

COMMITTEE ON THE RIGHTS OF THE CHILD

Forty-eighth session

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 12(1) OF THE OPTIONAL PROTOCOL TO THE CONVENTION
ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD
PROSTITUTION AND CHILD PORNOGRAPHY**

Concluding observations: Republic of Korea

1. The Committee considered the initial report of the Republic of Korea (CRC/C/OPSC/KOR/1) at its 1323rd meeting (see CRC/C/SR.1323), held on 23 May 2008, and adopted at its 1342nd meeting, held on 6 June 2008, the following concluding observations.

Introduction

2. The Committee welcomes the submission of the State party's initial report, as well as the replies to its list of issues submitted in a timely fashion. However, the Committee regrets that the State party's delegation lacked some information necessary for a constructive dialogue.
3. The Committee reminds the State party that these concluding observations should be read in conjunction with its previous concluding observations adopted on the State party's second periodic report on 15 January 2003 (CRC/C/15/Add.197) and with the concluding observation adopted on the initial report under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/KOR/CO/1) on 6 June 2008.

I. General Guidelines

A. Positive aspects

4. The Committee notes with appreciation the adoption of the following legislative and other measures:
 - a) The *Juvenile Protection Law Against Sexual Exploitation*, in 2000, as amended;

- b) The *Act on the Punishment of Procuring Prostitution and Associated Acts*, in 2004;
 - c) The *Act on the Prevention of Prostitution and Protection of its Victims*, in 2004;
 - d) The amendment to the civil code, raising the minimum age of marriage to 18; and
 - e) The *Comprehensive Measures on Harmful Environment for Youth*.
5. The Committee also welcomes the establishment of:
- a) The Child Rights Monitoring Centre, in 2006; and
 - b) The Hotline 1366, in 2001, pursuant to the *Act on the Punishment of Sexual Crimes and Protection of its Victims*.
6. The Committee further commends the State party's accession to or ratification of:
- a) The Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women, in 2006; and
 - b) The United Nations Convention Against Transnational Organized Crime, in 2000;
 - c) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, in 2000;
 - d) The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crimes, in 2000.

II. Data

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 on the prosecution of the offenders, but regrets that such data are not disaggregated by sex or age. The Committee also regrets that no statistical information is available on child victims of trafficking, though 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.**

III. General measures of implementation

Legislation

9. The Committee regrets that, while the Optional Protocol has the identical force and effect of law as the domestic legislation in force, national legislation is not fully in compliance with the provisions of the Protocol, for example, in the areas of child prostitution and child pornography.

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

- a) **Take the necessary measures to fully harmonise its legislation with the provisions of the Optional Protocol; and**
- b) **Provide systematic training to judges and lawyers on the provisions of the Optional Protocol.**

National Plan of Action

11. While noting the adoption of the Five-Year Basic Plan for Youth Protection (2002–2006) and the National Plan of Action for Protection and Promotion of Human Rights (2007-2011), the Committee is concerned that neither of these action plans contains strategies and programmes specifically related to the Optional Protocol.

12. **The Committee recommends that the State party incorporate the implementation of the specific obligations arising from the Protocol in its national strategies and programmes in consultation and cooperation with relevant stakeholders, and taking into account the Declaration and Agenda for Action and the Global Commitment adopted at the First and Second World Congresses against Commercial Sexual Exploitation of Children (Stockholm 1996; Yokohama 2001).**

Coordination and evaluation

13. While welcoming the establishment of the Child Policy Coordinating Committee under the Office of the Prime Minister in 2004 and of the Child Rights Monitoring Centre as a three-year pilot project in 2006, the Committee remains concerned about the absence of a functional permanent mechanism to enable effective coordination between the various institutions involved in the implementation of the Optional Protocol.

14. **The Committee recommends that the State party ensure effective coordination in the implementation of the Optional Protocol. Furthermore, the Committee recommends that the State party provide the Child Rights Monitoring Center with sufficient human and financial resources to enable it to be fully operational, and consider making it a permanent mechanism responsible for the evaluation and the implementation of the Optional Protocol.**

Dissemination and training

15. The Committee notes with appreciation the State party's efforts to raise awareness on issues covered by the Optional Protocol, including the organization of numerous information campaigns and seminars related to child prostitution and child pornography. However, the Committee remains concerned that relevant groups of professionals are not systematically provided with adequate training in all areas of the Optional Protocol and that the awareness about the Optional Protocol remains low among these groups of professionals as well as the public at large.
16. **The Committee recommends that the State party allocate adequate and earmarked resources for the development of training materials and courses for all relevant groups of professionals throughout its territory, including police officers, public prosecutors, judges, medical staff and other professionals involved in the implementation of the Optional Protocol.**
17. **Furthermore, in light of article 9, paragraph 2, of the Protocol, the Committee recommends that the State party make the provisions of the Optional Protocol widely known, particularly to children and their families, through, *inter alia*, school curricula and long-term awareness raising campaigns, including the media and training about the preventive measures and harmful effects of all offences referred to in the Optional Protocol. In this regard, the participation of the community and, in particular, children, should be encouraged.**

Allocation of resources

18. The Committee regrets that no specific information has been provided by the State party on the budget allocated for the implementation of the different areas covered by the Optional Protocol.
19. **The Committee encourages the State party to ensure that adequate resources are allocated for the implementation of all areas covered by the Protocol, by providing in particular, the necessary human and financial resources for the development and implementation of programmes aimed at the prevention, protection, physical and psychological recovery and social reintegration of victims, as well as the investigation and prosecution of the offences covered by the Protocol.**

Independent institutions

20. The Committee welcomes the decision of the State party taken on 20 February 2008 to maintain the independence of the National Human Rights Commission of Korea (NHRCK), and notes with appreciation that the NHRCK has competence to monitor violations of individual rights of children by state agents. However, the Committee regrets the lack of a child right division

within the NHRCK that allows for adequate monitoring and promotion of the Optional Protocol.

21. **The Committee, reiterating what it previously stated in its concluding observations upon the State party's second periodic report (CRC/C/15/Add.197, para. 18), recommends that the State party continue to ensure that the NHRCK is provided with the necessary human and financial resources that would enable the Commission to establish a child rights division in order to adequately monitor and promote the Optional Protocol and undertake awareness raising measures with a view to achieving increased visibility and accessibility for children.**

IV. Prevention of the sale of children, child prostitution and child pornography (art. 9, paras. 1 and 2)

Measures adopted to prevent offences prohibited under the Protocol

22. The Committee welcomes initiatives for preventive action, such as the promotional materials on laws banning child prostitution and child pornography, however regrets that documentation and research are lacking on the root causes, nature and extent of sexual exploitation of children, including prostitution and pornography.
23. **The Committee encourages the State party to carry out further documentation and gender-sensitive research on the root causes, the nature and the extent of the sexual exploitation of children, including prostitution and pornography, in order to develop relevant prevention measures, in collaboration with, *inter alia*, UNICEF, ILO, IOM and civil society organisations. The Committee also recommends that the State party allocate earmarked budget resources for preventive measures.**
24. The Committee notes the initiative "John School" introduced in 2004 as part of the Sex Trafficking Prevention Plan of the Task Force for the Elimination of Prostitution, whereby men who have used a child for prostitution or are suspected of having done so, are sentenced to mandatory rehabilitation programme. The Committee is concerned that the fact that perpetrators are exempt from receiving a criminal sentence if they participate in the programme may weaken the deterrent effects of the existing law criminalising solicitation of prostitutes, particularly of child victims of prostitution.
25. **The Committee urges the State party to continue, and strengthen its efforts to rehabilitate offenders of sexual crimes stipulated in the Optional Protocol while encouraging strict application and enforcement of existing legislation criminalising the use of children for the purpose of prostitution.**
26. The Committee is concerned that, "the Republic of Korea has been listed as one of the violators of human rights of children in island nations in the South Pacific such as Kiribati" (para. 74, State party report). While noting that the Special Team to Combat Overseas Prostitution has been established in partnership between the Prosecutor's Office and the National Police Agency,

the Committee regrets the lack of concrete strategies to combat child sex tourism.

27. **The Committee recommends that the State party undertake further measures to prevent sex tourism, in particular by earmarking additional funds for public campaigns for this purpose. The State party should also, through relevant authorities, continue its cooperation with the tourism industry, NGOs and civil society organisations in order to promote responsible tourism by the dissemination of the Code of Conduct of the World Tourist Organisation among employees within the tourism industry as well as awareness raising campaigns for the general public.**
28. The Committee notes with appreciation efforts made by the State party to address cyber criminality, in relation to offences referred to in the Optional Protocol. However, it remains concerned by the lack of a clear and comprehensive strategy to tackle sexual crimes referred to in the Optional Protocol being committed via the Internet or other forms of information technology, including mobile phones.
29. **The Committee recommends that the State party includes measures within the existing plans of action to address cyber crimes as they relate to the Optional Protocol, with the participation of children, and strengthen its awareness-raising efforts among the general public with a view to informing children and their parents about the safe use of the Internet.**

V. Prohibition of the sale of children, child pornography and child prostitution and related matters (arts. 3; 4, paras. 2 and 3; 5; 6 and 7)

Existing criminal or penal laws and regulations

30. The Committee commends the State party for its efforts to strengthen the legal protection for children against sale of children, child prostitution and child pornography, including, *inter alia*, the enactment of the *Juvenile Protection Law Against Sexual Exploitation* in 2000 and the *Prevention of Prostitution and Protection of its Victims Act* and the *Punishment of Soliciting Prostitution Act* in 2004. Nevertheless, the Committee is concerned that the offences contained in articles 2 and 3 of the Optional Protocol are not all adequately covered under the State party's legislation. In particular, the Committee is concerned that:
 - a) While offences relating to the sale of, and trafficking in persons are covered by article 324 of the Criminal Law and article 113 of the Labour Standards Law, the State party's Criminal Code does not contain a specific provision outlawing trafficking in persons which criminalises child trafficking regardless of the use of a deceptive scheme, force, or other form of coercion, and regardless of the provision of money or other forms of remuneration;
 - b) The definition of child prostitution contained in the *Juvenile Protection Law Against Sexual Exploitation* (2000) may not cover sexual acts that

do not involve penetration, or cases whereby the child him/herself receives the payment for the sexual act;

- c) The provision in the Criminal Code on procurement of prostitutes does not systematically apply to all cases of use of children for prostitution;
- d) That the *Prevention of Prostitution and Protection of its Victims Act* treats victims of prostitution, including children, as offenders, in contradiction to the *Act on the Punishment of Procuring Prostitution and Associated Acts* which specifically stipulates that victims of prostitution are not subject to punishment (article 6); and
- e) The definition of child pornography, as stipulated in article 2.3 of the *Juvenile Protection Law Against Sexual Exploitation* (2000), does not cover mere possession of child pornography and simulated explicit sexual activities or sexual representation of the sexual parts of a child for primarily sexual purposes, as required by article 2 (c) of the Optional Protocol.

31. **The Committee recommends that the State Party take necessary measures to bring its domestic legislation in full compliance with articles 2 and 3 of the Protocol, including the provision on the definition of child pornography (articles 2(c)). In particular, the Committee recommends that the State party:**

- a) **Ratify the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the *UN Convention against Transnational Organized Crime* and take the necessary steps to adequately define and criminalize the sale of, and trafficking in, children in accordance with the Protocol;**
- b) **Amend the definition of child prostitution contained in the *Juvenile Protection Law Against Sexual Exploitation* (2000) in order to strengthen the protection afforded to child victims of prostitution;**
- c) **Criminalize all acts that constitute offering, delivering or accepting, by whatever means, a child for the purpose of sexual exploitation of the child; and**
- d) **Amend the relevant legislation in order to ensure that child victims of prostitution are not subject to punishment;**
- e) **Amend the *Juvenile Protection Law Against Sexual Exploitation* (2000) in order to include, in its definition of child pornography, simulated explicit sexual activities or sexual representation of the sexual parts of a child for primarily sexual purposes, as required by article 2 (c) of the Optional Protocol; and**
- f) **Criminalize possession of child pornography without requiring the intent of dissemination.**

32. The Committee is also concerned about the weak enforcement of legislation relating to offences referred to in the Optional Protocol, in particular, the prosecution and punishment of those responsible for acts involving sale of children, child prostitution and child pornography.

33. **The Committee recommends that the State party ensure effective and prompt investigation, prosecution and conviction of all crimes referred to in the Optional Protocol.**
34. The Committee is further concerned that the State party's report does not contain information on measures taken to establish the liability of legal persons for offences referred to in article 3 (1) of the Optional Protocol.
35. **In light of article 3(1) of the Optional Protocol, the Committee recommends that the State party take necessary measures to establish the liability of legal persons for offences referred to in the Optional Protocol.**

Adoption

36. In view of the high number of domestic and inter-country adoption of Korean children, the Committee notes with regret the declaration made by the State party upon ratification to article 3(1)(a)(ii) of the Optional Protocol and the reservation to article 21 of the Convention. The Committee is also concerned that the legislation of the State party does not criminalize sale of children as required by article 3(1)(a)(ii) of the Optional Protocol.
37. **The Committee strongly recommends the State party to withdraw the declaration to article 3(1)(a)(ii) of the Optional Protocol and the reservation to article 21 of the Convention, and consider ratifying the 1993 Hague Convention No. 33 on Protection of Children and Cooperation in Respect of Intercountry Adoption. The Committee further recommends the State party to ensure that acts covered by article 3(1)(a)(ii) of the Optional Protocol are criminalized as sale in its legislation.**

Jurisdiction and extradition

38. The Committee notes with concern that no information has been provided by the State party with regard to measures taken to establish extraterritorial jurisdiction over the offences related to article 3 (1) of the Optional Protocol, when the crime is committed abroad by a national or a person who has habitual residence in its territory, or when the victim is a national of the Republic of Korea.
39. **In light of article 4(2) of the Optional Protocol, the Committee recommends that the State party take the necessary legislative measures to establish its extraterritorial jurisdiction over the offences referred to in the Optional Protocol when such offences are committed by a national of the Republic of Korea or a person who has his habitual residence in its territory, or when the victims is a national of the Republic of Korea.**

VI. Protection of the rights of child victims (arts. 8 and 9, paras.3 and 4)

Measures adopted to protect the rights and interests of child victims of offences prohibited under the Protocol

40. The Committee is deeply concerned that that the *Prevention of Prostitution and Protection of its Victims Act* treats child victims of prostitution, among others, as offenders, although, according to the State party, it is “unlikely” that child victims of prostitution will be prosecuted.
41. **The Committee recommends that the State party:**
- a) **Take all necessary measures, including legislative amendments, to ensure that child victims of any of the offences under the Optional Protocol are as such neither criminalised nor penalised, and that all possible measures be taken to avoid their stigmatisation and social marginalisation;**
 - b) **Allocate adequate financial and human resources to the competent authorities in order to improve the legal representation for child victims;**
 - c) **Ensure that all child victims of the offences described in the Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible, in accordance with article 9(4) of the Optional Protocol;**
 - d) **Consider merging the existing child helplines (1577, 1391 and 1388) into one helpline which should be sufficiently funded, fully accessible and known to children, and available in multi-lingual format; and facilitate the collaboration of the Helpline with child-focused NGOs, health and social workers, as well as the police; and**
 - e) **Ensure that resources be earmarked in order to strengthen social reintegration and physical and psychosocial recovery measures, in accordance with article 9 (3) of the Protocol, in particular by providing interdisciplinary assistance for child victims.**

Criminal justice system protection measures

42. While welcoming the introduction of video-taping of witness testimonies for children under the age of 16, the Committee notes with concern that this practice does not apply for those aged between 16 and 18. The Committee also remains concerned about the unclear legal status of victims of crimes covered by the Optional Protocol which may result in these victims being viewed as child offenders, and as such, may not receive adequate protection in the criminal justice system.
43. **The State party should be guided by the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20) and should in particular:**
- a) **Protect the rights and interests of child victims by providing them with adequate and explicit protection in the criminal justice system so as to ensure that they are not considered or treated as juvenile offenders;**

- b) **Allow the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected;**
- c) **Use child-sensitive procedures to protect children from hardship during the justice process, including by the use of special interview rooms designed for children, child-sensitive methods of questioning; and by reducing the number of interviews, statements and hearings, and in this connection, consider making use of video-taping of witness testimonies for all children under 18; and**
- d) **Presume young victims of sexual exploitation to be children, and not adults, if in doubt.**

Recovery and reintegration of victims

- 44. The Committee welcomes the efforts made by the State party to assist child victims of offences referred to in the Optional Protocol with rehabilitation measures, including those stipulated in the 2004 *Prevention of Prostitution and Protection of its Victims Act* and the *Punishment of Procuring Prostitution and Associated Acts*, and the plans to establish additional centres for counselling for victims of prostitution. However, the Committee regrets that the social reintegration and physical and psychosocial recovery measures for child victims currently in place are inadequate, and that there is no mechanism to evaluate such programmes. The Committee also notes with concern that the existing programmes and services are available only for women and girl victims, and only in the Korean language.
- 45. Furthermore, that the Committee regrets not having received sufficient clarification by the State party whether the recovery and rehabilitation programme for victims of sexual exploitation which subject them to undergo “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 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 that 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 to provide rehabilitation measures to boys as well as girls, and in 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 the State party to ensure that such programmes are effectively monitored and evaluated regularly, with active participation of children.**
- 47. **The Committee also requests the State party to provide in the next report detailed information on the “corrective education” programme for child victims of sexual exploitation and ensure that the programme prioritises**

the rights and interests of child victims in line with article 8 of the Optional Protocol, the General Comment No.10 on Children's Rights in Juvenile Justice (CRC/C/GC/10) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the "Riyadh Guidelines").

VII. International assistance and cooperation (art.10)

Multilateral, regional, bilateral agreements

48. The Committee welcomes the State party's support for international cooperation projects relating to implementation of the Protocol in a number of countries and urges the State party to further its efforts in this regard, taking into account the relevant concluding observations adopted by the Committee on these countries with respect to the Optional Protocol.

VIII. Follow-up and dissemination

Follow-up

49. The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, *inter alia*, by transmitting them to relevant Government ministries, the State Council, members of the National Assembly and to provincial authorities, for appropriate consideration and further action.

Dissemination

50. The Committee recommends that the report and written replies submitted by the State party and related recommendations (concluding observations) adopted be made widely available, including through the internet (but not exclusively), to the public at large, civil society organizations, the media, youth groups, professional groups in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring. Furthermore, the Committee recommends that the State party make the Optional Protocol widely known to children and their parents through, *inter alia*, school curricula and human rights education.

VIII. Next report

51. In accordance with article 12, paragraph 2, the Committee requests the State party to include further information on the implementation of the Optional Protocol in its consolidated third and fourth periodic report under the Convention on the Rights of the Child, in accordance with article 44 of the Convention, due on 19 December 2008.