



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

**Excerpts of Concluding Observations and Recommendations from
UN Treaty Monitoring Bodies and from reports by UN Special Procedures
Mandate holders**

Universal Periodic Review:

REPUBLIC OF KOREA

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations and the Human Rights Council's Special Procedures' Reports, relating to issues of interest and persons of concern to UNHCR in the Republic of Korea.

1. Treaty Body Reports

CRC/C/KOR/CO/3-4

COMMITTEE ON THE RIGHTS OF THE CHILD, 58th Session

6 October 2011

19. The Committee recommends that the State party:

f) Define strategic budgetary lines for children in disadvantaged or vulnerable situations that may require affirmative social measures (for example, children of refugees or migrant workers) and make sure that those budgetary lines are protected even in situations of economic crisis, natural disasters or other emergencies;

Non-discrimination

28. The Committee regrets that the draft Anti-discrimination Act of the State party was discarded without consideration at the National Assembly in December 2007 and that the legislative definition of discrimination does not contain an express prohibition of discrimination based on sexual orientation and nationality. Furthermore, the Committee is concerned at the multiple forms of discrimination that continue to persist in the State party, including those against Children from multi-cultural or migrant backgrounds or who have come from the Democratic People's Republic of Korea; refugee children; children with disabilities; and, single mothers, particularly those who are adolescent, including with regard to their preclusion from State support measures.

29. The Committee urges the State party to:

- a) Expeditiously enact anti-discrimination legislation with the objective of adopting legislation that is in full compliance with article 2 of the Convention;**
- b) Take all necessary measures, including awareness-raising and public education campaigns, to eradicate and prevent discriminatory attitudes towards children in vulnerable or minority situations;**

c) Provide adequate support to single mothers, including those who are adolescent.

Best interests of the child

32. The Committee is concerned about the lack of explicit reference to the principle of the best interests of the child in the legislation of the State party concerning children and the infrequent application of this principle in judicial and administrative decisions, as well as policies and programmes relevant to children.

33. The Committee urges the State party to strengthen its efforts to ensure that the principle of the best interests of the child is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings as well as in all policies, programmes and projects relevant to and with an impact on children. The legal reasoning of all judicial and administrative judgments and decisions should also be based on this principle.

Birth registration

36. The Committee is concerned that the current legislation and practice in the State party are inadequate in providing for universal birth registration by the biological parents of children in all situations. In particular, the Committee is concerned that birth registrations can be undertaken by adoptive parents or persons holding public authority, resulting in the occurrence of de facto adoptions in absence of proper judicial oversight, including in situations concerning single adolescent mothers. The Committee is further concerned that birth registration is not practicably or consistently available for persons in refugee, asylum-seeking or irregular migration situations.

37. In accordance with article 7 of the Convention, the Committee urges the State party to undertake measures to ensure that birth registration is available to all children regardless of their parents' legal status and/or origin. In doing so, the Committee further urges the State party to ensure and verify that the registration accurately indicates the biological parents of the child.

Violence against children, including abuse and neglect

46. With reference to the United Nations Secretary-General's Study on violence against children (A/61/299), the Committee encourages the State party to:

c) Cooperate with and seek technical assistance from the Special Representative of the Secretary General on violence against children, UNICEF, the Office of the High Commissioner for Human Rights (OHCHR) and the World Health Organization (WHO), and other relevant agencies, inter alia, ILO, UNESCO, UNHCR, UNODC, as well as NGO partners.

Asylum-seeking and refugee children

64. The Committee is concerned that legislation in the State party does not provide for civil status documentation for refugee and asylum-seeking children born in its territory and that this vulnerable situation of children of asylum seekers and humanitarian status holders is exacerbated by their parents having restricted access to the labour market and the lack of livelihood assistance. The Committee is also concerned about the absence of programmes for assisting the social integration of refugees, including the limited access to education for children of refugees and asylum seekers due to their admission to schools being subject to the immigration status of their parent(s). The Committee is further concerned at the lack of educational programmes or training on the right of refugees provided for officials who are in direct contact with refugees or asylum seekers.

65. The Committee urges the State party to provide registration for all children, including children of refugees and asylum seekers, born within its territory. It also encourages the State party to provide sufficient financial and social assistance to families of asylum seekers and humanitarian status holders and ensure that children in such situations are provided with the same access to education as State party nationals.

Furthermore, the Committee urges the State party to provide public officials, particularly those being in contact with refugees or asylum seekers, with special training on the right of refugees.

66. Furthermore, the Committee is deeply concerned that refugee, asylum-seeking and unaccompanied children can be subject to detention under the immigration legislation of the State party. The Committee further notes with concern that when such detention occurs, it is in facilities that are inappropriate for children and that there are no provisions to ensure the periodic and timely review of such detention for which there are no statutory time limits when the execution of a repatriation order is pending.

67. The Committee urges the State party to refrain from the detention of children in a refugee, asylum-seeking or unaccompanied situation. In cases of repatriation, it urges the State party to ensure that children in such situations are accommodated in facilities which, to the greatest extent possible, are sensitive of and respectful of their rights and subject to timely periodic review and clearly defined time limits.

Children in situations of migration

68. The Committee welcomes the adoption of the Law concerning Foreigners in Korea in 2007, which facilitates integration of foreigners to life in Korea, as well as amendments to the Decree on Enforcement of the Primary and Secondary Education Act in 2008 which allows children of illegal immigrants to enter and transfer between schools. However, the Committee remains concerned that the school attendance rate of migrant children is still low. The Committee is further concerned that the State party's legislation requiring parents to ensure that their children attend elementary and middle school does not apply to parents who are not its nationals.

69. The Committee recommends that the State party develop and adopt policies and strategies to ensure access to and actual receipt of education for children of migrants, including children of illegal migrants. The Committee also encourages the State party to ratify the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and bring its domestic legislation in compliance with its provisions.

CEDAW/C/KOR/CO/7

COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, 49th Session

1 August 2011

Violence against women

20. While taking note of the various measures in place to protect victims of sexual violence and domestic violence, such as the launch of an emergency hotline and the existence of state run counselling centres and shelters for victims of violence, including specific centres for foreign wives who are victims of domestic violence, the

Committee is concerned that the low rate of reported cases does not correspond with the actual number of cases of domestic violence occurring in the State party, despite the obligation for education and health care professionals, as well as for social workers to report such cases, in conformity with article 4 of the Special Procedure Act on the Punishment of Domestic Violence. It is also concerned at the Criminal Code provision requiring adult victims of sexual violence to file a complaint in order to prosecute their cases and the consequent low level of victims who present charges, the low rates of prosecutions and convictions. The Committee also expresses its concern at the limited number of women police officers available to deal with cases of sexual and domestic violence. It reiterates its regret over the fact that marital rape is not criminalized in the State party's legislation but only in case law.

21. The Committee calls upon the State party to:

- a) Take the necessary measures to encourage the reporting of domestic and sexual violence cases, including by ensuring that education professionals, health care providers and social workers, are fully familiar with relevant legal provisions and are sensitized to all forms of violence against women and are capable of complying with their obligation to report cases;**
- b) Review and amend the Criminal Code and other relevant legislation to remove provisions which require adult victims of sexual violence to file a complaint in order to have their cases prosecuted;**
- c) Take measures to increase the number of women police officers and steps to enhance their capacity to deal with cases of violence against women in a gender sensitive manner;**
- d) Conduct awareness raising campaigns for women, including foreign women to make them aware of their rights and avenues of redress, including measures available for protection and prevention against domestic violence;**
- e) Take all legislative measures necessary to criminalize marital rape, defined on the basis of lack of consent of the wife;**
- f) Collect data and conduct research on the prevalence, causes and consequences of all forms of violence against women, including violence in the domestic sphere, in line with the Committee's general recommendation No. 19 (1992), and use such data as the basis for further comprehensive measures and targeted interventions. It invites the State party to include statistical data and the results of measures taken in its next periodic report.**

Trafficking and exploitation of prostitution

22. The Committee is concerned that the State party lacks a comprehensive statute dealing with trafficking of human beings and reiterates its concern about the persistence of trafficking and exploitation of prostitution and the lack of data on these phenomena. It is particularly concerned about women migrant workers, who enter the country under an E-6 entertainment work visa, and foreign wives, who enter the country through international marriage brokerage agencies, since information received indicates that many of these women fall victim to trafficking and exploitation of prostitution. The Committee is also concerned that even though women engaged in prostitution in the State party may have access to counseling centres, they must prove their status as victims in order not to be prosecuted for the offence of prostitution. Further, the Committee is concerned that the State party has signed but not ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

23. Reiterating its recommendation to fully implement article 6 of the Convention (see CEDAW/C/KOR/CO/6), the Committee urges the State party to:

(a) Adopt a comprehensive law on trafficking in human beings and amend relevant legislation, such as the Criminal Code, to include trafficking as an offence;

(b) Take measures to enhance its current initial screening procedure of entertainment companies who recruit foreign women and to establish an effective in situ monitoring mechanism of the establishments where women under an E-6 visa work to ensure that they are not being subjected to exploitation of prostitution;

(c) Take legislative and other measures to ensure effective implementation of the Marriage Brokerage Control Act, in order to protect foreign women against exploitation and abuse by marriage brokers and traffickers and by their spouses;

(d) Review its prostitution policy and relevant legislation, including the Criminal Code, with a view to decriminalizing women's involvement in prostitution and ensuring that women involved in the sex trade are not punished;

(e) Take further measures to protect and support women and girls who are victims of trafficking and to address the root cause of trafficking;

(f) Take appropriate measures to suppress the exploitation of prostitution of women, including by discouraging the demand for prostitution, and to provide rehabilitation and economic empowerment programmes for women and girls exploited in prostitution, thereby facilitating their reintegration into society;

(g) Ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

Nationality

26. The Committee acknowledges the written and oral information provided on the requirements to be eligible to acquire Korean nationality. However, it is concerned at the difficulties foreign women married to Korean men may face to be granted Korean nationality, if they do not comply with the prerequisite of being supported by their husbands to file a naturalization application and if they do not have children.

27. The Committee recommends that the State party revise its legislation governing nationality with a view to remove all discriminatory provisions relating to the requirements to acquire Korean nationality, in accordance with article 9 of the Convention.

E/C.12/KOR/CO/3

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 43rd Session

17 December 2009

Positive aspects

4. The Committee notes with appreciation the positive efforts made by the State party in promoting the implementation of social, economic and cultural rights. The Committee welcomes in particular:

[...]

(e) The changes to the Immigration Control Act to **grant humanitarian status holders the right to work and provide asylum-seekers with the possibility of applying for a work permit;**

10. The Committee is concerned about the difficulties faced by applicants for refugee and asylum status because of the long waiting periods while their applications are processed. The Committee remains concerned about the extremely low rate of recognition of refugees and asylum-seekers by the State party, and by the still lengthy status recognition process.

The Committee recommends that the State party make more efforts to shorten waiting periods for the recognition of refugee and asylum-seeker status by:

(a) Providing adequate resources for the implementation of the revised Immigration Control Act and relevant enforcement decree, including by increasing the number of immigration officers;

(b) Standardizing asylum procedures;

(c) Systematically collecting data on refugees and asylum-seekers. The Committee requests the State party to include information on the measures taken in this regard, including statistics on the granting of refugee and asylum status, in its next periodic report.

25. The Committee is concerned that, notwithstanding the fact that State party legislation penalizes trafficking not only for prostitution or sexual exploitation but for any purpose of profit, a high number of women and children continue to be trafficked from, through and within the country for the purposes of sexual exploitation and forced labour, especially women workers originally arriving on an E-6 visa (entertainment). The Committee is particularly concerned about the low rate of prosecution and conviction of traffickers (art. 10).

The Committee recommends that the State party intensify its efforts to combat trafficking in human beings, especially women and children, for any purpose, by, inter alia:

(a) Strengthening the monitoring of issuances of E-6 visas;

(b) Supporting programmes and information campaigns to prevent trafficking;

(c) Providing mandatory training for law enforcement officials, prosecutors and judges on anti-trafficking legislation;

(d) Increasing the provision of medical, psychological and legal support to victims;

(e) Ensuring an effective complaint mechanism for migrant workers, regardless of their immigration status;

(f) Fully investigating cases of human trafficking and ensuring justice.

CRC/C/OPSC/KOR/CO/1

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY, 48th Session

2 July 2008

Data collection

7. The Committee welcomes the statistical data provided in the State party report and the replies to the list of issues, including data on child victims of sexual abuse,

children involved in prostitution, and the prosecution of offenders, but regrets that such data are not disaggregated by sex or age. The Committee also regrets that no statistical information is available on children victims of trafficking, although according to information available before the Committee, trafficking in children is a problem that affects the State party. The Committee is also concerned about the apparent lack of coordination among government ministries with regard to data collection and analysis.

8. The Committee recommends that a comprehensive data collection system be established within a central governmental body, in order to ensure that data on child prostitution and child pornography, disaggregated, inter alia, by age and sex, are systematically collected and analysed, as they provide essential tools for measuring policy implementation. Data should also include information on the number of prosecutions and convictions for such offences, disaggregated by the nature of the offence.

45. Furthermore, the Committee regrets not having received sufficient clarification by the State party whether the recovery and rehabilitation programme for victims of sexual exploitation which subjects them to “corrective education” for over four weeks in a selected institution is in fact voluntary, and if not, whether it is a criminal or civil procedure. The Committee is particularly concerned that such a programme may, in fact, hamper the psychological recovery of child victims of sexual exploitation.

46. The Committee urges the State party to ensure that adequate and appropriate administrative measures, social policies and programmes are in place to protect all children who are vulnerable to the offences referred to in the Optional Protocol and to allow for the full physical, psychological, and social recovery of child victims, with their full participation. In this connection, the Committee recommends that the State party provide rehabilitation measures to boys as well as to girls, in a multi-lingual format, in particular, taking into account the most common countries of origin of child victims of trafficking and sexual exploitation. The Committee recommends that the State party ensure that such programmes are effectively monitored and evaluated regularly, with the active participation of children.

CRC/C/OPAC/KOR/CO/1

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT, 48th Session

27 June 2008

Dissemination and training

7. The Committee, while welcoming various initiatives taken by the National Human Rights Commission of Korea (NHRCK) to promote human rights education in the school curricula and for the public at large, regrets that no information has been provided by the State party with respect to dissemination of information and training related to the issues covered by the Optional Protocol, including in the curricula of military schools and in the pre-deployment training programmes for peace-keeping personnel.

8. The Committee recommends that the State party, in the light of article 6, paragraph 2, ensure that the principles and provisions of the Optional Protocol

are included in the curricula of military schools and widely disseminated to the general public and State officials, as well as military and peace-keeping personnel, by appropriate means, including the media.

9. It also recommends that the State party develop systematic awareness-raising, education and training programmes on the provisions of the Optional Protocol for all relevant professional groups working with and for children, including those working with asylum-seeking and refugee children coming from countries affected by armed conflict, such as health personnel, social workers, teachers, lawyers, judges and immigration officials.

Measures adopted to protect the rights of child victims

16. While noting the position of the State party that children coming from the Democratic People's Republic of Korea are not considered as asylum-seeking children, and that no case of unaccompanied children arriving in the State party has yet been reported, the Committee remains concerned about the absence of an identification mechanism for asylum-seeking and refugee children who may have been recruited or used in hostilities, and regrets the lack a specific strategy for their physical and psychological recovery and social reintegration. The Committee also notes with concern the extremely low rate of asylum recognition by the State party, including for asylum-seeking children coming from conflict areas.

17. The Committee recommends that the State party:

(a) Introduce a mechanism that allows for systematic identification at the earliest possible stage of refugee and asylum-seeking children entering the Republic of Korea who may have been recruited or used in hostilities abroad;

(b) Carefully assess the situation of these children and provide them with immediate, culturally sensitive and multidisciplinary assistance for their physical and psychological recovery and their social reintegration, in accordance with article 6(3) of the Optional Protocol;

(c) Systematically collect data on refugee and asylum-seeking children within its jurisdiction who may have been recruited or used in hostilities in their home country;

(d) Include information on measures adopted in this regard in its next report.

18. The Committee further recommends that the State party consider the particular vulnerabilities of children coming from the Democratic People's Republic of Korea who may have been recruited or used in hostilities, and grant them special protection and assistance measures, taking into account article 6(3) of the Optional Protocol and the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin. The Committee also urges the State party to take all necessary measures to ensure that children coming from the Democratic People's Republic of Korea who may have been recruited or used in hostilities and who seek the protection of the State party are not forcibly returned.

2. Reports of Special Procedures mandate holders

A/HCR/4/24/Add.2

HUMAN RIGHTS COUNCIL, 4th Session

Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante
14 March 2007

Conclusions

53. Historically, the Republic of Korea saw itself as a mono-ethnic society, with a small Chinese minority that has blended into the wider society very smoothly over the years. With the economic growth, and globalization, the Republic of Korea has become as of the eighties an attractive country for migrants. The Koreans authorities, started to initiate programmes to organize the migration flow without necessarily giving the required attention to the protection of the human rights of migrants.

55. Migrant women are also particularly vulnerable to multiple violations based on their gender and their status. They may become victims of violence at home, within their families, in their hosting communities and as foreign migrant workers at the workplace.

56. The situation of undocumented children of migrants is another matter of concern. Children's rights to education are not addressed appropriately in accordance with relevant human rights standards, including the Convention on the Rights of the Child.

Recommendations

58. The Special Rapporteur encourages incentives for voluntary return rather than expulsion in accordance with procedural guarantees against forced return provided for in the International Convention on Civil and Political Rights (ICCPR), Article 13.

With regard to female migrants

62. The Korean Government should mitigate the requirements to apply for naturalization for the victims of domestic violence. Migrant women who have a child with Korean men should be entitled to residency rights regardless of their marriage status.

63. The Government should create systematic arrangements to provide foreign spouses with Korean-language training and cultural integration programmes upon their arrival in the Republic of Korea. The Government should provide health-related information to foreign wives in a language they understand.

64. In the case of domestic violence, the Government should provide a legal system to protect the foreign spouse. Foreign victims must have access to adequate interpretation facilities in police stations and the courts. The Korean Government must expand translation services through the Women's Emergency Hotline.

With regard to migrant children

66. As foreseen in the CRC, the best interests of the child should govern all regulations or decisions taken to govern their status. In particular, all efforts

should be made to allow them to enjoy all their human rights notably with regard to access to education and health services.

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