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**Committee on the Elimination of Racial Discrimination****Concluding observations on the combined 17<sup>th</sup> to 19<sup>th</sup> periodic reports of Republic of Korea\***

1. The Committee considered the combined seventeenth to nineteenth periodic reports of the Republic of Korea (CERD/C/ROK/17-19), submitted in one document, at its 2691<sup>st</sup> and 2692<sup>nd</sup> meetings (CERD/C/SR.2691 and 2692), held on 3 and 4 December 2018. At its 2703<sup>rd</sup> and 2704<sup>th</sup> meetings (CERD/C/SR.2703 and 2704), held on 11 and 12 December 2018, it adopted the present concluding observations.

**A. Introduction**

2. The Committee welcomes the submission of the seventeenth to nineteenth periodic reports of the State party. The Committee expresses its appreciation for the frank and constructive dialogue with the State party's high level delegation. It thanks the delegation for the answers provided during the consideration of the State party's report in response to the Committee's questions as well as for the additional written information submitted after the dialogue. The Committee also welcomed the participation of the National Human Rights Institution and of the vibrant and dynamic civil society organizations.

**B. Positive aspects**

3. The Committee welcomes a number of positive developments and activities undertaken by the State party to fight racial discrimination and promote diversity, including:

- (a) The amendment to the Criminal Code which establishes criminal penalties for the offense of human trafficking, on 5 April 2013;
- (b) The adoption of the Refugee Act, on 1 July 2013;
- (c) The adoption of the third Basic Plan for Immigration Policy, on 12 February 2018;
- (d) The adoption of the third Basic Plan for Multicultural Family Policy, on 12 February 2018;
- (e) The adoption of the third National Action Plan for the Promotion and Protection of Human Rights, on 7 August 2018.

4. The Committee notes with satisfaction the ratification of the Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ("Palermo Protocol"), on 5 November 2015.

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\* Adopted by the Committee at its ninety-seventh session (26 November – 14 December 2018).

## C. Concerns and recommendations

### Legislation and definition of racial discrimination

5. The Committee regrets that once again, the State party has failed to adopt a comprehensive legislation that prohibits and defines racial discrimination, in spite of the Committee's previous recommendations (CERD/C/KOR/CO/15-16). The Committee emphasises that article 11(1) of the Constitution along with other existing laws addressing certain aspects of discrimination are not sufficient substitutes for the full definitions and descriptions of prohibited grounds in the Convention. The Committee is also concerned about the absence of a provision in the Criminal Code establishing racist motives as aggravating circumstances leading to enhanced penalties (arts. 1, 2 and 4).

**6. The Committee reiterates its recommendation (CERD/C/KOR/CO/15-16) that the State party expedite the adoption of a comprehensive law that defines and prohibits direct and indirect racial discrimination on all prohibited grounds, in line with article 1 of the Convention. The Committee also reiterates its recommendation (CERD/C/KOR/CO/15-16) that the State party amend its Criminal Code to consider racist motivations as aggravating circumstances with respect to criminal offenses, in line with article 4 of the Convention. The Committee further recommends that the State party set up a mechanism to collect statistics on racially motivated crimes, disaggregated by race, colour, ethnicity, national origin, religion, immigration status, gender and other indicators that would identify intersecting forms of discrimination.**

### Racist hate speech

7. The Committee is concerned about the current climate of hate and mistrust towards migrants and refugees in the State party. The Committee is also concerned about the rise of hate speech, incitement to racial hatred and propagation of ideas of racial superiority as well as racist stereotypes expressed in the media, including on Internet and on social media, particularly exacerbated by the arrival of around 500 Yemeni refugees on Jeju Island in May 2018. The Committee is further concerned about the use of derogatory terms such as "illegal immigrants" used in official documents to refer to migrants residing in the State party without a valid permit, noting that such terms exacerbate negative perceptions and discriminations towards these migrants (arts. 2, 4 and 7).

**8. In light of its general recommendation No. 35 (2013) on combatting racist hate speech, the Committee recommends that the State party:**

**(a) Take measures to firmly combat hate speech and adopt a strategy to: i) address prejudices, misunderstanding and misinformation about migrants and refugees, in particular Muslim refugees; ii) raise the awareness of the population about refugee rights; and iii) promote understanding and tolerance between refugees and the local population;**

**(b) Continue to monitor the media, Internet and social networks to identify individuals or groups who disseminate ideas based on racial superiority or incite to racial hatred against foreigners, investigate such acts and if convicted, sanction such individuals or groups with appropriate penalties, as required by article 4 of the Convention;**

**(c) Ensure the effective implementation of the Guidelines for Broadcasting Language;**

**(d) Review its legislation and official documents to eliminate the use of the term "illegal immigrants" and avoid its use in the future.**

The Committee also recommends that the State party take steps to create an environment conducive to reducing the antagonism against migrants in the larger society and which facilitates the integration of migrants into society.

### Migrant workers

9. The Committee is concerned that, despite amendments to the Employment Permit System in 2012, migrant workers still face the following obstacles: a) restrictions in the number of times they can change workplace; b) restrictions to the maximum period of authorized stay in the territory of the State party; c) the impossibility of family reunification; d) the very limited possibility to change visa type, which hinders migrant workers' access to a long-term or a permanent residence permit and increases the risk of irregular stay (art. 5).

**10. The Committee recommends that the State party further amend the Employment Permit System and other legislation applicable to migrant workers to: a) facilitate family reunification; b) remove restrictions which prevent them to change their workplace; c) extend their maximum period of stay and; d) allow them to obtain a different visa type.**

11. The Committee is concerned about reports that the Labour Standards Act does not apply in the agriculture and fisheries industries and are often not applied in practice in the manufacturing, construction and livestock industries, while working conditions of migrant workers in these sectors remain inadequate. The Committee is also concerned that migrants do not benefit from the same minimum wages as Korean nationals in the fisheries industry and that the profit is reportedly shared exclusively among Korean workers. Additionally, the Committee is concerned that such migrant workers face obstacles to report physical and verbal abuses, labour exploitation and harassment to which they are exposed (arts. 1, 5 and 6).

**12. In light of its general recommendation No. 30 (2005) on discrimination against non-citizens, the Committee recommends that the State party make the necessary amendments to the legislation applicable to migrant workers to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices which may have discriminatory purposes or effect. It also recommends that the State party firmly combat discrimination between national and foreign workers, including by strengthening its labour inspections in industries employing migrant workers, without prejudice to their immigration status. It further recommends that the State party guarantee access to adequate remedies for migrant workers in cases where their rights are violated, and ensure that those responsible are held accountable and sanctioned with appropriate penalties. Finally, the Committee requests the State party to include in its next periodic report statistics on visits, violations, sanctions, remedies and penalties of the labour inspection or any other body.**

### Refugees and asylum-seekers

13. While noting the efforts undertaken by the State party to train refugee status determination officers with the United Nations High Commissioner for Refugees, to promote speedy, transparent and fair refugee status determination procedures and to receive refugee status applications at the port of entry, the Committee remains concerned that the acceptance rate for refugee status remains extremely low. It is also concerned that asylum seekers still face challenges in the appeal procedure, as the decision rejecting their asylum application is notified in two languages only, Korean and English, and does not provide comprehensive information about the steps to appeal the decision. The Committee is further concerned about reports that in some cases, refugee status determination interviews were conducted unprofessionally. Additionally, the Committee is concerned that the State party appears to prioritize the resettlement of refugees from certain regions as opposed to others (art. 5 and 6).

**14. The Committee recommends that the State party ensure that applicants for refugee status be supported by professional and competent staff throughout the refugee status determination process and have access to clear information about the process in a language they understand. The Committee also recommends that the State party continue to provide and strengthen human rights training to immigration officers and interpreters working with refugee applicants. It further recommends that the State party take measures to guarantee that the refugee status determination is conducted in**

**a professional manner. Additionally, the Committee requests that the State party ensures that any decision related to asylum-seekers and refugees is fair and based solely on protection needs instead of race, colour, national or ethnic origin.**

#### **Undocumented migrants**

**15.** The Committee is concerned that undocumented migrants continue to endure repression in the State party and there are cases of violent crackdowns by immigration and police officers that frequently result in injuries and, in some cases, in deaths. The Committee is also concerned about crackdowns conducted against the Migrants' Trade Union (MTU), in some cases leading to the deportation of union leaders. The Committee is further concerned about reported acts of repression against human rights defenders, sometimes resulting in death. Moreover, the Committee is concerned that, due to their immigration status, undocumented migrants who have been victims of human rights violations are reluctant to report them to law enforcement authorities (arts. 5 and 6).

**16.** **The Committee recommends that the State party take measures to prevent violence targeting undocumented migrant workers, including members of trade unions, and to intensify human rights training delivered to police and immigration officers, including on the protection of human rights defenders, the right to peaceful assembly, freedom of association and the right to organise. The Committee also recommends that the State party guarantee the right of all workers to participate in trade union activities without fear of deportation. The Committee further recommends that the State party take steps to ensure that victims can report violations without prejudice related to their immigration status and have access to adequate remedies. The Committee requests that the State party provide data on the number of migrants arrested and deported following crackdowns and, in cases where excessive force was used, the number of cases that have been investigated.**

**17.** The Committee is concerned that under article 63 of the Immigration Act, the detention of immigrants who cannot be immediately deported could be indefinitely extended every three months based on an authorization granted by the Ministry of Justice. It is also concerned that while undocumented immigration detainees are entitled to submit an administrative appeal to challenge their detention, these appeals are reviewed by the Ministry of Justice and not by an independent body. The Committee is further concerned that the State party's immigration legislation allows the detention of children and does not consider their best interests (arts. 2, 5 and 6).

**18.** **The Committee recommends that the State party amend article 63 of the Immigration Act to ensure that the lawfulness of the detention of immigrants who cannot be immediately deported be regularly reviewed by an independent mechanism. It also recommends that the detention of asylum seekers be considered a measure of last resort and for the shortest possible period of time and that the State party establish a time limit for the detention of migrants and prioritize the use of alternative measures to detention. The Committee further recommends that the State party avoid the detention of children/minors and amend the Immigration Act to include provisions related to the best interests of the child.**

#### **Protection of foreign women**

**19.** The Committee is concerned that migrant women who are victims of gender-based violence still lack adequate redress, despite the revised Immigration Act and the Special Rules for Victims of Sexual Violence in 2014, which improve access to justice and support for these migrant women. The Committee is also concerned that while undocumented migrant women who are victims of gender-based violence are entitled to an extension of stay during the judicial procedure, they remain at risk of deportation after their case is closed, which discourages them from reporting abuses (arts. 5 and 6).

**20.** **The Committee recommends that the State party:**

**(a) Take measures to protect migrant women from gender-based violence and ensure that those who are victims are provided with adequate legal, medical and**

psychosocial assistance, regardless of their immigration status, and take measures to ensure that the perpetrators be held accountable;

(b) Grant undocumented migrants who have been victims of gender-based violence the possibility to reside in the country after their case has been closed, and

(c) Ensure that migrant women be provided with clear information, in a language they understand, about the services and remedies available to them, as victims of gender-based violence.

#### **“Marriage migrants” and “multicultural families”**

21. The Committee is concerned that the National Basic Living Security System is only available to foreigners who married a Korean citizen (“marriage migrants”) under the conditions of being pregnant, raising a child or supporting a family member of their (Korean) spouse. The Committee is also concerned that in case of divorce, “marriage migrants” are not allowed to stay in the country unless they perform typically gendered roles such as raising an underage child or taking care of her spouse’s family member(s), or unless they are not found to be responsible for the termination of marriage. The Committee is further concerned that in cases when “marriage migrants” return to their country of origin after a divorce with custody of their children of Korean nationality, the State party fails to take adequate measures to guarantee that child support is maintained by the Korean father (art. 5).

22. **In light of its general recommendation No. 25 (2000) on gender-related dimensions of discrimination, the Committee recommends that the State party extend the National Basic Living Security System to all “marriage migrants” without conditions and take measures to ensure equivalent support and benefits to all “marriage migrants”. The Committee also recommends that the State party allows “marriage migrants” to change their residence status so that they can continue to live in the State party after the marriage is terminated, no matter what the reasons for that termination and regardless of whether they are raising a child or taking care of their spouse’s family member(s). The Committee further recommends that the State party increase its efforts to provide adequate administrative and judicial support to “marriage migrants” who return to their country of origin with their Korean children in relation to divorce proceedings and child custody.**

23. The Committee is concerned that the definition of “multicultural families” in the Multicultural Families Support Act only refers to families composed of at least one Korean citizen and thereby excludes a marriage where both partners are foreigners or among ethnic Koreans from another country. The Committee is also concerned that such an exclusion prevents migrant families, including asylum seekers and refugees, from a range of benefits and support which are specifically reserved to “multicultural families” (arts. 2 and 5).

24. **The Committee recommends that the State party review the definition of “multicultural families” and extend it to all families where at least one member is not a Korean citizen (such as families composed of two foreign partners and families composed of ethnic Koreans from another country) in order to grant the same benefits to all families, without discrimination.**

#### **Trafficking in persons**

25. The Committee is concerned that the State party still lacks a comprehensive law on human trafficking. It is also concerned about reports on the forced sexual exploitation of migrant women who entered the country with an E-6 visa as well as of those who are exempted from visa. The Committee is further concerned that despite the exemption regime, undocumented migrants, while being particularly vulnerable to human trafficking, remain reluctant to report out of fear of being expelled. Additionally, the Committee is concerned about the low percentage of those held accountable for human trafficking (arts. 2, 5 and 6).

26. **The Committee recommends the State party to:**

(a) **Adopt a comprehensive law on human trafficking, (in line with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women**

and Children), and conduct awareness-raising campaigns to inform the public about the legislation;

(b) Facilitate victims of human trafficking to lodge complaints to the authorities, provide protection to victims and grant them with a stable status of residence and basic livelihood at least until the remedy process ends;

(c) Ensure that investigations of cases of human trafficking are conducted in a professional manner and that those responsible are held accountable. The Committee recommends that the State party ensure that victims of human trafficking have access to adequate redress, including rehabilitation.

#### **Birth registration**

27. The Committee is concerned that children born of parents of foreign origin are not systematically registered, as foreigners must register with embassies of their countries of origin. The Committee is also concerned that the application procedure for citizenship for a child born out of wedlock from a Korean father and a foreign mother requires a passport issued from the mother's country of origin. As a consequence, in cases when the issuance of foreign passport is not feasible, children remain unregistered, thus having no access to a range of social benefits (arts. 1, 2 and 5).

28. **In light of its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee emphasises that birth registration is a prerequisite for the enjoyment of a wide range of human rights. It recommends that the State party take measures to ensure that all children born in the territory of the State party are registered, regardless of their nationality and residence status. The Committee also recommends that the State party eliminate barriers to Korean citizenship for children who were born of a Korean father and a foreign mother out of wedlock. The Committee further recommends that the State party ratify the 1961 Convention on the Reduction of Statelessness.**

#### **Access to education**

29. The Committee is concerned that education is compulsory only for Korean nationals, based on the Framework Act on Education. It is also concerned that while migrant children have the right to enrol in schools, admissions remain at the sole discretion of the school principals, thus resulting in the fact that some migrant children are left out of school, either because the school refused to admit them or because their parents failed to enrol them. The Committee is further concerned that the practice of enrolling migrant children in alternative schools is discriminatory and has a negative impact on their integration into the Korean society (arts. 1, 2 and 5).

30. **The Committee recommends that the State party amend the Framework Act on Education to extend compulsory education to all children without discrimination. It also recommends that the State party raise awareness, including among migrant communities and school principals, of the right of children to attend school. The Committee further recommends that the State party take measures to increase the enrolment rate of migrant children in regular schools, with a view to enhance their integration into Korean society.**

#### **Access to social security**

31. The Committee is concerned about the lower rate of enrolment of migrants in the health insurance scheme, including migrant children. It notes with concern that while the State party plans to increase the health insurance coverage of migrants, the fees will be higher for migrants than for Korean nationals. The Committee is also concerned that several categories of migrants are excluded from social security schemes and that the National Basic Living Security System is only available to refugees and certain categories of marriage migrants (those who are pregnant, raising a child or taking care of their spouse's family member(s)), thus leaving the majority of migrants without any basic social security coverage. The Committee is further concerned that according to the National Human Rights Commission

of Korea, the State party withholds support based on the Emergency Aid and Support System “when both the victim and the perpetrator of crime are migrants” (arts. 1, 2 and 5).

**32. The Committee recommends that the State party:**

(a) **Take measures to increase the health insurance coverage of migrants and ensure that all migrant children are covered by health insurance, including the children of persons who are not covered by the National Health Insurance;**

**The Committee also recommends that the State party review the amendment of its national health insurance scheme to cover all migrants at the same level of fees as Korean nationals.**

(b) **Review its social security policies to ensure that all persons living on its territory, irrespective of their national origin, receive basic social support;**

(c) **Take measures to ensure equal eligibility conditions for all to the Emergency Aid Support System without discrimination.**

33. The Committee is concerned that only nationals of States with a cross-guarantee agreement with the State party benefit from the Crime Victim Protection Act, thus excluding the majority of foreigners from relief as they originate from countries without such an agreement with the State party (arts. 1 and 6).

**34. In light of its general recommendation No. 31 (2004) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party amend its legislation to make the Crime Victim Protection Act applicable to all foreigners, including undocumented migrants who are particularly vulnerable to crimes, in order to guarantee the right of every person within its jurisdiction to an effective remedy.**

## **D. Other recommendations**

### **Ratification of other instruments**

35. **Bearing in mind the indivisibility of all human rights, the Committee urges the State party to consider ratifying those international human rights instruments that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the International Convention on the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The Committee also recommends that the State party ratify the 1961 Convention on the Reduction of Statelessness and ILO Convention No. 189 concerning Domestic Workers.**

### **Follow-up to the Durban Declaration and Programme of Action**

36. **In light of its general recommendation No. 33 (2009), the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001), taking into account the outcome document of the Durban Review Conference (April 2009), and that it report accordingly.**

### **International Decade for People of African Descent**

37. **In light of General Assembly resolution 68/237, the Committee requests that the State party include in its next periodic report precise information on the concrete measures adopted in the framework of the International Decade for People of African Descent, taking into account the Committee’s general recommendation No. 34 (2011) on racial discrimination against people of African descent.**

### **Consultations with civil society**

38. **The Committee recommends that the State party continue consulting and increasing its dialogue with civil society organizations concerned with human rights**

protection, in particular those working to combat racial discrimination, in the preparation of the next periodic report and in follow-up to the present concluding observations.

#### **Declaration under article 14 of the Convention**

39. The Committee encourages the State party to make the optional declaration provided for in article 14 of the Convention recognizing the Committee's competence to receive and consider individual communications.

#### **Amendment to article 8 of the Convention**

40. The Committee recommends that the State party ratify the amendment to article 8 (6) of the Convention adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111.

#### **Common core document**

41. The Committee welcomes the submission of the State party's common core document in 2015, but notes that the document does not fully conform to the harmonized guidelines on reporting under the international human rights treaties, in particular for reporting under international human rights treaties. (HRI/GEN/2/Rev.6, chap. I). The Committee invites the State party to revise and resubmit its core document in line with these guidelines. It urges the State party to observe the limit of 42,400 words for such documents (General Assembly resolution 68/268,).

#### **Follow-up to the present concluding observations**

42. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 16 (right of workers to organise), 28 (birth registration) above.

#### **Paragraphs of particular importance**

43. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 6 (anti-discrimination law, amendments to the Criminal Code and mechanisms to collect data on racially motivated crimes), 10 and 12 (amendments of Employment Permit System and discrimination against non-citizens in labour law), 18 (detention of immigrants), 26 (comprehensive anti-trafficking law) and 30 (compulsory education) above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement these.

#### **Dissemination of information**

44. The Committee recommends that the State party's reports be made readily available to and accessible by the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.

#### **Preparation of the next periodic report**

45. The Committee recommends that the State party submit its combined twentieth to twenty-second periodic reports, as a single document, by 4 January 2022, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.