

ALTERNATIVE REPORT

FOLLOWING THE 3rd 4th PERIODIC REPORT FROM THE REPUBLIC OF KOREA ON
THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD

SUBMITTED BY

KOREA NPO Coalition for the UNCRC

DECEMBER 2010

Korea NPO Coalition for the UNCRC (KNCCRC)

Korea NPO Coalition for the UNCRC, composed of 18 major NGOs, was inaugurated in September 2005 to further promote and advocate the children's rights in Korea. From the outset, the Coalition focused on three things- advocacy, withdrawal of reservations and preparing an NGO Alternative Report to the state report.

The Coalition is particularly concerned about the withdrawal of reservations and conducted symposiums and hearings yearly inviting parliamentarians, government officials and child rights experts to discuss the early withdrawal. As a result, the government withdrew its reservations to one of the three provisions- child's right to maintain contact with parents (article 9) in accordance with the Civil Law amendment in 2008.

The Coalition conducted 10 workshops from 2008 to 2009 on 8 clusters of *the UN Convention on the Rights of the Child* (in the following referred to as *the UNCRC*). With the outcome of the workshops, the Coalition started working on an NGO Alternative Report which will be submitted to the UN Committee of the Convention on the Rights of the Child at the end of 2010.

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Table of Contents

■ Foreword	2
■ Chapter 1. General Measures of Implementation	3
1. Operation of Child Policy Coordinating Committee	3
2. Monitoring by public authorities	4
3. Necessity for child policy research institution	5
4. Withdrawal of reservations	5
5. Securing a budget for children	6
6. Dissemination of the UNCRC	6
■ Chapter 2. Definition of a Child	7
1. Legal definition of child	7
2. Minimum age of consent in legislation	8
3. Medical treatment or surgery without parental consent	8
4. Social rights of the child in the Constitution	8
■ Chapter 3. General Principles	9
1. Coordination and cooperation	9
2. Non-discrimination	11
3. The best interest of the child	11
4. Right to life, survival, and development	11
5. Respect for the views of the child	12
■ Chapter 4. Civil Rights and Freedoms	13
1. Right to acquire a nationality	13
2. Freedom of expression and assembly	13
3. Freedom of religion	14
4. Protecting privacy	15
5. Prohibition of torture and inhumane treatment - corporal punishment	16
■ Chapter 5. Family Environment and Alternative Care	17
1. Social safety nets for children in low income families	17
2. Separation from parents and family reunion	18
3. Alternative care of children	19
4. Abuse, abandonment and physical and psychological recovery and reintegration	20
5. Adoption	21
■ Chapter 6. Basic Health and Welfare	22
1. Public health service	22
2. Disabled children	24
3. Social security, public health and welfare budget	25
■ Chapter 7. Education, Leisure and Cultural activities	26
1. Private education expenditure	26
■ Chapter 8. Special Protection Measures	27
1. Marginalized children	27
1) Children of multi-cultural families	27
2) Migrant children	27
3) Refugee children	28
2. Economic exploitation	29
3. Sexual exploitation	30
4. Juvenile justice	35

Foreword

The main objective of this report is to seek what changes are needed to improve the rights of the child given Korea's status moving towards an advanced country in terms of human rights, rather than criticizing the national report in detail.

First, in this report, newly emerged child issues related to migrant children including children of multi-cultural families, refugee children, etc. are addressed and recommendations are suggested to effectively deal with the issues. These children are integrated into Korean society by social change.

Second, regarding sexual exploitation against children, implementation of *the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and pornography* is dealt with in detail and recommendations are also presented.

Third, concerns over adoption are expressed because *the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption* is not ratified yet, even though international adoption cases have decreased thanks to Korean government's policies to promote domestic adoption. Therefore, it is recommended to ratify the convention.

Fourth, the issues continuously raised are addressed. For example, the definition of child is not unified into one clear definition in relevant domestic laws; cooperation and policy coordination between governmental bodies remain ineffective.

Fifth, it is highlighted that two reservation clauses (an authorization-based adoption system, child's right to appeal) should be withdrawn as soon as possible. To be sure, it is a remarkable achievement that the child's right to maintain contact with parents is guaranteed through the amendment of *the Civil Law*.

Sixth, updated statistics and data are included in this report.

A group of experts in child issues participated in the preparation of the report. Presentations and discussions were held throughout the year of 2010. However, despite these efforts, insufficient human and financial resources continue to pose difficulties for the Coalition.

Chapter1. General Measures of Implementation

1. Operation of Child Policy Coordinating Committee

○ The government established the Child Policy Coordinating Committee in 2004 under the Prime Ministerial Office and ran it until 2007 based on the recommendations of the UN Committee on the Rights of the Child. However, it did not have a secretariat with necessary authority and meetings were not held regularly. A meeting convened to discuss child policy was held only one or two times a year except for the quarterly working group meetings.

○ Recently, Korea has experienced conflicts in the system of implementing policies for children and youth. The National Youth Committee was merged into the Ministry of Health and Welfare in 2008. However, policies for child and youth were separated into two: the Ministry of Health and Welfare for Children and the Ministry of Gender Equality for youth in March 2010. As a result of this process, the Child Policy Coordinating Committee has not functioned since 2008.

○ In addition, it was suggested a new organization be established that could replace the committee. While reforming the laws related to children and youth as part of efforts to unify the system for implementing policies for children and youth in 2008, the Children and Youth Policy Committee was mentioned as an alternative organization to the previous Child Policy Coordinating Committee. The Child Policy Coordinating Committee was established as an organization under the Prime Ministerial Office to coordinate tasks and lead consultation among departments relating to children. However, the functionality of the Child and Youth Policy Committee was limited to coordinating policies dealt with only in departments related to child welfare under the Ministry of Health and Welfare.

Recommendations

○ It is significant to establish a permanent body which can deal with all the issues relating to children and promote coordination and cooperation across ministries.

○ Operational problems in the Child Policy Coordinating Committee need to be addressed and it should be fully empowered with necessary authority and adequate financial and human resources to systematically collect data, formulate a comprehensive long term policy framework, develop strategies and evaluate implementation.

2. Monitoring by public authorities

- The Monitoring Center for Children's Rights is currently not run based on the law so the center cannot secure an official standing. The center has several limitations in terms of independence, consistency and effectiveness.
- The Monitoring Center for Children's Rights does not actively monitor or investigate child rights violations. Rather, it has been operated as a national research organization. The center has published the national report on the WFFC and national reports on *the UNCRC* and *the Optional Protocols* on the request from the government. In addition, not so many children voluntarily participate. That is, the center exists merely by having a minimal role and by doing the minimum of tasks. It is also concerned that the National Human Rights Commission is not effectively responding to child rights violation cases since the Commission still has no specialization in children's rights.
- The staff of the center consist of the director general, a researcher, a research assistant and ombudspersons who are a non-permanent members. Therefore, with such insufficient human resources it is difficult to expect the center to do active and specialized monitoring on the rights of the child.

Recommendations

- There should be a legal basis for the functions and operation of the monitoring center and its official status needs to be secured.
- It is quite possible that the center lacks independence because the budget for the center is supported by the Ministry of Health and Welfare. The current system of running the center by consigning it to the ministry should be improved to secure independence of the center. To this end, problems caused by the system need to be addressed and a solution to overcome the limitation of the system needs to be suggested.
- The government needs to take into account diverse opinions from experts in the rights of children regarding where to establish and what kinds of authority can be given. It is also essential for external organizations to assess whether the center is properly functioning.
- Substantial human and financial resources are required for the center and the secretariat of the ombudsmen to function properly.

3. Necessity for child policy research institution

○ There is no child policy research institution covering all children under the age of 18. Furthermore, even an organization responsible for data collection does not exist. The Korean Institute for Health and Social Affairs, National Youth Policy Institute, and the Korea Institute of Child Care and Education are national research organizations developing child related policies. However, they have limitations in leading research on policies to improve the quality of children's lives and enhance their rights since they do not specifically focus on children. The Korean Institute for Health and Social Affairs focuses on healthcare and welfare of children, but does not have a research department specialized in children. The Korea Institute of Child Care and Education does research by dividing children who are the target of policy research into the age groups 9-12 years old and 13-24 years old, and its research is weighted towards youth. The Korea Institute of Child Care and Education also has limitations because it mainly focuses its research on preschool children.

Recommendations

- It is essential to establish a research institute responsible for child policies and an organization to monitor the situation of children and collect basic data.
- There should be an organization collecting information and index related to children as well as promoting cooperation with relevant research institutions for a comprehensive report on the current status of the rights of the child.

4. Withdrawal of reservations

- In 2009, laws related to adoption were reviewed and the revised bill to codify the state intervention in the adoption process was proposed, but there have been no progress since then. Organization regulating adoption does not exist and adoptions can be arranged without involvement of the government. Sometimes children are even bought and sold online. Korea Central Adoption Resources was founded as a central national organization but it has no legal basis.
- With regard to article 40 2b(v), it is hard to recognize the validity of the claim by the government that the restriction on children's right to appeal in court is necessary considering unique security situation.

Recommendations

- The reservation on article 21a in *the UNCRC* should be withdrawn and that the Hague Convention ratified.

○ The reservation on the article 40 2b(v) should be withdrawn.

5. Securing a budget for children

○ The budget for children accounts for only a small proportion of the entire government budget. Welfare expenditure per child are lower than the budget amount for underprivileged people including the elderly and disabled, and remain on a level of about 1/7~1/100 of costs in advanced nations. The welfare cost per child in 2008 was KRW 8,800. (Child welfare expenditure of the Ministry of Health and Welfare only) This does not include expenditure transferred to local governments or budgets of other departments. Child and family expenditures amount to 1.7% of public expenditure which is one tenth that of northern Europe countries: the lowest level among OECD countries.

○ One of the concerns regarding the budget is inequality caused by the difference among local governments in budgets for children. From 2005 some or whole parts of nine projects related to child welfare-some parts of the adoption agency (adoption agency support), parts of foster care center operations(supporting foster families in local areas), parts of operations of organizations specialized in child protection (supporting organizations in local areas or small sized organizations), parts of projects on operating institutions for children (operating child welfare institution), whole projects supporting foster families and families where a child is the breadwinner, and projects supporting meal services, as well as projects operating organizations forming a relationship with children, and projects of resettlement funds for children having left child welfare institutions- were transferred to local areas. As a result, depending on the fiscal independence of local governments, or the governments' will to implement child policies, different qualities and quantities of service are being offered to children with the same needs. For example, each local government has its own programs for poorly fed children regarding school meals and other support.

Recommendations

○ The budget for children must to be increased to a sufficient level. Especially, inequalities between local governments in terms of child health and welfare must be addressed.

6. Dissemination of the UNCRC

○ Despite of efforts to raise awareness, the level of public awareness including children is still low. According to a comprehensive study on the current status of youth, only 24.8~39.1% of parents (fosterers) and 14.2~22.6% of children have heard of *the UNCRC*.

○ There are several reasons why education on child rights is insufficient. First, education is mainly conducted by child related organizations. Furthermore, the curriculum and targets of education overlaps between organizations. Second, the government still shows a lack of interests in child rights education. The Ministry of Health and Welfare has developed training materials but not established specific plans for distribution and utilization. Last, child rights are not included in the school curriculum. Thus, it is difficult to systematically teach children about their rights.

Recommendations

- First of all, an assessment on the current state of child rights education is necessary.
- A proactive strategy needs to be established to raise awareness of *the UNCRC*. A long-term and comprehensive road map for awareness-raising and education must be formulated. In particular, it is necessary to devise a plan to provide child rights education for all professionals working with and for children suggested in the guidelines of the UN Committee on the Rights of the Child.
- It is also essential to evaluate the effectiveness of child rights education programs. Education on child rights must be regularly conducted.

Chapter2. Definition of a Child

1. Legal definition of child

○ In *the UNCRC*, a child is defined as all people under the age of 18, and *the Child Welfare Act* also defines 'a person under the age of 18' as child. On the other hand, *the Juvenile Protection Act* and *the Act on the Protection of Juveniles from Sexual Exploitation* identify 'a person under the age of 19' as a juvenile, whereas *the Framework Act on Juveniles* and *the Juvenile Welfare Support Act* identify 'a person from the age of 9 to 24' as a juvenile, and *the Civil Law* defines 'a person under the age of 20' as 'a person underage.' This indicates that the concepts of a child are differently defined in domestic legislations and overlap or be neglected (lack of institutes specialized in the research on child), and it is difficult to collect accurate data and statistics. Therefore, from the long term perspective, it is necessary to define an integrated and consistent concept of a child.

2. Minimum age of consent in legislation

○ Under the law, the views of children below 15 years of age, are not taken into consideration, but the age limit is too high considering a child's physical and psychological development, and it also does not meet the principle of being in the best interest for the child.

○ Current law has many regulations which are not conducive to protecting the rights of the child. The contents of 'the right to take disciplinary action' and 'the right to decide a child's abode' in *the Civil Law* seldom include details of considering a child's opinion when it comes to loss of parental rights. Instead, they underline parental rights only. When a ruling to assign a proxy guardian is applied or a person with parental rights dies it can sometimes be inappropriate to just award parental rights to the other surviving parent. In this case, a guardian can be assigned by the court's authority after a claim is made by relatives or prosecutors, but complementary measures are necessary to enhance effectiveness of the court's authority. The court can intervene when parents cannot reach an agreement in terms of child rearing during the process of a divorce by consent but this is rarely the case.

3. Medical treatment or surgery without parental consent

○ The articles to prevent the neglect of children in *the Child Welfare Act* do not allow guardians to encourage their children not to take up treatment for religious or other reasons. However, if this is considered just as an issue of neglect, the situation of the child can become worse as the opportunity to intervene is missed.

○ As it is difficult to intervene in issues related to parental rights, the intervention such as a court order requested by a doctor (the right to order treatment) is necessary.

4. Social rights of the child in the Constitution

○ Article 34 of *the Constitution* stipulates that all the citizens shall be entitled to a life worthy of a human being by having social basic rights, and that the government must make efforts to further improve social protection and welfare to enable people to enjoy a life worthy of a human being. The government's obligation to improve welfare of women, the elderly and youth is specified under articles 3, 4, and 5 but the obligation to improve a child's welfare is not mentioned.

Recommendations

- Defining legal ages should be based on the four principles of *the UNCRC*. There must be no discrimination, the child's best interests must be a primary consideration and the child's maximum survival and development must be ensured.
- It is necessary to eliminate differences in rights and obligations and in benefits caused by duplicated age or the omission of an age stipulation in child related laws. Integrating the diverse concepts pertaining to a child into one single concept will enable easy and accurate data collection and statistics. This will, in the long-term, prevent an overlap in tasks or loop holes occurring between departments.
- It should be ensured that the right of child to express his or her views freely in all matters affecting him or her, the views of the child being given due weight in accordance with the age and maturity of the child in question. This general principle should also be reflected in all laws, judicial and administrative decisions, policies and this programs relating to children and should be implemented in the family, school, community and all institutions attended by and working with children. Regulations should be set out on detailed procedures.

Chapter 3. General Principles

1. Coordination and cooperation

- It was pointed out that the government poorly integrated and applied general principles in the previous consideration. However, still, general principles such as non-discrimination, the best interest of the child, the right to life, survival, and development, and participation integrated into, or applied to policy decisions, processes and practices including the government's political decision, administrative system, legal system, program development, and welfare service. Also, coordination and cooperation across the ministries and departments at different levels of government are not fully effective since departments related to children are scattered and there is no administrative body taking the whole responsibility for child policy. Even within a given ministry, there are redundancies in work, and communication is not effectively promoted across the sections. Therefore, it is hard to promote synergy effect through cooperation and coordination.

2. Non-discrimination

○ The national report mentioned that relevant laws were revised for children not to be discriminated in all aspects of life but measures for prohibiting discrimination and helping children cannot prove their effectiveness. Especially societal discrimination against children of multi-cultural families, children defected from the North, and children of migrant workers are critical.

○ Also it emerges as a social issue that children are discriminated depending on appearance, weight, age, educational backgrounds, sexual orientation, etc. Appearance and weight are children's major interests, and bullying due to appearance becomes prevalent. A tendency towards valuing educational backgrounds brings about a tendency towards focusing on academic performance from infant education stage so many children are forced out to do advance learning, go to extra classes after school, and study abroad at an early age. This tendency causes the gap between children of middle or higher level income families and those of low income level families.

○ Still, there is discrimination against disabled children. Many children who have developmental disability are verbally abused and bullied by teachers and other students in schools. In addition, requests for resolving problems of overcrowding classes are mostly not accepted. As the authorities resolve issues from schools' perspectives, not abused students' perspectives, actual status is continuously covered up. Additionally, even though *the Act on Prohibition of Discrimination against Disabled Persons* sets out a general principle that disabled persons must not be prohibited, any national standards or standards for groups are not stipulated.

○ Juvenile unwed mothers are negatively viewed in society, particularly in schools and fundamental service for them to receive education and nurture their babies is not provided. As a result, their rights' to learn are infringed. As stipulated in article 3 and 4 in *the Framework Act on Education*, and article 7 in *the UNCRC*, children's rights to education are the basic human rights for their growth, development, and maturity.

Recommendations

○ Effectiveness and influence of anti-discrimination measures must be frequently monitored and comprehensive and feasible legal and institutional solutions must be devised to ban unreasonable discrimination due to gender, color, religion, nationality, age, disability, appearance, language, sexual orientation, etc. in every area.

○ Progressive measures must be taken to prevent cultural and institutional discrimination against children who are not benefited from official education.

- A network should be established to promote effective communication and interaction among different bodies.
- Measures should be taken to enable juvenile unwed mothers to continue learning and rear their babies.

3. The best interest of the child

○ The best interest of the child shall be a primary consideration in all actions concerning children whether undertaken by public or private institutions, the courts, the administrative authorities, or legislative bodies. However, if awareness-raising and education on the rights of the child are not sufficient, there is limitation in realizing the principle of the best interest of the child. This principle can be upheld when children's opinions are taken into consideration. However, regulations and procedures for respecting children's dignity, listening to their opinion, and reflecting their views in decisions absolutely lack.

Recommendations

- Mandatory education and training on the rights of the child should be provided for all professionals working with and for children, in particular teachers, judges, law enforcement officials, civil servants, personnel working in institutions and places of detention for children, health personnel, including psychologists and social workers.

4. Right to life, survival, and development

○ Recently, the number of child suicides has rapidly increased. Korea ranked the first in suicidal rate among OECD member countries so it is urgent to take fundamental measures. According to the data of the Ministry of Education, Science and Technology, the number of elementary, middle, and high school students who committed suicide was over 200 for the first time in 2009. As a result of analysis, the exact number was 202, increased by 47% from 137 persons in 2008 and 135 persons in 2005.

○ As a party to *the UNCRC*, the government has duties to guarantee children's complete and harmonious development in mental, moral, and social dimensions as well as physical dimension. Given this, children's survival and development are threatened by child abuse or violence caused by heavy stress due to family trouble, divorce, or unemployment and bankruptcy because of economic recession, joint suicide of families (family murder), increasing number of underfed children, suicide and drop-out due to bullying, violence in schools, juvenile sexual trafficking, and sexual violence.

○ The number of sexual violence cases against children is increasing and it becomes brutal as kidnapping and murdering children frequently happen. The government should ensure children's survival by securing psychological, moral, and social safety as well as physical safety.

○ Social factors such as family breakup, unemployment and bankruptcy due to economic crisis, and violence of adults and friends, and bullying have negative impact on child abuse and neglect, which may lead to children's giving up learning, dropout, and suicide.

Recommendations

○ Specific policies, institutional and administrative measures must be taken based on the national action plan including preventive measures and follow-up procedures to systematically and effectively promote children's rights to life, survival and development.

5. Respect for the views of the child

○ Children should be provided with the necessary information in relation to the matters affecting them. It also proves that children need to have ample opportunities to participate in various activities to become a responsible citizen. However, generally, traditional attitudes still prevailing in the country may not be conducive to the realization of the principle. Children have been considered as objects that need to be controlled or protected at home and in schools and society, and their opinions have not been seriously taken into consideration in decision-making.

○ With the revision of the *Civil Law*, the Full Adoption system was established. The approval of the court shall be required in order that the adoptee should be regarded in law as the child born in the marriage of adoptive parents. However, if the child to be adopted is under the age of 15, the consent of the child to be adopted is not sought in the process even though this has significant impact on children's lives.

Recommendations

○ The public awareness must be raised to ensure children are considered as rights-holders. In addition, educational information needs to be provided for parents, educators, administrative officials, the judiciary and society at large on children's right to have their views taken into account and to participate in all matters affecting them.

- The principle of respecting children's views should be integrated into domestic laws, policies and programs related to children.

Chapter 4. Civil Rights and Freedoms

1. Right to acquire a nationality

○ In the past, many Korean children were adopted overseas. Most of adopted children were given the nationality of their adoptive parents and lost Korean nationality regardless of their own intention. Some of these want to live as Koreans when they became adults but they must give up their adoptive nationality to restore their Korean nationality. So far, demands for allowing dual nationality for those who lost Korean nationality regardless of their own intention has increased. *The Nationality Act* was amended in May 2010 so that adopted persons can maintain the nationality of an adoptive country even though they choose to take up Korean nationality again. This is a positive change protecting the right of the child to a nationality. (Article 10-2-3 in *the Nationality Act*)

○ Article 7-1 of *the UNCRC* defines the right of the child to know their parents, that is, their family lines. In Korea, a person who is presumed to be a parent of a certain child may confirm whether he or she is not a biological parent through a suit to deny paternity under *the Civil Law*. However, this suit can only be filed by a father or a mother (Article 847 of *the Civil Law*). A child does not have the right to file such a suit. This can infringe the right of a child to know the identity of their biological parents. Similar law was declared unconstitutional at the Constitutional Court in Germany.

Recommendations

- Relevant provisions in *the Civil Law* need to be amended to approve the rights of the child to file a suit to deny paternity to find out who their birth parents are.

2. Freedom of expression and assembly

○ In the concluding observation in 2003, the UN Committee on the Rights of the Child expressed concerns about strict limitation on students' freedom of expression and association. However, those who work in the education field do not fully appreciate the importance to protect children's right to freedom of expression yet. In 2008, when an elementary school teacher was dismissed, some students held paper pickets at the school gate to support the teacher

before a class started in the morning. Classes were not interrupted and school facilities were not damaged by the picketing. However, the principal and other teachers took away their picket signs and tore them up. The petition was filed to the National Human Rights Commission and it was concluded that the rights of students had been violated. Yet, this is one of the examples to show low level of awareness of children's right to freedom of expression in Korea.

○ Despite recommendations by the UN Committee on the Rights of the Child in 2003, still, most schools prohibit political activities of students. To be sure, each individual needs to be vigilant against the negative impact of politics hurting an academic atmosphere, but children should be able to express political opinions as the freedom of expression. The right to political activity is a fundamental right of the citizens; so, the right needs to be guaranteed fairly in accordance with age. Children can and do form their own views from an early age. Human beings can grow also through participation in society, so children's political activities off school campuses should not be totally prohibited just because they are children, as long as the activities are not illegal.

○ Article 5 of *the Framework Act on Education* stipulates that 'teachers and other school staff, students, parents, and local residents can participate in school management based on legislation,' but article 31 of *the Primary and Secondary Education Act* limits membership to the school management committee to 'teachers' representative and parents and local figures' and excludes students. Official channel is not guaranteed for students to deliver their opinions concerning the school management.

○ Regarding this, *the Students' Rights Ordinance* of Gyeonggi Province was promulgated on the 5th of October in 2010 guarantees students' the right to freedom of expression (article 16) and their right to participate and express their opinions in the process of decision-making of formulating and amending school regulations, school management, and educational policies (article 17 and article 20), which is a positive improvement even though it was adopted at a local government level.

Recommendations

○ Governmental guidelines and regulations concerning school management should be revised to facilitate children's participation in decision making processes and political activities outside campus, and to protect children's right to freedom of expression and assembly, following recommendations offered by the Committee on the Rights of the Child in 2003.

3. Freedom of religion

○ It is general that students are assigned to middle and high schools through a lottery system depending on students' residence regardless of the school being public or private. Under this system, some students are assigned to private schools managed by certain religious foundations regardless of their religion and are forced to attend religious education and ceremony which they do not want to join. The educational authorities have issued guidelines stating that students who do not wish to participate in religious education or ceremony can attend alternative classes. But it is a well-known that this is not being put into practice properly in schools. On the other hand, students or parents also cannot enjoy their right to have the religious education in schools they want. Private schools of religious foundation have voiced complaints about the fact that they cannot run a more religious curriculum.

Recommendations

○ Respect for the child's right to freedom of religion should be ensured as much as possible in schools.

4. Protecting privacy

○ Korean schools have strict regulations in terms of student privacy. The complaint that students raise the most is the rules on student hair styles. In 2005, the National Human Rights Commission recommended educational authorities keep restrictions on students' hair length and hair style at a minimum level and also specifically recommended the educational authorities take measures not to cut students' hair by force. However, according to research conducted by the National Youth Committee in 2007, approximately 80% of middle and high school students had been cautioned in a hair style check and 11% of students had experienced of being forced to cut their hair. Indeed, hair style shows each individual's personality and character. Moreover, a student's hair style does not infringe upon the freedom or rights of others. Therefore, even if students attend the same school, they should not be forced to have the same hair style. A haircut against one's will can be an infringement of their right to personal freedom and makes them humiliated.

○ Inspections of students' belongings are often conducted under the pretext of guidance and safety. Most of students use mobile phones but sometimes teachers take these away or view students' call histories. Many teachers think that this kind of action is indispensable to ensure security and provide appropriate direction and guidance to students. But students consider it as an interference with their privacy. Inspections of students' belongings should be conducted with a student's consent only if necessary.

○ Generally speaking, adults' understanding of protecting the children's rights to privacy is quite low in Korea. Due to this, children's privacy is violated sometimes out of 'goodwill'. Regarding this, it is a progressive change that *the Students' Rights Ordinance* of Gyeonggi Province stipulates the protection of students' right to have their own

personality in terms of appearance such as clothes and hair style (article 11) and prohibits the inspection of belongings without a students' consent except for cases where it is urgently necessary for security reasons (article 12).

Recommendations

○ Measures should be taken to revise school rules on hair style and the inspection of belongings so that they will be conducted with students' consent only when they are indispensable for security and a proper academic environment. Additionally, the above mentioned details should be included in the teacher training curriculum to improve teachers' awareness.

5. Prohibition of torture and inhumane treatment - corporal punishment

○ In the previous concluding observations, it was recommended that the Korean government prohibit corporal punishment because it violated a child's dignity. However, such punishment is tolerated if it is "indispensable in terms of education" in article 31-7 in *the Regulation under the Primary and Secondary Education Act*. The Supreme Court and the Constitutional Court did not totally prohibit corporal punishment itself (*see* Judgment 2001 do 5380 & Decision 2005 hunma 1189).

○ Teachers have meted out corporal punishment to students so far in a broad way. According to the research on 1,248 middle and high school students conducted by the Korea Self-governance Solidarity and the Health Education Forum for Healthy Society, about 59.5% of respondents had experienced corporal punishment. The research conducted on request of the National Human Rights Commission in 2008 showed that approximately 78.8% of elementary and middle school athletes experienced violence, and 25% and 5% of them experienced violence once or twice a week and every day, respectively. Furthermore, 63.8% reported sexual abuse. Among them 58.5% verbal abuse and 25.4% indecent assault, 1.5% reported receiving a request for sexual intercourse, and 1% rape. However, offenders are not receiving appropriate punishment or disciplinary action. For instance, court hearings for corporal punishment cases have not been held in lower courts for at least five years since 2003.

○ There is a progressive change regarding corporal punishment. *The Students' Rights Ordinance* of Gyeonggi Province prohibits corporal punishment in schools (article 6) and the Seoul Metropolitan Office of Education also announced policies for abolishing corporal punishment. The Ministry of Education, Science, and Technology reviewed the revision of article 31- 7 in *the Enforcement Ordinance of the Primary and Secondary Education Act* as of August 2010, and a research team of the Korea Educational Development Institute proposed the prohibition of "punishment given by touching the body or by using an object." Special monitoring and measures are required to prevent corporal punishment especially towards athletes who live in often a separate training camp.

○ Violence among students emerges as a serious social issue. According to the research on violence in schools conducted in 2007, about 42.2% of children considered violence in schools severe, and 16.2% had experienced violence as victims. Another study by the National Youth Committee showed that 30.3% of respondents had experienced being the victim of violence in schools. Younger children are getting involved in school violence and it is becoming organized and collectivized, which is very serious.

Recommendations

○ *The Enforcement Ordinance of the Primary and Secondary Education Act* needs to be amended promptly to prohibit corporal punishment in schools, and effective measures should be devised to prevent violence among students.

Chapter 5. Family Environment and Alternative Care

1. Social safety nets for children in low income families

○ The Ministry of Health and Welfare conducted a nation-wide survey on development needs and child-rearing environment by different age groups of children in 2008. The research reveals that approximately 7.8% of Korean children are nurtured in a family which is living on income of less than the minimum cost of living. Also, only 47.3% of those children and youth live with both parents, and a third of children aged 9 to 11 are in danger of neglect after school.

○ According to the White Paper on Children and youth in 2009, about 8.6% of a total 15,887,000 households are single parent families mostly because of bereavement, separation, divorce, etc. In addition, the current status of foster children researched by the Ministry of Health and Welfare shows that 10,947 children are growing under the protection of grandparents due to parents' divorce or because parents have left home. These children are vulnerable to abuse, neglect, kidnapping or sexual violence because their guardians are often unable to provide full-time care.

○ Children in low income families are often negatively influenced by domestic troubles or family breakups caused by poverty. Since they are prone to bullying, abuse, or neglect, many children have difficulties in integrating in schools and society, which in turn, could lead to delinquency.

Recommendations

- It is required to expand welfare services for children in vulnerable situation by providing after-school care, meal services during vacations, etc.
- It is necessary to establish a social security policy along with a clear and coherent family policy in the framework of poverty reduction strategy, as well as effective strategies for using the social safety net benefits.
- Budget for the community children's center should be increased to improve both quality and quantity.
- The introduction of the child allowance system should be positively considered to cope with the problem of low fertility and population aging and to lower child care expenses.

2. Separation from parents and family reunion

- Separation of children from their parents should take place if necessary based upon *the Civil Law* and *the Child Welfare Act*. Under *the Civil Law*, parental rights should be withdrawn by the claim of relatives or prosecutors when a father or a mother abuses parental rights or parental rights cannot be exerted due to parents' obvious misdeeds. Procedures are not yet established such as temporary suspension and restoration of the parental rights for family reunion. The clauses about withdrawal of parental rights in article 12 of *the Child Welfare Act* also stipulate that limitation of parental rights or a claim for withdrawal of parental rights can be made by the heads of local governments to the courts. However, the clauses are almost considered dead because they have not been actually invoked due to the lack of specific procedures.
- A child who is abused by family members can be temporarily separated from the family for a maximum of three days based on article 27 Emergency Measures of *the Child Welfare Act*. Later, if the child needs alternative placements such as foster care, institutional care, or hospitalization, he or she can be separated through administrative procedures based on the article 10 Protection Measures of *the Child Welfare Act* carried out by a social worker who is entrusted by a governor, a mayor, or a ward head.
- According to the guidelines for implementation of *the UNCRC*, separation from his or her parents is in his or her best interests should be undertaken by competent authorities and such actions need be governed by clear and just procedures. Also, article 25 of *the UNCRC* requires treatment to be periodically reviewed. However, placement decisions are not necessarily subject to judicial review according to article 10 in *the Child Welfare Act*, so it is difficult to intervene when parents who have abused their children request to bring them back from institutions or foster

families. Once children are placed in institutions or foster care, they generally stay until they become adults. Efforts are not sufficient to promote or facilitate family reunion.

Recommendations

- Separation of children should be decided by the competent authorities subject to judicial review determination if necessary for his or her best interests. Removal of children from parents should be necessary in a particular case such as one involving abuse or neglect of the child by the parents.
- It is required to undertake a periodic review of placements.
- It is necessary to establish legal procedures to restore parental rights or custodial rights if competent authorities determine that the behavior and living conditions of the parent have changed, and he or she is able to rear the child, and also if the restoration of parental rights is in the interests of the child .

3. Alternative care of children

○ Children are placed in alternative care mainly due to abandonment by unwed parents, divorce and abuse. As of the end of 2009, 17,586 children stayed in institutions and 16,608 were protected by foster families, which account for approximately 0.3% of the total child population. However, it is hard to get sufficient information on children in alternative care to grasp the overall situation.

○ 17 foster care centers have been established in 16 provinces and cities since 2003. Legal grounds were made to establish national and local foster care centers through the amendment of *the Child Welfare Act* in 2005. Given the statistics of the National Foster Care Center in 2009, 53.8% stayed in foster homes more than three years. Many children have difficulties in reuniting with their own families. Currently, there is no tracking system in the case where parents cut off contacts with their children. In addition, foster care centers are not adequately equipped with financial and human resources to provide quality services.

○ Group homes have been introduced to promote family like care which is more likely to produce positive outcomes for children. They have been supported by the government since 2004. Children living in group homes can receive basic livelihood support based upon the results of evaluation. However, if a custodian doesn't agree to separation of children even if he or she is an abuser, or if it is not possible to prove that a custodian is not qualified to rear children, the child cannot receive support. On the other hand, children in institutions can receive the support if their guardians

give up custody or parental rights regardless of the reason for children's admission in institutions or the consideration of the qualifications of custodians. This is against the principle of non-discrimination.

○ According to *the Social Service Act*, an assessment of alternative care institutions should be conducted every three years, and each local government regularly investigates and visits protection agencies. In addition, the National Human Rights Commission assesses child welfare institutions based on the child rights index which was made in 2005. However, these evaluations can only assess management of institutions but not care and treatment.

Recommendations

- It should be ensured to systematically undertake a periodic review of care and treatment provided to children in all public and private institutions.
- It is required to establish a systematic framework to help children in alternative care better reintegrate into family and society including family support.
- It is necessary to provide greater financial support to foster families and increase the number of social workers and upgrade their skills and capacity to provide quality services to children in alternative care and to vulnerable families.

4. Abuse, abandonment and physical and psychological recovery and reintegration

○ As the revised act was enforced in July 2000 total 17 Child Abuse Prevention Centers (Child Protection Agency) were established in 16 provinces and cities in October 2000 to report and investigate child abuse cases. Since then, they have been expanded nationally to 45. The National Child Protection Agency has built a nation-wide database and collected information on the perpetrators and victims of abuse and neglect, disaggregated by gender and age. It publishes the report on the status of child abuse every year with the Ministry of Health and Welfare based on information in the database.

○ Currently, local child protection agencies cover broad regions. Thus, it is not easy to reach out to victims and it is difficult to not only provide services but also systematically conduct awareness raising campaigns and education for child abuse prevention with limited human and financial resources.

○ Only 0.55 cases of abuse and neglect were reported per 1,000 child population. That is because there are no penalties given to persons who fail to fulfill the duty to report, and the public still hesitate to report child neglect and abuse within the family.

○ Those in contact with children are obliged to report child abuse and neglect according to article 26 of *the Child Welfare Act*. However, every year, only one third of cases are reported by people who have obligations to report.

○ According to the report on the status of child abuse in 2009, 12.2% out of total 9,309 reported cases were recurrence cases. Furthermore, the number of recurrence increases every year. Also, legal proceedings are not yet established to provide compulsory treatment or counseling for abusive parents, restrict or, if necessary, terminate parental rights and hold abusive parents who fail to comply with court orders criminally accountable.

Recommendations

○ Efforts should be strengthened to ensure that the system could effectively detect, receive, monitor, and investigate child abuse and neglect, and, when necessary, prosecute cases in a child-friendly manner.

○ It is necessary to develop a national response system which is designed to provide, where appropriate, support and assistance to both victims and perpetrators. For example, the public defender system should be introduced for child victims to ensure the best interest of the child in legal proceedings and access to counseling and assistance with recovery and reintegration should be expanded to all victims of violence.

5. Adoption

○ Domestic adoptions can be arranged without authorization or involvement of the competent authorities based upon *the Civil Law*. Such arrangements do not necessarily take into account the best interests of the child or, where appropriate, the views of the child. It is not also required to examine motive for adoption and adoptive families' environments. In addition, the rate of domestic adoption is still remarkably low.

○ It is banned that individuals adopt children or unregistered facilities protect children by article 7 of *the Law on Protection and Support of Missing Children*. Also, if individuals or institutions protect missing children without justifiable reasons, they can be sentenced to maximum 5 years of imprisonment or 30 million won in fines.

Recommendations

- Adoption must be authorized only by competent authorities including the judicial in accordance with applicable law and procedures and on the basis of all pertinent and reliable information. Both trained social workers and adjudicators should be involved in the process.
- The best interests of the child must be the paramount consideration and children's views should be given due weight having regard to age and maturity in the adoption process.
- It is required to ratify *the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption*.

Chapter 6. Basic Health and Welfare

1. Public health service

○ Recently youth smoking rate is increasing again, while child smoking rate is also on the rise. According to the 'Survey on the Status of Youth Detrimental Environment' announced in 2009 by Ministry of Gender Equality and Family, general youth smoking rate was 8.2% as of 2009, decreased from 10.8% of 2008. This survey also showed that youth in crisis smoking rate was 55.4%, 6 times higher than that of general youth.

○ Habitual smoking rate among youth is also high. According to the 'Korea Youth Risk Behavior Web-based Survey'(KYRBWS) of Korea Centers for Disease Control and Prevention(KCDC), youth everyday smoking rate was increased to 6.7% last year from 3.9% of 2005. The rate has been increased every year as it jumped to 5.3% in 2006, to 5.9% in 2007, and to 6.5% in 2008.

○ Drinking is also one of the serious issues for children and youth. According to the 'Survey on the Status of Youth Detrimental Environment' of 2009, the rate of ordinary youth who have drinking experience was 55.8% and the average age of starting drinking was 13.7. Especially, the hazardous drinking rate of youth in crisis, which is as high as 87%, is calling for much attention. In addition, the drinking rate of female youth was found similar to that of male youth, which would possibly pose as a serious risk factor for maternal health in the future. The increasing rate of harmful drinker (who drinks one or more bottle of soju one or more times a month) is also a serious problem. The rate has been increased from 29.7% in 2005 to 31.5% in 2007 and to 33% in 2009.

○ The addiction to the internet and the internet games reached to a serious level. According to the statistics released by National Information Society Agency, 2.6% of youth (about 190,000) belongs to the harmful user group that needs medical treatment and 10.2% (about 750,000) fell into the potential risk group that needs counseling. The statistics showed that almost half of the internet addicts were children or youth as they accounted for 49% (938,000) of the total addicts (1,913,000). Though the youth internet addiction rate fell 1.5% to 12.8% in 2009 from 13.3% in 2008, the high risk compulsive internet users among youth increased 0.3% from 2.3% in last year to 2.6% in this year. Moreover, as the proportion of elementary student groups increased among these high risk users, the average age of internet addicts is getting younger.

○ Mental health of children and youth is also in dangerous situation. According to the White Paper on Children and Youth released by Ministry of Health and Welfare, 44.1% of children and youth were under stress, 19.1% have thought of suicide, and 4.8% have attempted suicide. Girls' mental health index was particularly worse than that of boys. Girls usually felt more stressful than boys, and often felt so much depression that they could not fulfill their daily duties. The rates of girls having suicidal thoughts and suicide attempts were higher than the boys' rates.

○ According to the White Paper on Children and Youth, the child obesity rate was increased from 5.8% in 1997 to 9.6% in 2008. In 2008, the boys' obesity rate was 12.8%, two times higher than girls' rate of 6%. According to the data from Health Insurance Review Agency, in 2009 the children who were treated at hospitals for adult diseases such as high blood pressure were 154,109 and the number of high cholesterol (children) patients doubled compared to the previous year.

○ The government is promoting the prevention of smoking and other harmful material addiction through the media. Those efforts, however, are not bearing fruits. Moreover, no effective programs targeting children were conducted.

○ Though mental health centers are set up at public health centers, most psychiatrists are working in and around city areas. Therefore, professional services are not provided evenly throughout the nation, and mental problems are not detected or prevented early and properly.

○ The accessibilities to Children's hospitals are low, because most of them are located in large medical centers. Mid and small sized hospitals lack human resources and facilities to provide children with emergency treatments. These hospitals cannot respond to the situations where urgent surgery or treatments are needed.

Recommendations

- Comprehensive and special measures against smoking, drinking, and mental health problems of children should be established at government level.
- Public-private cooperative pan-national organization should be established to protect and promote the health of children and youth. This organization must be participated by not only government, but also schools, youth groups, parents groups, and social groups.
- The countermeasures against internet addiction are urgently needed as the elementary students internet addiction rate is rising and the addiction rate of children and youth from low-income or double-income families is twice higher than that of total children and youth.
- Existing children's medical institutions need to be designated as children's hospitals and receive financial support from government.

2. Disabled Children

- Disabled children experience double disadvantages of being a child and a disabled. They should be at the top priority in the national welfare policy, but in reality they are not. They are isolated between *the Child Welfare Act* and *the Welfare Act for the Disabled* emphasizing on the disabled adult.
- The current welfare system covers the care of disabled child, medical expense, child-care expense, assistive devices, personal assistance, rehabilitation service, and family with disabled children. Most of welfare services, except child care support, however, are limited to low income households.
- Though the income criteria was removed from qualification conditions of rehabilitation service in 2001, physical therapy and vocational training cannot be provided by the voucher program of the Ministry of Health and Welfare, and the qualifications of therapists and clinics are not properly supervised.
- Health insurance supports only 18% of assistive devices. Many families should burden out of pocket payment in order to purchases high-priced assistive devices.

- There is a lack of cooperation between disabled child service institutions. The disabled child welfare delivery system has not been established.
- In the child care facilities, the ratio of disabled children and special education teachers is 9 to 1, which reflects low quality of service compared to the ratio of 4 to 1 in kindergartens.
- 15,000 disabled children go to the child care facilities. Over 30% children are left without responsible supervisors to take care of them, not to mention special education teachers.

Recommendations

- Independent legal system covering everything about the services for health and welfare of disabled children should be established.
- Until the welfare for the disabled children reaches to a certain level, Committees for welfare and health of disabled children need to be set up in the central and the local governments.
- The policy for the disabled children should be strengthened comprehensively, providing sufficient number of teachers caring disabled children.

3. Social security, public health and welfare budget

- The welfare expenditure of Korea is 11% of GDP as of 2009, which is the second lowest following Mexico among OECD countries and is half of the average of OECD countries. Moreover, the children welfare budget currently accounts for 0.27% of GDP, which is 1/47 of the OECD average 2.3%.
- According to the OECD Social Expenditure Data, the welfare expenditure per child in Korea is 40 dollars which includes child allowance, maternal and child-rearing allowances, cash support for low income households as well as other supports. This expenditure is far lower than 3,931 dollars in Sweden, 2,161 dollars in France, 1,707 dollars in Germany, and 913 dollars in UK.
- Though the budget of Ministry of Health and Welfare has increased over 10% for the last 5 years, the budget mostly focused on basic livelihood security protection program, medical assistance, and health insurance financing.

- Child welfare budget accounts for 0.09% of a total government budget, which is extremely low even considering the decreasing population of children.
- The current child welfare service is divided, as Ministry of Health and Welfare is in charge of child welfare and Ministry of Gender Equality and Family is in charge of youth welfare. Therefore it is hard to provide the holistic service.
- As the age ranges of children (ages under 18) and youth (ages from 9 to 24) are overlapped, confusion and conflicts are generated in providing welfare services. Cooperation and coordination are not enough among ministries.
- The current *Child Welfare Act* lacks universality, because it is mostly about disadvantaged children. In addition there is no legal system coordinating individual laws on child welfare.

Recommendations

- The objects of *the Framework Act of Youth* (aged 9 to 24) and *the Child Act* (aged under 18) should be redefined not to overlap, or should be combined when a new administrative system is established to organize cooperation and coordination among ministries.
- The enactment of tentatively named '*Framework Act on Child*' should be reviewed to overhaul the current Child Act which is limited to child welfare, and to include public health, security, and rights of children.

Chapter 7. Education, Leisure, and Cultural Activities

1. Private education expenditure

- The cost of private education is estimated to increase further. A current education curriculum focuses mainly on the subjects for university entrance exam. In entering university, the school records and College Scholastic Ability Test still weighs heavily. Although the government announced to reduce the number of subject of CSAT in the 8th educational curriculum to alleviate the expenditure of private education, it rather put more importance on the main subjects (Korean language, English, Mathematics).

○ An after-school program also affects the increase of private education expenditure. The government started the program for the children in low income families. However, it has been implemented by force and acted as an extracurricula on major subjects for university entrance exam, resulting in an increase of private education expenditure. The educational program of EBS (Education Broadcasting System) does not contribute to reduce the expenditure of private education. Thus, it would be continuously increasing without any fundamental changes. It will put a heavy burden on parent's shoulder given both public and private education fees. The children in low income families are likely to be lost in the intense competition for university admission.

○ It is desirable that the Ministry of Education, Technology and Science launched an admission officer system recently to develop talented human resources with improving various systems and the Education Bureau of Cities and Provinces has encouraged students to voluntarily participate in diverse activities. The system, however, has the limitation in achieving the objective of 'self-learning' stated in the 7th education curriculum. Because the system is led by the government and it changes only the importance of main subjects of Korean language, English and Mathematics. Students tend to participate in the activities passively rather than voluntarily. In consequence, the right to play for child development is not guaranteed in the system.

Recommendations

- A strong governmental measure against an increasing expenditure of private education in excessive competition for university admission are required.
- All possible measures are required to develop various activities and to ensure an opportunity to participate in them for a sound development.

Chapter 8. Special Protection Measures

1. Marginalized children

1) Children of multi-cultural families

○ As of 2009, the number of immigrants who got married to Koreans and resided in Korea was 167,090 and the number of their children was 103,484. According to the study on 154,000 marriage immigrants conducted by the Ministry of Health and Welfare in 2009, about 60% of them lived on income which is a half of the average household income in urban areas.

○ Compared to the statistics of civil registration of the Ministry of Public Administration and Security, the enrollment rates of children of multi-cultural families are 82.6% for elementary school, 82.9% for middle school, and 69.2% for high school, respectively. In other words, approximately 19.4% of children of school age from multi-cultural families do not receive formal school education.

○ Child abuse in multi-cultural families is also critical. The number of children who have been abused more than once is increasing. Out of 5,686 child abuse cases, 181 cases were related to children in multi-cultural families. The protection rate of abused children was 1.72% per 1,000, which is three times higher than average protection rate of 0.55%. It is reported that 8.7% of the abused children were re-abused in 2008, but 10.2% in 2009.

2) Migrant children

○ According to the Ministry of Justice, as of August 2008, the total number of migrant children was 69,987 and among them, undocumented migrant children were estimated to be about 8,000.

○ For migrant children, access to education and health services are elusive. Children should receive compulsory education in elementary and middle schools under current laws (*Framework Act on Education, and Primary and Secondary Education Act*). In fact, migrant children can enter or transfer to school 'at the discretion of the principal' and it is difficult for them to access to high education because it is not compulsory. Additionally, it is not clear whether completion of their studies is officially recognized. Also, the attendance rate of migrant children is very low. According to the Ministry of Education, Science and Technology, 1,402 children of migrant workers attended schools. In particular, the number of undocumented migrant children who went to schools was only 148.

○ Civil society organizations formed a coalition to protect the rights of migrant children in April 2009. The coalition is currently working on a bill for the protection of the rights of migrant children. It covers all children of migrants including children of undocumented workers and applicants for refugee status, and deals with the right to post-primary education and education on migrant children's identity, and political and social measures such as permission for special stay, suspension of compulsory eviction, and support for child care. However, relevant departments take a negative attitude expressing concerns about reverse discrimination against Korean children, which shows their low awareness of child rights.

3) Refugee children

○ Approximately 50 refugee children or children of asylum seekers stay in Korea and 70-80% of them are infants and young children. Identity, education and health issues are the biggest problems that they face. Korea adopts the

nationality principle when determining a person's nationality. Thus, children should acquire nationality of their parents. However, many have difficulties in getting certificates guaranteeing their legal validity issued by their home country or lack identity documents. This makes it difficult for them to receive basic education, welfare and health services, and family reunion.

○ Once children are recognized as refugees, most of them are admitted to schools. But it is not sure whether their graduation is certified. In addition, children are vulnerable to the risk of abuse and bullying.

○ The '2008 Study on the Status of Refugees' of the National Commission on Human Rights showed that more than 35% of people who applied for refugee status had poor access to medical services. Medical assistance budget was drawn up for refugee applicants and foreigners but less than 20% was actually executed. No specific guidelines for budget execution were established.

○ No educational programs or training on the right of refugees are provided for officials in direct contact with refugees or asylum-seekers at the Legal Research and Training Institute and concrete guidelines for the treatment of refugees are not laid down.

Recommendations

○ Specific measures must be taken to increase the enrollment rate of children from multi-cultural families, break out of vicious cycle of poverty of multi-cultural families, and prevent potential juvenile delinquency and deviation.

○ Public awareness should be raised to understand that these children should be protected as equal as Korean children based on the *Constitution* and the *UNCRC*.

2. Economic exploitation

○ The number of working children is increasing. According to an additional research of a study on the economically active population of the National Statistical Office, as of August 2009, about 6.5% of total 3,294,000 children aged 15 to 19, 213,000 children were working. Also, about 18.8% of children who had part-time jobs worked for a living, not for entertainment considered a main purpose of having part-time jobs.

○ Approximately 37.7% of respondents had worked for more than four months, which meant that they worked not only during vacation but also during semesters. Usually, it is known that children work for just a short period of time

but 9.8% of respondents had worked for more than a year. In addition, about 64% of them were paid less than the minimum wage.

○ Legal working hours per day for children are 7 hours which is 1 hour shorter than those of adult laborers. However, there is no difference in weekly working hours since the total weekly working hours for children is calculated based on six day work system. This is against the Constitution requesting special protection of children.

○ The research of the Network for Juvenile Labor and Human Rights in 2009 reveals that approximately 44.3% of respondents worked for more than 6 hours on average, and 62% of them worked without a break. Furthermore, many worked even at night, which is prohibited by the current law.

○ 83.6% of the respondents were provided with meals at their workplace and 15% among them ate food that were out of date or leftovers, raising serious concerns about their right to health.

○ Working children are also exposed to different types of violence. Approximately 53.9% of the total respondents worked in a dangerous place without protective devices, and 23.95% of them had accidents while working but about 43% did not get treatment after the accident. On the other hand, 235 children were verbally abused, 29 children were sexually harassed, and 46 children were physically assaulted. However, working children are not provided with sexual harassment prevention education and recovery measures are also not promptly taken. Education by employers on prevention of sexual harassment is less than effective as preventive measure.

○ In inspection of work environment, most necessary check items such as possibility of sexual harassment and industrial disaster, and issuance of social insurance are excluded. Government conducts inspections on companies employing juveniles twice a year, and nearly 80% of them were found failing in complying with *the Labor Standard Act*.

Recommendations

○ Measures to monitor working environment must be strengthened to guarantee the minimum wage, make companies comply with legal working hours, secure safety in workplaces, prevent diverse violence, and protect children's rights.

○ It must be stipulated that the Ministry of Labor and Employment should provide education on labor laws and sexual harassment prevention training for employers hiring children.

- Labor inspection should be strengthened. Effective remedies and rehabilitation measures must be provided to the victim. Strict punishment for employers violating *the Labor Standard Act* should be ensured.
- The authorities identify the status of workplaces based upon the information obtained from the employer without investigating children. The target of inquiry needs to be diversified and inspection methods should be improved.

3. Sexual exploitation

○ The number of sexual violence against children has continuously risen. According to the statistics of the National Police Agency, the number of sexual violence against children increased from 5,159 in 2006 to 6,782 in 2009. According to legislator Choi, Young-hee, the report rate of sexual violence against children is only 10%. Given this, the actual number of sexual violence against children is estimated to be around 50,000.

○ The National Police Agency analyzed 10,129 sexual violence cases handled by 18 One-stop support centers from 2009 to the first half of 2010. The analysis showed that a half of child victims were sexually assaulted during daytime. Enticement was the most used method of obtaining access to the victim, and about 30% of the children were repeatedly sexually abused two times and more. Surprisingly, many children were sexually assaulted in houses that could be considered as the safest place. (26.6% of infants and young children, 23.1% of elementary school students) In all age groups, the largest number of children was sexually assaulted by strangers but the percentage of relatives or neighbors being the offenders is inversely proportional to the age of victims. Adults were the most common perpetrators of sexual violence against children but the percentage of child offenders accounted for about 13%. According to the data of the National Police Agency, the number of sexual offences committed by children increased almost two times from 1,571 in 2006 to 2,934 in 2009.

○ Sexual crimes through the internet rapidly increased from 53.3% in 2001 to 91.3% in 2007. It is more likely for children who run away from home or drop out of school to get involved in sexual offences. It is a concern that the internet and mobile phones are becoming the dominant mediums from which children get obscene materials. Many children copycat crimes or commit sexual offences after watching them. According to the Top Ten Reviews, an internet filtering software ratings service, one Korean spent about 527 dollars on online pornography in 2006, which was the highest in the world. Children are getting easier access to pornography through the media. Though media is getting more sexually suggestive and violent, the authority does not appropriately respond to the situation: the Korea Communications Standards Commission requested to correct 35,163 cases out of 73,995 deliberations in 2007 and requested to correct 5,057 cases 6,809 deliberations in 2009. In order to prevent sexual violence, a more thorough monitoring and a crackdown on pornography are required.

- It is also concerned that the rights of children who work in the entertainment business or want to become entertainers are often violated. Ministry of Gender Equality and Family conducted a research on the current status of sexual exploitation against children working in the entertainment industry in 2010. It surveyed 103 juvenile entertainers and aspiring entertainers aged 9 to 24 (53 males, 50 females). 60% of the girls were forced to expose their bodies. One out of ten were advised to get a cosmetic surgery or forced to expose specific body parts. This result indicates girls are prevalently portrayed as sex objects. Approximately 56.1% were recommended to lose their weight.
- Violence against athletes is also serious. According to a study jointly conducted by the Korean Olympic Committee and Seoul National University, three of 100 elementary school athletes have been sexually assaulted or raped within one year.
- The government has not adopted a national plan of action with prevention and follow-up measures, and effective tools for evaluation. It is hard to view the Comprehensive Plan for Preventing Sex Trafficking and the Comprehensive Plan for Protecting Juveniles from Harmful Environments as comprehensive long-term frameworks.
- In March 2010, laws related to sexual violence against children were amended to strengthen punishment for offenders. Through the amendments, the legal system of punishment was introduced, which comprises of *the criminal law, the Special Act on Sexual Violence, and the Act on Protection of Juvenile from Sexual Exploitation*. The sentence of sexual crimes against children has increased and sexual crimes committed in drunken state are not longer considered as the factor to reduce the sentence. However, those laws do not strongly focus on prevention and protection of victims.
- Punishment for those convicted of a sex offence against children cannot be viewed as appropriate. The prosecution rate and the imprisonment rate were only 40% and 36%, respectively, and only 20% of sex offenders against children who were found guilty were sentenced to imprisonment and most of them were sentenced to a suspended of execution and fines. Also, the term of imprisonment is frequently reduced in the courts.
- It is hard to recognize the effectiveness of the online disclosure of the personal information of sex offenders against children. Currently, information about only those who were found guilty after January 1st 2010 is accessible. In other words, if someone committed a sexual crime against children but was convicted before January 1st 2010, his or her information is not registered. Questions have been raised regarding the effectiveness of electronic tagging. It can be used to keep track of offenders who were convicted after September 2008. However, 7 out of 574 persons who were ordered to wear electronic tagging cut it off and ran away. In addition, it is reported that sex offenders who are highly likely to commit a crime again have free access to elementary schools.

○ Sex offender management policies and programs are not systematically and consistently implemented. Ministry of Gender Equality and Family is making efforts to take a proactive approach. For instance, it held a joint conference with relevant departments including the Ministry of Health and Welfare to develop measures for child protection from sexual violence. However, work is dispersed and communication is not effectively promoted across the ministries. While the online disclosure of the personal information of sex offenders against children is implemented by the Ministry of Gender Equality and Family, the Ministry of Justice operates the electronic tagging system. Also, *the Act on the Protection of Juveniles from Sexual Exploitation* falls under the jurisdiction of the Ministry of Health and Welfare but *the Act on the Punishment of Sexual Crimes and Protection of Victims* is undertaken by the Ministry of Justice.

○ Long-term follow-up studies show that the recidivism rate of sexual offenders is very high, which is approximately 50% to 60%. The 1 year recurrence rate of sex crimes was 37% but that of sexual offences against children reached 50%. However, recidivism prevention programs are insufficient and ineffective. Psychological or medical treatment is not extensively provided for sex offenders. Recidivism prevention education will be conducted in seven more prisons from November 2010 but currently, only four out of 36 prisons provide prevention education. In addition, the completion rate was only 50% as 131 persons of total 274 targets and 464 persons of total 891 targets received education in 2008 and 2009, respectively. The Ministry of Gender Equality and Family conducts treatment and rehabilitation programs for juvenile offenders in probation offices. In 2009, only 10% of total 2,934 juvenile offenders received education. Punitive steps unaccompanied by prevention and treatment measures cannot be a fundamental solution for sex offences.

○ It is a concern that child victims often suffer from a second victimization during the process of interrogation or trial. *The Act on the Prevention of Prostitution and Protection of Victims* allows child victims under the age of sixteen to make a statement via video recording but in reality they frequently have to repeat their testimony because officials are not skilled in recording. Moreover, the courts often might not recognize the validity of video. Victims also are forced to give testimony or have excessive cross-examination. Moreover, they are urged to reconcile with offenders, and sometimes their personal information is leaked. Or, relevant officials such as police officers and medical personnel verbally abuse or show lukewarm response to child victims. As the guidelines for resolving sexual crime cases were announced on April 16th 2010, video recording of testimony has the same legal effect as a written statement in trials. However, both are still required to secure sufficient evidence. Sometimes child victims have to show up for trial when there is no sufficient evidence to find an offender guilty. According to the Sunflower Children's Centers for child victims of sexual violence, about 20% of the children have experienced a second victimization.

○ 10 Sunflower Children's Centers and 16 One-stop Support Centers are established to provide victims with integrated assistance through counseling, protection and treatment services. However, Sunflower Children's Centers

provide counseling, the women and children unit of the police is responsible for victim impact statement, and the criminal investigation section takes charge of investigation.

○ The research on features of international and domestic sexual crimes against children and child protection system showed that boys accounted for 4% of total victims. On the other hand, according to the survey of 4,701 elementary school students (the 4th~6th grades), more than a half of male victims covered up the facts that they were sexually abused.

○ Sexual crimes against children become more serious but the budget decreased. The budget of the Ministry of Gender Equality and Family, the competent Ministry, is 20,412,000,000 KRW in 2011, decreased by 11.6% compared to 2010. The budget for sexual violence prevention and support for victims was reduced by 10% from 17,096,000,000 KRW in 2010 to 15,381,000,000 KRW in 2011. The budget for establishing One-stop Support Center was not included and the budget for operating centers were reduced by 1 billion KRW from 2,455,000,000 won to 2,350,000,000 KRW. Also, operating budget for correction programs and programs for victim's families and budget for education for child offenders were cut.

○ An expert team consisting of prosecutors, clinical psychologists and child psychiatrist was established in 2010 but more experts are needed. Sex crime prosecutors and investigators are rotated out every one to two years, which is not effective. In addition, different prosecutors conduct investigation and trials and sometimes prosecutors are replaced even during the trial. The police and the prosecution undertake training on characteristics of child victims, interview and investigation skills, etc. only 1~9 times a year.

Recommendations

○ A data collection system should be established in order to ensure that data on sexual violence against children, disaggregated, inter alia, by age and sex, are systematically collected and analyzed. Data should also include information on the number of prosecutions and convictions for such offences, disaggregated by the nature of the offence.

○ The mid and long-term national action plan based on accurate statistics must be established, and budget and human resources should be adequately allocated.

○ Measures must be taken to protect neglected children and children in dual-income families, and it is necessary to build an effective social safety net.

○ It is required to undertake an intensive review of current prevention measures.

- Strict punishment must be meted out to sex offenders. For example, indictment period should be extended until child victims reach maturity and limits of imprisonment should also be extended.
- Punitive measures should also be accompanied by prevention and follow-up programs including prevention and correction education, and treatment.
- Effective interagency coordination is necessary. There should be a special body comprised of relevant ministries and experts taking full responsibility of coordination and policy implementation.
- Procedures and systems should be improved to promptly and effectively provide assistance for child victims.
 - Unifying investigation and post-management systems
 - Providing substantial education for professionals such as investigators, judges, medical personnel, and clinical psychiatrists.

3. Juvenile Justice

- With the amendment of *the Juvenile Act* in December 2007, new systems were introduced; a state-appointed legal assistant, reconciliation or mediation procedures, guarantee of the victim's rights to give testimony, investigation prior to the decision of the prosecutor, legislation of conditional suspension of prosecution, diversification of programs and services, and a maximum two years of detention. Also, human rights education has been carried out for probation officers, and diverse programs were conducted; for instance, vocational training, ski camps, the International Youth Peace Camp, and cross-country tracking.
- However, it is difficult to recognize that *the Juvenile Act* meets the international standard. The amended act still has factors that can potentially infringe human rights. For example, other than the public defender system and reconciliation procedures, guarantee of rights to due process lacks necessary regulations. Investigation prior to the decision of the prosecutor is not mandatory. Prosecutor might not investigate the conduct, record, general environment, and other issues pertaining to the children if he or she deems it is unnecessary. Requirements for consignment of the Juvenile Classification Center are less specific than those for imprisonment in the code of criminal procedure. Shock incarceration may have negative impact on children.
- The recurrence rate of juvenile crime is high (32.4%). Many children in detention centers come from low income families. It is reported that many children commit crimes again because they fail in getting jobs and entering schools. This indicates that child offenders have difficulties in reintegrating into society and no social safety net is secured for

children in vulnerable situation. Juvenile crimes are heavily influenced by family and social environment. That is, those who have financial difficulty and are neglected are more likely to commit crimes. Unless their environment is improved, it is difficult to promote behavioral change from a long-term perspective.

Recommendations

- ☐ When amending *the Juvenile Act* and making decision on treatment, the principle of best interest of the child must be a primary consideration.
- ☐ Improvement should be made to protect the rights of children.
 - Resolving overcrowding in detention centers
 - Strengthening the involvement of experts in juvenile justice
 - Establishing detailed guidelines for the implementation of systems
 - Reducing use of pre-trial detention
- ☐ It is required to strengthen connection with families, schools and the community since juvenile crimes are significantly influenced by environmental factors.
- ☐ It is necessary to provide social safety nets and systematic reintegration programs especially for children in vulnerable situations.