



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

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Thirty-eighth session

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

Sixth periodic reports of States parties due in 1990

Addendum

REPUBLIC OF KOREA */

[5 July 1990]

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*/ For the fourth and fifth periodic 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:

Fourth periodic report - CERD/C/144/Add.1 (CERD/C/SR.787);

Fifth periodic report - CERD/C/167/Add.1 (pending consideration).

PART I: GENERAL

5. With the inauguration of the Sixth Republic in February 1988, the Government of the Republic of Korea has given utmost priority to the improvement of the human rights situation.

6. The Government has reinforced its efforts to guarantee human rights of individuals to a greater extent by stipulating more comprehensive provisions for human rights in its new Constitution.

7. The Constitution states in its preamble the determination of the people of Korea

"... to destroy all social vices and injustices, and to afford equal opportunities to every person and to provide for the fullest development of the capabilities of each individual in all fields, including political, economic, civic and cultural life by further strengthening the basic free and democratic order conducive to private initiative and public harmony ...".

8. The Constitution 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 incorporated into national legislation as well as in the political, economic, social, cultural and other fields of public life.

9. The Government of the Republic of Korea acceded on 10 April 1990 to the International Bill of Human Rights: the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and its Optional Protocol. The accession to these Covenants will contribute to ensuring the observance and respect of fundamental human rights and will promote national understanding of the significance of human rights.

10. The Government of the Republic of Korea reaffirms that some international conventions duly concluded and promulgated under the Constitution have been incorporated into national law in accordance with article 6 (1) of the Constitution, which reads: "Treaties duly concluded and promulgated in accordance with the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea."

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. Accordingly, additional domestic legislation is considered unnecessary for the purpose of implementing the provisions of the Convention. In fact, no complaint of racial discrimination has been brought before the court or administrative authorities, owing to the historic homogeneity of the Korean people.

13. 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.

14. Archaeological and linguistic studies have established that Tungusic tribes from the Altaic Mountains settled in the Korean peninsula some 5,000 years ago. Since then, the Korean people have retained their homogeneous nature, sharing distinct physical characteristics, one language and one culture.

15. With this background of homogeneity, the Korean people have no problem of racial discrimination or segregation, either in theory or in practice, in any aspect of the lives.

16. For the Committee's information, the demographic composition of the population of the Republic of Korea is as follows:

(a) The Republic of Korea is, basically, an ethnically homogeneous country with a population of around 43.6 million people;

(b) As of 30 April 1990, the number of foreign nationals residing in the Republic of Korea stands at 47,589 or approximately 0.1 per cent of the total population. Of these, as shown in the table below, around 50 per cent are of Chinese nationality, followed by Americans and Japanese.

Table: Foreign nationals residing in the Republic of Korea, by nationality, as of 30 April 1990

<u>Total</u>	<u>47,589</u>
Chinese	23,725
Americans (United States)	13,120
Japanese	4,866
Other nationalities	5,649
Stateless	229

17. Foreigners residing in Korea enjoy their rights pursuant to article 6 (2) of the Constitution, which reads: "The status of aliens shall be guaranteed in accordance with international law and treaties."

18. The principle of the guarantee of fundamental human rights and the principle of 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.

PART II: INFORMATION IN RELATION TO ARTICLES 2 TO 7 OF THE CONVENTION

Article 2

19. During the period under consideration, no specific law has been enacted which has a bearing on the Convention. It should be understood, however, that as already explained in part I, 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. The Korean Government will continue to give due attention to this matter to ensure effective implementation of the Convention.

20. As one of the new developments during the last two years in the Republic of Korea, the human rights-related conventions, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, have been acceded to and will come into force on 10 July 1990. In addition, the Protocol relating to the Status of Refugees will be submitted to the National Assembly, whose regular session is to begin this autumn, for its consent to ratification.

Article 3

21. As stated in previous reports, the Government of the Republic of Korea continues to follow its declared policy of anti-apartheid.

22. The Republic of Korea does not have diplomatic or consular relations with South Africa. Trade with South Africa has been effectively discouraged, particularly since the Korean Government shut down its only trade promotion office (KOTRA) in Johannesburg in 1978.

23. Exchanges of persons between the Republic of Korea and South Africa have also been actively discouraged. Entry of South Africans, even for simple participation in international conferences and meetings held in Korea, has been strictly prohibited, as shown, for instance, by the Seoul Olympic Games held in 1988.

24. The Republic of Korea has actively joined the international community in condemning the apartheid policy of South Africa. Since 1978, the Republic of Korea has made contributions to the United Nations Fund for South Africa, the United Nations Education and Training Programme for South Africa, the United Nations Fund for Namibia and the United Nations Institute for Namibia. In addition, the Korean Government is contributing \$US 1 million in kind to the AFRICA Fund of the Non-Aligned Movement over a five-year period which began in 1988.

25. The Korean Government's Prime Minister or Foreign Minister has annually sent messages to the United Nations on the International Day for the Elimination of Racial Discrimination (21 March) and on Namibia Day (26 August), to the effect that the Korean Government is in strong opposition to the apartheid policies of any country in the world.

Article 4

26. The Constitution of the Republic condemns any idea or theory of the superiority of one race or group of persons of one colour or ethnic origin or any attempt to justify or promote racial hatred and discrimination in any form. Article 11 of the Constitution stipulates:

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

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

27. The said article itself can be invoked before the courts and can be directly enforced by them. If any person has sustained damages through legislative or administrative measures which run counter to the article, he may challenge the constitutionality of the law or administrative decrees or dispositions and may contend that the legislative or administrative measures are void. Furthermore, he may make a claim against the State or public agency for just compensation in accordance with the relevant provisions of law.

28. These constitutional principles are reflected in a concrete and detailed way in various domestic laws. It is, therefore, considered that the existing constitutional safeguards and domestic legislation are generally sufficient for complete implementation of article 4 of the Convention.

Article 5

29. 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 freedom and rights of individuals in political, judicial, economic, social and cultural fields.

30. Furthermore, the Constitution and its relating laws emphasize 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. 10), and that "Freedoms and rights of citizens shall not be neglected on the grounds that they are not enumerated in the Constitution." (art. 37.(1)).

31. The recent accession of the Republic of Korea to the International Covenant on Economic, Social and Cultural Rights and to the International Covenant on Civil and Political Rights and its Optional Protocol shows its determination to achieve the promotion of universal respect for and observance of human rights and fundamental freedoms, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status.

32. The Covenants are expected to have the same effect as the domestic law of the Republic of Korea from early in July this year.

33. For the Committee's information, the constitutional clauses guaranteeing, without any distinction, the rights of everyone are attached. The clauses are also incorporated in detail into various domestic laws.

Article 6

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

35. The attached articles 12, 26, 27, 28 and 29 of the Constitution refer to protection and remedies for damages suffered as a result of such discrimination.

36. Other basic laws which can be invoked as a protection from and as a remedy against racism and racial discrimination are the Civil Code, Criminal Code, Code of Civil Procedure, National Compensation Act, Administrative Litigation Procedure Act and Criminal Compensation Act.

37. Under the relevant provisions of the laws mentioned above, Korean citizens and foreign nationals are entitled to protection, remedies and compensation for acts of discrimination, including racial discrimination, committed by a person, a group of persons, or central and local Government.

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

39. In this connection, for example, the Civil Code in Article 750 provides that "any person who causes damages to another person by an unlawful act intentionally or negligently shall make compensation for the 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."

40. 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.

41. 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 6 of the Convention. Accordingly, it is doubtful whether any further purpose would be served by additional legislation to implement the provisions of article 6 of the Convention.

Article 7

Education and Teaching

42. The information contained in paragraphs 29 and 30 of the fifth report remains applicable.

43. Fifty-five schools have been established for foreigners in order to meet varying educational needs of the foreign nationals residing in Korea.

Culture and Information

44. The information contained in paragraphs 32, 34 and 35 of the fifth report remains applicable.

Enclosures: As stated (arts. 10 to 37 of the Constitution). 1/

1/ A copy in English is available in the files of the Secretariat for consultation by members of the Committee.