

UNITED NATIONS HUMAN RIGHTS COUNCIL

14th Session of the Working Group on the Universal Periodic Review
22 October to 5 November 2012

COMPARISON OF ICJ SECOND CYCLE RECOMMENDATIONS FOR THE UPR OF THE REPUBLIC OF KOREA
WITH CORRESPONDING FIRST CYCLE RECOMMENDATIONS AND COMMITMENTS

| Concerning the implementation of the Convention on the Rights of the Child | | |
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| <ul style="list-style-type: none"> • First cycle UPR Working Group report, UN Doc A/HRC/8/40 (2008): see Summary of Proceedings at paras 16, 11, 15, 36, 39, 45, 52, 40, 13 and 24 (Canada, Indonesia, Algeria, Philippines, Egypt, Mexico, Peru, Bangladesh, Democratic People's Republic of Korea and Azerbaijan), and responses/commitments by the Government of the Republic of Korea at paras: 63, 5, 6 and 31. • First cycle UPR response of the Government of the Republic of Korea, UN Doc A/HRC/8/40/Add.1 (2008): see I. Summary of the Republic of Korea's response to the recommendations at paras 4, note c, rec 7 and rec 6, and the report of the HRC on its 8th session, UN Doc A/HRC/8/52 (2008), p. 224 ff, at paras: 767, 775 and 769. • Second cycle ICJ submission (April 2012): see paras 3-13. | | |
| <i>Second cycle ICJ recommendations</i> | <i>Corresponding recommendations in the first cycle</i> | <i>Corresponding first cycle voluntary commitments</i> |
| <p>i) Provide for an effective legal framework to ensure the adoption of a framework of corporate responsibility that requires companies domiciled in the Republic of Korea to adopt measures to prevent and mitigate adverse human rights impacts in their operations.</p> | <p>No exactly corresponding recommendation.</p> <p>Related recommendations:</p> <p>64(11) and 16. (Canada) Measures are taken to ensure that the human rights of migrants are protected at all times. – <i>Accepted</i></p> <p>64(3) and 11. (Indonesia) To strengthen efforts to uphold the Act on the Foreign Workers Employment in order to ensure the effective protection of the rights of foreign workers in the country. – <i>Accepted</i></p> <p>64(7), 15, 36, 39, 45 and 52. (Algeria, Philippines, Egypt, Mexico and Peru) To accede to the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families. – <i>Not Accepted</i></p> <p>64(7) and 45. (Mexico) To withdraw reservations to other treaties restricting the protection of migrant workers and their families. – <i>Not Accepted</i></p> <p>64(8) and 15. (Algeria) To take measures to protect</p> | <p>No corresponding voluntary commitment.</p> <p>Related commitment:</p> <p>Doc 8/52, 767. The Republic of Korea stated that the Government will intensify efforts to effectively protect the rights of foreign workers by upholding relevant laws, including the Employment of Foreign Workers Act. It also stressed that continued efforts focusing on various measures for their fuller social integration will be made and more effective remedies developed to further protect the rights and interests of foreign workers.</p> <p><i>On 64(7):</i> 8/40/Add.1, rec 7, and Doc 8/52, 775. The Republic of Korea welcomes the intention and spirit of this recommendation to protect migrant workers and their family members, but does not accept at this stage the recommended accession to the ICRMW, which is now in conflict with some key domestic laws. In the meantime, Republic of Korea will do its best to protect human rights including their health and safety and employment rights</p> |

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| | <p>and fulfill the rights of all women migrant workers and to ensure that they are not subjected to discriminatory practices. – <i>Accepted</i></p> <p>64(14) and 16. (Canada) Place special emphasis on women and children when formulating policies to protect the rights of migrant workers. – <i>Accepted</i></p> <p>Not taken up as a recommendation:</p> <p>40. (Bangladesh) Make further efforts to implement existing legislative measures for the protection of migrant workers. It requested that the Government deal with the issue of irregular migration in a humane manner, consider regularizing migrant workers or at the minimum guarantee their fundamental human rights.</p> | <p>under current national laws covering human rights and welfare for foreigners in the Republic of Korea.</p> <p>Related statements:</p> <p>Doc 8/40, 63. The Republic of Korea takes serious note of some concerns expressed regarding the human rights of migrant workers and will engage in domestic discussion on that matter.</p> <p>8/40/Add.1, note c. Some measures, such as allowing trade union pluralism and expanding the scope of public officials eligible to join a trade union etc., need to be taken before withdrawing the reservation on Article 22. Regarding the full implementation of union pluralism, the government is seeking ways to improve the situation through a process of tripartite consensus. In the belief that stabilizing industrial relations is of paramount importance for social integration and sustainable national development, the tripartite representatives meeting agreed to postpone the implementation of union pluralism for three years until 1 January 2010. During the grace period, the Tripartite Commission will set up a framework to engage in intensive discussions on measures to minimize confusion in the event that enterprise-level multiple unions are allowed, and come up with specific implementation measures.</p> |
| <p>ii) Require the inclusion of child rights indicators and parameters for reporting and specific assessments on business' impacts on child rights.</p> | <p>No corresponding recommendation.</p> | <p>No corresponding voluntary commitment.</p> |
| <p>iii) Ensure effective regulation and monitoring of the products that enter into its market, in order to verify that all products are child labour free, in compliance with Article 32 of the Convention on the Rights of the Child.</p> | <p>No corresponding recommendation.</p> | <p>No corresponding voluntary commitment.</p> |
| <p>iv) Undertake the necessary legislative changes to hold criminally liable all companies domiciled in</p> | <p>No corresponding recommendation.</p> | <p>No corresponding voluntary commitment.</p> |

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| <p>the Republic of Korea that use child labour, including their suppliers and business partners, whether operating within the state or abroad.</p> | | |
| <p>v) Carry out human rights impact assessments before entering into trade and investment agreements.</p> | <p>No corresponding recommendation.</p> | <p>No corresponding voluntary commitment.</p> <p>Related statement:</p> <p>Doc 8/40, 5. Vice-Minister of Foreign Affairs and Trade reaffirmed his country's strong commitment to promoting and protecting human rights at home and abroad.</p> |
| <p>vi) Promptly establish a specialized and independent children's rights division within the National Human Rights Commission.</p> | <p>No corresponding recommendation by States.</p> <p><i>Note:</i> See corresponding CRC recommendation: UN Doc CRC/C/KOR/CO/3-4, 7. The Committee urges the State party to take all necessary measures to address the recommendations from the concluding observations on its second periodic report, which have not yet been implemented, particularly those related to establishing a subcommittee on children's rights inside the National Human Rights Commission of Korea.</p> | <p>No corresponding voluntary commitment.</p> |
| <p>vii) Withdraw its reservation to Article 40(2)(b)(v) of the Convention and ensure that every child has the right to appeal.</p> | <p>No corresponding recommendation by States.</p> <p><i>Note:</i> See corresponding CRC recommendation: UN Doc CRC/C/KOR/CO/3-4, 8-9. Regrets that the State party has maintained its reservations to Article 40 paragraph 2 (b) and (v) on ensuring that every child alleged as or accused of having infringed the State party's penal law having a right to having such a decision reviewed by a higher competent, independent and impartial authority or judicial body according to law.</p> <p>The Committee recommends that the State party consider withdrawing its reservations to Article 40 paragraph 2 (b) and (v), which constitute an obstacle to the full application of the Convention.</p> | <p>No corresponding voluntary commitment.</p> |
| <p>viii) Ensure that the principle of the best interests of the child is taken into account in all judicial, legislative and administrative proceedings.</p> | <p>64(14) and 16. (Canada) Child abuse and domestic violence be criminalized, perpetrators be prosecuted and sanctioned, human rights training</p> | <p>No corresponding voluntary commitment.</p> <p>Related statements:</p> |

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| | <p>be provided for officials dealing with instances of domestic violence and child abuse, and that child-sensitive procedures be adopted during criminal proceedings involving children. (...). Place special emphasis on women and children when formulating policies to protect the rights of migrant workers. – <i>Accepted</i></p> | <p>Doc 8/40, 6. Appreciates the concluding observations and recommendations of treaty bodies and continues to incorporate their opinions into the domestic legal system by amending relevant laws such as the Penal Procedure Code and the Criminal Administration Act.</p> <p>Doc 8/52, 769. The Republic of Korea also welcomed other important recommendations relating to matters such as the implementation of observations of treaty bodies, child abuse and domestic violence, refugee recognition procedures. It stated that it will continue to seek ways to strengthen and improve the relevant domestic laws, institutions and procedures in these areas.</p> |
| <p>ix) Undertake measures, including considering further legislation, to ensure that all the provisions of the Convention are adequately applied in its judicial decisions.</p> | <p>64(6) and 13. (Democratic Peoples’ Republic of Korea) To adopt relevant measures for legislative and criminal justice improvements in relation to concerns expressed by the Committee on the Rights of the Child in relation to limitations on freedom of expression and assembly of students. – <i>Unclear whether accepted or not (see response in 8/40/Add.1, rec 6)</i></p> | <p>No corresponding voluntary commitment.</p> <p><i>On 64(6):</i> 8/40/Add.1, rec 6. The Amendment to the Elementary and Secondary Education Act of March 2008 established the provision guaranteeing human rights of students stipulated in the Constitution and international human rights treaties.</p> <p>Related statement:</p> <p>Doc 8/40, 6. Appreciates the concluding observations and recommendations of treaty bodies and continues to incorporate their opinions into the domestic legal system by amending relevant laws such as the Penal Procedure Code and the Criminal Administration Act.</p> |
| <p>x) Promptly take effective measures to ensure that children are not indirectly discriminated by third parties in full compliance with the obligations deriving from Article 2 of the Convention.</p> | <p>No corresponding recommendation.</p> <p>Related question that was not taken up as a recommendation:</p> <p>24. (Azerbaijan) Question how non-discrimination is guaranteed, a concern also raised by the Committee on the Rights of the Child, given that</p> | <p>No voluntary commitment.</p> <p>Related statements:</p> <p>8/40/Add.1, note c: Of all the various provisions of the Convention - those on allowing migrant workers to be accompanied by their family members (Article 44), prescribing the conditions under which a migrant worker is authorized to engage in work on his/her own account (Article 52</p> |

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| | <p>the Constitution does not explicitly prohibit discrimination on specific grounds.</p> | <p>Paragraph 4), according each child of a migrant worker the right to registration of birth and to a nationality (Article 29) and taking measures to ensure that an irregular situation does not persist (Article 69 Paragraph 1) - are in conflict with various domestic laws such as the Immigration Control Act, the Korean Nationality Act, the Act on Foreign Workers' Employment, etc. The government will accord careful consideration to whether to ratify the Convention, and will continue to take various measures to prevent infringements upon the human rights of foreign workers and guarantee their rights and interests.</p> <p>Doc 8/40, 6. On the issue of non-discrimination, the delegation noted that the Constitution clearly states that nobody shall be subject to discrimination. The Government is well aware of the importance of preventing ungrounded discrimination, whether direct or indirect. Reference was made to recent legislative developments, such as the draft Anti-Discrimination Act submitted to the National Assembly for deliberation.</p> <p>Doc 8/40, 31. With regard to anti-discrimination grounds, the delegation stressed that according to article 11 of the Constitution, there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status.</p> <p>8/40/Add.1, 4. The Government submitted to the 17th National Assembly, in December 2007, a draft Anti-Discrimination Act that prohibits ungrounded discrimination in all areas of life and will continue to take into consideration opinions of Member States when pursuing a new draft Act.</p> |
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