

Written Information for the Committee on the Elimination of Racial Discrimination

Submitted by National Human Rights Commission of Korea

1. Background of submitting the written information

The Republic of Korea submitted its fifteenth and sixteenth periodic draft report (hereinafter referred to as the “draft report”) to the National Human Rights Commission of Korea (hereinafter referred to as “NHRCK”) for review in January 2011. Pursuant to Article 21 of the National Human Rights Commission Act, NHRCK reviewed the draft report and recommended its opinion and comments to the Government in February 2011.

In February 2012, the Government partially reflected the NHRCK’s opinion and comments in the fifteenth and sixteenth periodic report (hereinafter referred to as the “report”) and submitted the report to the Committee on the Elimination of Racial Discrimination.(hereinafter referred to as “Committee”)

During the eighty-first session of the Committee, the report of the Republic of Korea is scheduled for consideration from August 21 to 22, 2012. As the Committee requested the NHRCK to provide written information regarding the report, the NHRCK decided to offer written information that mainly focused on the extent to which the NHRCK’s opinion and comments were reflected in the report.

The purpose of providing this information is to foster constructive discussion between the Committee and the Korean delegation, as the NHRCK is aware of the domestic situation regarding the implementation of the International Convention of the Elimination of All Forms of Racial Discrimination (hereinafter referred to as the “Convention”) and is monitoring the process.

2. Evaluation of the draft report by NHRCK

The NHRCK’s overall comments on the Government’s draft report,

presented in February 2011, were as follows:

Of references used to report statistics and the present condition, the categorization is not appropriate to accurately capture the current state of affairs.

References used to report statistics and the present condition need to have consistency in its time frame. Considering the time for submitting the report, references also should be updated for an accurate understanding of issues related to regulations, systems, policies, and the current situation.

The draft report does not extend beyond the presentation of current facts, regulations, and policies. There is insufficient presentation of further related problems, needs for solutions, measures, and efforts.

The draft report does not fully reflect important racial discrimination cases that have occurred in the Korean society.

The English version of the report must pay particular attention to each word choice in translation to avoid making any accidental statement related to racism.

The report should review and reflect the suggestions in consultation with civil society.

3. Evaluation of the extent to which the NHRCK's comments have been reflected in the report

In February 2012, the Government partially reflected the NHRCK's opinion and comments in the report and submitted it to the Committee. The following sections discuss the NHRCK's opinion and comments that have been reflected (or not) in the report.

Sections relevant to the NHRCK

The NHRCK recommended the Government to revise related laws to ensure the right of access to education for undocumented migrant children. Grounded on this recommendation, the Government has made efforts to guarantee that all migrant children, including children of

undocumented migrants, receive primary and secondary education by amending and implementing the Enforcement Decree on the Primary and Secondary Education Act in October 2010. Therefore, regarding paragraph 115 of the report, the NHRCK recommended including this fact in the report and the recommendation was reflected.

Regarding paragraph 44 of the report, the NHRCK conducted the ‘Study on the Status of Educational Rights of Migrant Children (hereinafter referred as the “study”)’ in 2010. The study highlighted the importance of implementing various measures, such as developing various programs to strengthen migrant children’s access to public education, exempting public education officials from the duty of public servants to report undocumented aliens (the Ministry of Justice currently aims to make amendments regarding the exemption of the reporting obligation), offering the specialized Korean language education for migrant children, providing tailored education that concerns the background of migrant children, and preparing precautions against migrant children’s drop-outs. In an effort to accurately capture current issues, the NHRCK requested such measures based on the study to be included in the report. However, the recommendation was not reflected in the report.

Relevant to paragraph 85 of the report, two undocumented migrants related to a foreign workers’ union were arrested and forcefully deported by the Immigration Office in December 2007. The deportation occurred during the NHRCK’s investigation. Thus, regarding this case, the NHRCK recommended the Ministry of Justice to come up with measures to respect the rights to counsel for undocumented foreigners, revise laws and regulations to protect the rights of foreigners and enforce deportation in line with penal due procedures, and postpone the enforcement of deportation until the NHRCK finishes its investigation. The NHRCK suggested incorporating this case in the report. However, the recommendation was not reflected in the report.

Paragraph 121 of the report concerns the NHRCK’s investigation on foreigners. In January 2008, the NHRCK discovered that the head of a migration detention center did not accept a petition to the NHRCK filed by a foreigner. The NHRCK concluded the case as violating human rights and urged preventive measures in this regard. Moreover, the NHRCK requested the Ministry of Justice to rectify the unlawfully entering the working places where migrants are working and to stop exerting excessive force in October

2008. Therefore, the NHRCK suggested including these cases in the report. However, the recommendation was not reflected in the report.

Important case relating to racial discrimination

In its review of the thirteenth and fourteenth reports, the Committee commented that the Republic of Korea had not imposed criminal penalties on racial discrimination. Related to such racial discrimination, the Bucheon branch of the Incheon District Court convicted a South Korean for making racially discriminatory remarks against a foreigner in a bus in 2009. The Court held that the foreigner felt publicly insulted by racist remarks. Thus, the NHRCK recommended including the case in the report. However, the recommendation was not reflected in the report.

Sections relevant to the present condition, regulations, and policies

Paragraph 8 of the report discussed the constant decrease in the number of irregular migrants. In this regard, the NHRCK recommended supplementing that one reason for such decrease is due to the Korean government's strengthened crackdown process and deportation as a result of such process in the report. The NHRCK suggested that this information may provide insight into the current state of irregular migration as well as facilitate constructive discussions with the Committee. However, the recommendation was not reflected in the report.

Paragraph 9 of the report presented the fact that the number of Vietnamese who married a Korean citizen was significantly high and that the number of female marriage migrants far exceeds the number of male marriage migrants. The NHRCK explained such trend as a result of international marriage, arranged by international marriage agencies or local governments that fund the international marriage in rural areas with the majority of applicants being male. The NHRCK suggested including this information in the report. However, the recommendation was not reflected in the report.

With regard to paragraph 15 of the report, the majority of 36 recognized refugees, listed in 2008, were recognized by the judicial judgment on the applicant's filing of administrative lawsuit, challenging the denial of refugee status rendered by the Ministry of Justice. Moreover, the sharp increase in the number of recognized refugees by the Ministry of

Justice in 2009 was resulted from the accelerated procedures for the recognition of refugee status to resolve the delay in the examination process. Therefore, the NHRCK recommended modifying the statement, “Since the establishment of the Nationality and Refugee Division ... the number of recognized refugees ... increased significantly” as the current state was not accurately delivered. However, the recommendation was not reflected in the report.

Regarding paragraph 19 of the report, the NHRCK recommended including the fact that the Constitutional Court differentiates between the rights of nationals of the Republic of Korea and foreigners’ rights in order to provide accurate information on the judicial measures related to the implementation of the provisions of the Convention. However, the recommendation was not reflected in the report.

With regard to paragraph 25 of the report, the NHRCK recommended including that the Constitutional Court argues that only Korean nationals are entitled to exercise not only political rights but also fundamental social rights. However, the recommendation was not reflected in the report.

Regarding paragraph 39 of the report, the term “Foreigners Residing in the Republic of Korea” in the Framework Act on Treatment of Foreigners Residing in the Republic of Korea referred only to those foreigners legally residing in Korea. As civil society and experts have strongly asserted that the Act does not display the large number of undocumented migrants residing in the Republic of Korea, the NHRCK requested including the argument in the report. However, the recommendation was not reflected in the report.

Relevant to paragraph 50 of the report, there has been a growing public sentiment that anonymity on the Internet may develop negative attitudes toward foreigners. In this regard, the NHRCK recommended that the report emphasize the importance of grasping the Government’s attention in order to accurately address the problems. However, the recommendation was not reflected in the report.

Relevant to paragraph 54 of the report, the Immigration Control Act states that a foreigner, who is deemed to have committed any violation of the Immigration Control Act, shall not refuse to respond without a probable

cause, unlike the Act on the Performance of Duties by Police Officers. The immigration officer only needs to present a certificate indicating one's authority. Therefore, in order to provide accurate information, the NHRCK recommended including the fact that arbitrary investigations concerning foreigners and Korean nationals are different. However, the recommendation was not reflected in the report.

With regard to paragraph 76 of the report, the NHRCK delivered its opinion that the report should indicate the fact that the establishment of the labor union of foreign workers is currently being disputed before the Court, after the return of an application on establishment of the union in 2007. However, the recommendation was not reflected in the report.

Regarding paragraph 77 of the report, the applicants for refugee status can seek a work permit if no decision is issued within one year from the date of application as stated in the revised Immigration Control Act in 2008. However, according to the revised Act, the applicants for refugee status are limited to those in the waiting period from application, while excluding others, who requested for an appeal or filed lawsuit challenging the denial of refugee status. That is, applicants and their families are left destitute without means of support during the procedure of examination on recognition of refugee. Thus, the NHRCK recommended that the report include this matter. However, the recommendation was not reflected in the report.

With regard to paragraph 80 of the report, a fair and due procedure is needed to strengthen support for the applicants for refugee status in the procedure of examination on recognition of refugee. In this vein, the NHRCK delivered its opinion that the report should indicate whether the increase in manpower is adequate, whether the interpreter service is sufficiently offered to the applicants, and whether translation services on the documents in the application process is properly offered. However, the recommendation was not reflected in the report.

Regarding paragraph 92 of the report, Korean international marriage agencies are in operation in countries, including Vietnam and Cambodia, where commercialized international matchmaking is prohibited by law. Therefore, the NHRCK recommended indicating the need for the Government's intervention in the report in an effort to provide accurate information on the problems related to regulations, systems and the current

situation as well as demonstrate the Government's effort on this matter. However, the recommendation was not reflected in the report.

Regarding paragraph 100 of the report, the fact that foreign women, who enter the country with entertainment visas (E-6) from Southeast Asian countries, often work in the sex industry is widely known. As civil society strongly argued that this situation could lead to trafficking of foreign women, the NHRCK recommended incorporating the Government's countermeasures for the prevention of human trafficking in the report. However, the recommendation was not reflected in the report.

Regarding paragraph 129 of the report, the Multicultural Families Support Act, established in 2008, used the term 'multicultural families' in referring to foreigners who marry Korean nationals or naturalize. With this respect, civil society strongly criticized that the Government's support usually concerned families of married immigrants and their children. Therefore, the NHRCK recommended including this matter in the report as it revealed problems related to regulations, systems, policies, and practices. However, the recommendation was not reflected in the report.

Correction of statistical data, status updates, regulations and factual information

With regard to paragraph 10 and paragraph 84 of the report, the NHRCK recommended updating statistical data and its recommendation was reflected in the report.

As recommended by the NHRCK, the report modified the following paragraphs: paragraph 20(supplemented laws), paragraph 50(modified inappropriate description), paragraph 64(corrected the content of the law), paragraph 67(used proper terminology related to international law), paragraph 71(used proper terminology related to the law and corrected the content), paragraph 91(corrected the content related to the law), and paragraph 111(added the fact that the law was amended and implemented)

4. Conclusion

The NHRCK appreciates that the report partially reflected its

recommendations. However, the majority of changes occurred with relation to the presentation of specific statistical data and status updates, and the modification and correction of laws and factual information. That is, the NHRCK's other suggestions to use accurate descriptions in discussing the current state as well as to change or add directions and problems related to policies, systems, laws and regulations in an effort to facilitate constructive discussions with the Committee, were mostly not reflected in the report.

Henceforth, the Government needs to reflect the NHRCK's recommendations more in the following reports.