



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the combined fifteenth and sixteenth periodic reports of the Republic of Korea

Addendum

Information received from the Republic of Korea on follow- up to the concluding observations*

[14 October 2013]

1. The Government of the Republic of Korea would like to extend its appreciation to the Committee on the Elimination of Racial Discrimination for the constructive recommendations during the consideration of Korea's fifteenth and sixteenth periodic report at its eighty-first session held on 21 and 22 August 2012.

2. The Republic of Korea has been implementing the recommendations of the report through close coordination among all relevant administrative agencies. The follow-up measures of the Government for the past year after the adoption of the Concluding Observations are as follows:

In paragraph 11, the Committee recommends the State party to further amend the Employment Permit System in particular relating to: the complexity and variety of types of visa; the discrimination based on country of origin; the limitation of the migrant workers' ability to change their workplaces; the maximum employment period; and to ensure that migrant workers can fully enjoy their rights and that migrant workers and their families, in particular children, enjoy adequate livelihood, housing, healthcare and education.

3. **Revising the EPS** with regard to the complexity and variety of types of visa and discrimination based on country of origin: Under its own Immigration Act, each nation has viewed its overseas nationals differently from foreigners residing in its own nation. As regards the case of foreigners, the workforce is divided into that of high-skilled and low-skilled depending on the career, capabilities, and other traits of each individual. According to such distinction, the requirements and procedures of entry, sojourn, and nationality acquisition are prescribed in a separate manner. This is a common practice of the international community.

* The present document is being issued without formal editing.

4. **Easing restriction on transferring to other workplaces:** Regarding the issue of foreign workers' transfer to other workplaces under the EPS, the Government of the Republic of Korea is seeking the most comprehensive and harmonized way to protect the human rights of the foreign workers as well as the rights of their employers and protect the domestic workers of vulnerable groups from the possible job reduction and deterioration of working conditions that may be caused by the frequent transfer of foreign workers. For this reason, the Government of the Republic of Korea allows foreign workers to transfer to other workplaces on limited conditions and terms. Thanks to the revised system in 2012, when a worker is not able to continue his/her work in a workplace because of business shutdown, closure, or other reasons not attributable to the foreign worker, the worker is allowed to apply for a transfer to other workplaces with no limit.

5. **Extending the maximum period of employment:** The EPS (Employment Permit System) is not for permanent stay of foreign workers in Korea. It is rather for temporary stay while they are employed by Korean employers. Thus, the current EPS has restrictions on the length of foreign workers' stay in Korea. Restricting the length of foreign workers' employment period as well as the length of visa period is very common in other countries. Thus, there is no need to change the current EPS system.

6. **Ensuring the rights of foreign workers:** Foreign workers who have appropriate visas can enjoy the rights within the relevant domestic laws.

In addition, the Committee urges the State party to guarantee the right of all persons to form and join trade unions freely. The Committee requests the State party to report on these specific issues. The Committee recommends the State party to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

7. **Ensuring the rights to form and join trade unions:** Legal migrant workers who are working in a domestic workplace under the EPS are allowed to establish and join a labor union just like Korean workers, in accordance with the "Trade Union and Labor Relations Adjustment Act." However, the right to establish a labor union of illegal migrant workers will be taken into consideration after the ruling on the MTU (Migrants' Trade Union) case¹ by the Supreme Court.

8. **Review on the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families:** The International Convention on the Protection of the Rights of All Migrant Workers and Their Members of Family is considered to have implications on a variety of social institutions (i.e. social security, legal, labor, taxation, election, and education system). Thus, the ratification of the convention shall be reviewed by relevant government offices and approved by the National Assembly of the Republic of Korea.

In paragraph 12, the Committee urges the State party to protect the rights of undocumented migrant workers and asks for information on the number of undocumented workers identified during labour inspections, their condition and length of detention, as well as the number of those who have been expelled. The Committee requests the State party to take all measures to ensure that migrant workers, who entered the country legally, do not become undocumented as a result of the inflexibility of the work permits system.

¹ The recognition of the MTU as a labor union has been disapproved because the majority of its members are illegal migrant workers. The proceedings on this case are now underway at the Supreme Court.

9. Labor Inspection is aimed at protecting the rights and working conditions of foreign workers who are employed under the EPS. Therefore, its main duty is to find employers' violation of legal obligations. According to the results of the labor inspection in the first half of 2013, there were a total of 3,788 violation cases, including 33 violations of immigration law. Among those, 24 cases were committed by employers who kept the passports of their foreign employees, 8 were disapprovals of workers' transfer to other workplaces, and 1 was employment of illegal migrant workers.

In paragraph 13, the Committee recommends that the State party ensure unhindered and equal access to official procedures for lodging asylum applications at ports of entry, thereby upholding the principle of non-refoulement; take all necessary measures so that refugees and asylum seekers enjoy the right to work and that they and their families enjoy and adequate livelihood, housing, healthcare, and education; and establish a system and procedures to properly register the birth of children of refugees, humanitarian status holders, and asylum seekers born in the State party, as already recommended by the Committee on the Rights of the Child in 2011 (CRC/C/KOR/CO/3-4), and of children of undocumented migrants. The Committee requests that the State party, in its next report, provide the total number of applications for refugee status per year, broken down by those rejected and those accepted.

The Committee further recommends that the procedure for recognizing refugee status conform to international standards and be further implemented, including by appointing more officials to review the applications. Due process of law should be respected at all stages of the process, inter alia, by providing interpreters for the applicants and guaranteeing their right to be heard during the appeal procedures which concern them.

10. **Establishment of the Refugee Act and the Refugee Division for Refugee System Operation** based on international standards: The Government of the Republic of Korea joined the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees in December 1992 and prescribed Refugee Status Determination (RSD) procedures in the Immigration Control Act. The Government of the Republic of Korea enacted the Refugee Act in February 2012 (entered into force in July 2013), in order to promote speedy, transparent, and fair RSD procedures as well as to stipulate the specifics on treatment of refugees in conformity with the Convention relating to the Status of Refugees. The enforcement Decree and regulations prescribing specific procedures of the Refugee Act also went into effect in July 2013. Furthermore, by establishing the Refugee Division under the Ministry of Justice in June 2013 for seamless implementation of the aforementioned Act, the Government of the Republic of Korea has been making efforts to take the lead in human rights protection for refugees.

11. **Observation of the principle of non-refoulement:** In accordance with the Convention relating to the Status of Refugees and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Government of the Republic of Korea ensures that there is no deportation of recognized refugees, humanitarian status holders, and refugee applicants against their will. Refugee applicants are also allowed to remain in the Republic of Korea until the determination on the refugee status application is made.

12. **Refugee status application at ports of entry:** The refugee status application at ports of entry system was introduced in the Refugee Act. According to the provision of the Act, an alien may apply for refugee status recognition during immigration inspection at the port of entry. The alien is required to submit an application for refugee status recognition to the respective Chief of the immigration office (hereinafter, referred to as 'Office Chief') who has jurisdiction over the port of entry. The Office Chief shall permit the stay of the

applicant in the port of entry for seven days while determining whether to refer the case. If the Office Chief fails to make the determination within the seven-day period, he/she shall permit the entry of the applicant.

13. **Guarantee of procedural rights for refugee status applicants:** The Government of the Republic of Korea strengthened the guarantee of the rights of refugee status applicants during RSD procedures by prescribing in the Refugee Act that the Minister of Justice should collect favorable data for refugee status applicants and may request cooperation of relevant administrative agencies and/or the head of relevant organizations such as the submission of information regarding the refugee status evaluation. The same Act guarantees the rights of refugee status applicants to receive assistance from an attorney; to be accompanied by a trusted individual; to receive language support from a qualified interpreter; and to request access to, or the copy of the interview record or relevant material submitted by the applicant and prohibits the release of personal information of the individual accompanying the applicant during an interview.

14. **Improvement of treatment of recognized refugees:** Recognized refugees are entitled to treatment in accordance with the Convention relating to the Status of Refugees; to social security service at the same level as that of Korean nationals; and to protections ensured by the National Basic Living Security Act. An underage recognized refugee or an underage child of a recognized refugee is entitled to elementary and secondary education identical to that provided to Korean nationals. Their education credentials and/or qualifications acquired abroad may be recognized. In addition, application by a spouse or an underage child of recognized refugee for entry into the Republic of Korea shall be permitted.

15. **Improvement of treatment of refugee status applicants:** The Refugee Act stipulates the provision of living expenses, housing, medical assistance for refugee status applicants, and elementary and secondary education identical to that provided to Korean nationals for underage refugee applicants or an underage child of a refugee applicant. It is of particular focus for the Government of the Republic of Korea to enable practical assistance for refugee applicants by securing budget to provide living expenses for them from 2014. Also, under the Refugee Act, if more than six months have passed after the submission of the application, the refugee applicant is allowed to seek employment activity. Previously, the passage of at least one year after the submission was required, but the Act reduced it to six months.

16. **Establishment of the refugee committee for the appeal procedure:** The Refugee Committee was founded under the Ministry of Justice to examine the appeals of applicants who received a notice of non-recognition of refugee status or a notice of refugee status cancellation or withdrawal. Unlike the previous Refugee Recognition Committee, establishment of which was prescribed in the Ordinance of the Ministry of Justice, the Refugee Committee is governed by the Refugee Act with the goal of enhancing expertise and fairness in handling appeal cases during RSD procedures. The Government of the Republic of Korea newly selected the members of the Committee in July 2013 pursuant to the Refugee Act. The Refugee Committee consists of five government officials from the Ministry of Justice, the Ministry of Health & Welfare. Etc., and seven civilian committee members including a judge, an attorney, a professor, and persons with expert knowledge and professional experience in the field of refugee issue. Section Committees under the Refugee Committee were also organized to strengthen the pre-screening procedures. A refugee investigation officer assisting the Refugee Committee conducts research and investigations on appeal cases. The Refugee Committee provides hearing sessions for an applicant to express his/her opinions fully when the Refugee Committee (or the Section Committees) determines that it is deemed necessary.

17. **Provision of interpreters to assist refugee applicants:** The Government of the Republic of Korea appointed 64 language experts for 18 different languages as interpreters for refugees in May 2012 and has been providing interpretation services for refugee applicants who are unable to express their situations fully due to insufficient Korean proficiency during RSD interview procedures.

18. **Establishment and operation of refugee support facilities:** A facility to support refugees operated by the Government of the Republic of Korea is scheduled to open in October 2013 to provide refugee applicants and refugees seeking resettlement and their family with access to housing and health care services. It will also conducting programs to improve Korean language proficiency and social integration of recognized refugees. The facility is expected to be operated under a system whereby entering or leaving the facility as well as going out or sleeping out is allowed.

19. **Birth registration of children of refugees and other foreigners born in Korea:** Birth registration is only permitted to those who have Korean nationality, pursuant to the Act on the Registration, etc. of Family Relationship. Thus, a child born to a foreign national is not granted the right to have his/her birth registered. If a foreigner gives birth to a child during their sojourn period in the Republic of Korea, he/she can register the child's birth by making an entry into the relevant public register of his/her country through the relevant embassy in Korea. On the other hand, in the case of the children of refugees, humanitarian status holders, and refugee applicants born in Korea, he/she is entitled to receive a legitimate status of stay and an official identification document, the Alien Registration Card, after submitting his/her birth certificate issued by a local hospital. As regards the bestowment of sojourn status to the children of foreign nationals born in Korea, the Minister of Justice exclusively allows a child born to a foreign national legally residing in Korea to have the equivalent sojourn status as his or her parents. Although the Nationality Act is based on the personal principle, the Act also recognizes the territorial principle exceptionally for a child born in Korea whose parents are unknown or stateless, so that the child may obtain Korean nationality at the time of his/her birth.

20. **Regarding the statistics of refugees, broken down by those rejected and those accepted:** The Government of the Republic of Korea plans to provide the total number of applications for refugee status per year, broken down by those accepted and those rejected, in accordance with the recommendation of the Committee on the Elimination of Racial Discrimination.

21. The Government of the Republic of Korea would like to reiterate that it will continue to carefully consider the Committee's comments and recommendations, in the aspect of promotion and protection of human rights. We will cooperate with the Committee in its future endeavors to eliminate racial discrimination in all its forms and promote understanding among all races.
