom of peaceful assembly and association is guaranteed in Articles 18 and 29 of the Constitution.

Article 18

No citizen shall be subject to restriction of, freedom of assembly and association, except as provided by law.

Article 29 (1)

The right to association,, of workers shall be guaranteed within the scope defined by law.

5. Economic, social, and cultural rights are likewise guaranteed by the Constitution of the Republic of Korea to all citizens irrespective of race or colour:

(a) The right to work, free choice of employment, fair and favourable conditions of work, protection against unemployment are embodied in following Articles of the Constitution and respective laws concerned such as Labour Standard Law.

Article 13

No citizen shall be subject to restriction of freedom of choice of occupation, except as provided by law.

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Article 28

(1) All citizens shall have the right to work. The State shall endeavour to promote the employment of workers through social and economic means.

(2) All citizens shall have the duty to work. The contents and conditions of the duty to work shall be determined by law in conformity with democratic principles.

(3) Standards of working conditions shall be determined by law.

(4) Special protection shall be accorded to working women and children.

(b) The right to form and join trade unions are derived from Article 29 of the Constitution.

Article 29

(1) The right to association, collective bargaining and collective action of workers shall be guaranteed within the scope defined by law.

(c) The right to housing is also guaranteed by Article 14 of the Constitution, several laws and decrees. Among them, the Law on the Promotion of Housing Construction gives priority to the construction of low-income housing for the poor. (Articles 1 and 2)

(d) The right to public health, medical care, social security and social services is stipulated in Article 30 of the Constitution.

Article 30

(1) All citizens shall be entitled to a decent human life.

(2) The State shall endeavour to promote social security.

(3) Citizens who are incapable of earning a livelihood shall be protected by the State in accordance with the provisions of law.

(e) The right to education and training is laid down in Article 27 of the Constitution:

Article 27

(1) All citizens shall have equal opportunity to receive education corresponding to their abilities.

(f) The right to participation in cultural activities is guaranteed by Article 19.

Article 19

(1) All citizens shall enjoy freedom of learning and of art.

(2) The rights of authors, inventors and artists shall be protected by

6. The enjoyment of the right of access to any place or service intended for use by the general public - such as transportation, hotels, restaurants, cafés, theatres, parks - is taken for granted by the Korean people.

No practice, social custom or precedent of discrimination in the above-mentioned right have been found in Korea.

7. In addition to guaranteeing of all rights as pointed out above, the Constitution of the Republic of Korea provides also a comprehensive clause for the protection of human rights, whether or not they are set out in the Constitution. Article 32 reads as follows:

"Article 32

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

C. Article 6 of the Convention

1. With regard to any legislation contravening the principles of the Constitution, the Court could appeal to the Constitution Committee.

Article 105 (1) of the Constitution reads as follows:

"When the constitutionality of a law is a prerequisite to a trial, the Court shall request a decision of the Constitution Committee, and shall judge according to the decision thereof."

2. And the Supreme Court has the power to make a final review of the constitutionality or legality of administrative decrees, regulations or dispositions in accordance with Article 105 (2) of the Constitution.

Article 105 (2)

The Supreme Court shall have the power to make a final review of the constitutionality or legality of administrative decrees, regulations or dispositions, when their constitutionality or legality is a prerequisite to a trial.

3. Adequate compensation for damages arising from such unlawful act as discrimination is clearly stipulated in Articles 750 and 751 of the Civil Code.

In case of criminal charges, any person who commits violation of the provisions of the Penal Code pertaining to racial discrimination is punished according to relevant provisions.

III. Information on the Implementation of Articles 2, 4 (c), and 7 of the Convention

As explained at the outset of this report, the Government of the Republic of Korea, having not any kind of experience or practice of racial discrimination, did not find it necessary to adopt or introduce new legislative, judicial, administrative and other measures with a view to eliminating racial discrimination. It will, however, continue to fulfil, by taking suitable measures if necessary in the future, obligations stipulated in Articles 2, 4 (c) and 7 of the Convention.

IV. Information on the Implementation of Articles 4 (a) and (b) of the Convention

1. In accordance with Articles 4 (a) and (b) of the Convention, acts of violence and other unlawfulness against persons of different colour or ethnic origin, constitute offences under Article 260 (1) of the Criminal Law of the Republic of Korea which reads as follows:

"A Person who uses violence against another shall be punished with penal servitude for not more than two years, a fine of not more than twenty-five thousand won or detention."

2. In addition, the Law for the Punishment of the Acts of Violence is applicable for the punishment of such specific crimes as collective violence.

V. Information on the status of our relations with the racist regime of South Africa:

1. The basic policy toward the Republic of South Africa

The Republic of Korea has respected the decisions and resolutions of the United Nations which requested the cessation of any political, economic, military and other collaboration with the racist regime of South Africa.

As a step to observe United Nations decisions and resolutions, the Republic of Korea has abstained from establishing all formal relations with South Africa.

2. Actions in the political field

(a) The Republic of Korea will have no diplomatic relations with South Africa until the policies of apartheid are terminated.

(b) For the manifestation of our determined policy toward South Africa, the Government took part in the following conferences, delivering the relevant messages to the Secretary-General of the United Nations:

- the International Conference in Support of the Peoples of Zimbabwe and Namibia held at Maputo from 16 to 21 May 1977,
- the World Conference for Action against Apartheid held at Lagos from 22 to 26 August 1977,
- the World Conference to Combat Racism and Racial Discrimination held at Geneva from 14 to 25 August 1978.

(c) In addition, the Republic of Korea has issued messages on the occasion of observing the International Day for Elimination of Racial Discrimination on 21 March every year since 1975 and contributed \$5,000 to the United Nations Fund for Namibia, \$5,000 to the United Nations Institute for Namibia respectively on 26 April 1978 and \$10,000 to the United Nations Fund for Namibia on 20 March 1979.

3. Actions in the military and economic field

(a) The Republic of Korea has positively responded to the Security Council resolution 418 of 4 November 1977 on Mandatory arms embargo to South Africa and

(b) The Government of the Republic of Korea has also stopped economic collaboration with South Africa in accordance with United Nations resolutions, in particular, the General Assembly resolutions 32/105 G of 14 December 1977, 33/183 H of 24 January 1979 and 34/93 Q of 12 December 1979, and subsequently closed the Johannesburg office of KOTRA (Korea Trade Promotion Corporation) on 30 June 1978.

4. Actions in the cultural and sporting field

(a) The Republic of Korea has restricted cultural exchanges with South Africa, reaffirming the importance of effective international action to abolish apartheid in all fields, and prohibited all sports contacts with South Africa in pursuance with United Nations resolutions, inter alia, the General Assembly resolutions 32/105 M of 14 December 1977, 33/183 N of 24 January 1977 and 34/93 N of 12 December 1979.

(b) As regards visas the Ministry of Foreign Affairs of the Republic of Korea has rejected issuances of visas to representatives of cultural and sports bodies, members of cultural and sports teams or individual participants from South Africa, for example, in the following cases:

- the first Christian Businessmen International held at Seoul from 19 to 23 October 1977,
- for the training of Taekwondo (traditional martial art of Korea), in October 1977.
- the 42nd World Shooting Championships held at Seoul from 23 September to 3 October 1978.
- the 4th International Conference of the World Federation of the Associations for Voluntary Sterilization held at Seoul from 7 to 11 May 1979.