



INTERNATIONAL
COMMISSION
OF JURISTS

UNITED NATIONS HUMAN RIGHTS COUNCIL
14th Session of the Working Group on the Universal Periodic Review
22 October to 5 November 2012

**INTERNATIONAL COMMISSION OF JURISTS (ICJ) SUBMISSION TO THE
UNIVERSAL PERIODIC REVIEW OF
THE REPUBLIC OF KOREA**

Submitted April 2012

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

ICJ submission to the Universal Periodic Review of the Republic of Korea

Tel: +41(0) 22 979 3800 - Fax: +41(0) 22 979 3801 - Website: <http://www.icj.org> - E-mail: info@icj.org

ICJ submission to the Universal Periodic Review of the Republic of Korea

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Human Rights Council's Universal Periodic Review (UPR) of the Republic of Korea. In this submission, the ICJ brings to the attention of the Human Rights Council's Working Group on the UPR (Working Group) and to the Human Rights Council (Council) issues concerning: (1) the implementation by the Republic of Korea of its obligations under the Convention on the Rights of the Child; and (2) international instruments and mechanisms.

IMPLEMENTATION BY THE REPUBLIC OF KOREA OF ITS OBLIGATIONS UNDER THE CONVENTION ON THE RIGHTS OF THE CHILD

2. In June 2008, the Human Rights Council adopted the United Nations "Protect, Respect and Remedy" Framework. Guiding Principles in this respect were also adopted in June 2011. The ICJ believes that children's rights and the business sector is of critical importance in the examination of States' reporting procedures under the Convention on the Rights of the Child (Convention). Human Rights Council Resolutions 8/7 (2008) and 14/7 (2011) requested the new Working Group on the issue of human rights and transnational corporations and other business enterprises (Working Group) to include consideration of the rights of the child when exploring the relationship between business and human rights. Bearing this context in mind, the ICJ provides the following information regarding the business sector impact with a specific focus on children's rights in the Republic of Korea and in relation with its obligations under the Convention.

The rights of the child and the responsibility of business enterprises

3. The Republic of Korea has the duty, under Article 32 of the Convention, to protect children from economic exploitation. Such duty entails an obligation to refrain from contributing to the creation or perpetuation of child labour and the commercialisation and/or use of the products of such work regardless of whether it occurs in the country or abroad. The preamble of the Convention recognises the importance of international co-operation for the improvement of the lives of children, while Article 4 recognises its importance for the implementation of the Convention.¹

4. In this regard, the Council and the Working Group may wish to welcome the following initiatives by the Republic of Korea. In 2011, an expert committee, including experts from the Republic of Korea, discussed the Asia Corporate Social Responsibility (CSR) Assessment model to include, among others, human rights parameters for CSR reporting.² While this initiative is welcome, it should also include a specific assessment of the impact of business activities on child rights, and it should also cover all companies registered in the state. CSR reporting can be an important instrument to highlight abuses of children's rights by corporations, and to take preventive and remedial measures. A second initiative consisted of a seminar on business management and human rights, held in 2011 by the National Human Rights Commission of the Republic of Korea, with a view to explore the corporate responsibility to respect human rights on a Constitutional law basis and the obligations of the State to ensure respect of human rights by the business sector.³

5. Even though an increasing number of companies from the Republic of Korea have voluntarily reported on CSR since 2006, the reports fail to pay sufficient attention to human rights issues.⁴ The Republic of Korea therefore needs to ensure the implementation of the responsibility of business to respect human rights by providing a legislative framework that requires companies domiciled in the Republic of Korea to adopt measures to prevent and mitigate adverse human rights impacts in their operations. The inclusion of child rights

indicators and parameters for reporting should be promoted and specific assessments on business' impacts on child rights should be required.

6. The Republic of Korea does not appear to have a complete legal regime that contemplates corporate criminal liability in relation to human rights abuses. Corporations apparently can be penalised only in cases of bribery through the Act preventing bribery of foreign public officials in international business transactions.⁵ In such cases a legal person (corporation) may be deemed liable for crimes committed by an employee acting on its behalf when the offence is committed in connection with the business.⁶ Companies engaging in child labour within or outside Korea cannot be held criminally liable.

7. It has been recommended by the Committee on the Rights of the Child (the Committee) that the Republic of Korea monitor the entry of products into its market to prevent the importation of products made with forced child labour.⁷ Due to the increasing allegations of forced child labour in the cotton harvest in Uzbekistan,⁸ the Republic of Korea should monitor especially the entry into its market of cotton products from Uzbekistan, and it could use its bargaining power while negotiating trade agreements to require that all products entering its market are child labour free.

8. The Republic of Korea has also reportedly been acquiring large portions of land in various countries, such as Ethiopia, Cambodia, Philippines and Ukraine, to meet national food security concerns.⁹ These land acquisitions and leases reportedly often include water rights and relocation of the population living nearby, thus leading to water scarcity, lack of access to land, food insecurity and displacement.¹⁰ The relocation of children is likely to negatively impact their development, especially if they belong to the indigenous population, as the use of traditional land and substance means are necessary for their development and culture.¹¹ The Committee has recommended that the Republic of Korea provide for an effective legal framework to ensure respect for child rights in trade agreements that it is participating in, including specifically the rights of indigenous children.¹²

9. Under the Convention, States are bound to ensure children the right to life, development and survival (Article 6) and to provide them with an adequate standard of living (Article 27(1)). The Preamble clearly recognises the importance of international cooperation as a means of "improving living conditions of children in every country". In this regard, the risks of increasing food insecurity, environmental degradation, and deprivation of access to land and water, often severely impacting the lives of children, give rise to concerns that the Republic of Korea is not meeting these Convention obligations.

National legislation and institutions

10. The Committee has urged the Republic of Korea to undertake measures, including considering further legislation, to ensure that all the provisions of the Convention are adequately applied in its judicial decisions,¹³ and to ensure that the principle of the best interest of the child is applied in all legislative, judicial and administrative proceedings.¹⁴ One of the important steps to take for the Republic of Korea is to ensure a right to all children to appeal to court decisions¹⁵ and to develop the necessary regulations to protect the rights of child victims, in accordance with its obligations under the Convention.¹⁶

11. While workers in the Republic of Korea are free to organise trade unions, employees of important defence industries may be denied or restricted in their right to collective action. The legislation in force creates some obstacles, for example, when companies are allowed not to pay workers during time spent on industrial action (strikes).¹⁷ Moreover, there is no specific provision protecting workers from anti-union discrimination and strikes are restricted to certain objectives.¹⁸

12. The principle of non-discrimination in respect of children is one of the core principles of the Convention. It is therefore imperative that the Republic of Korea adopts the necessary legislation to prevent discrimination on the work place and respects trade union freedoms, to strengthen the respect of unions' rights as a further tool to protect children from economic exploitation.

13. The Republic of Korea should ensure the prompt establishment of a division specialized in children's rights within the National Human Rights Commission, as recommended by the Committee in the concluding observations to the second, third and fourth periodic reports.¹⁹ National human rights institutions specialized in children's rights are of importance to ensure the implementation of the Convention.²⁰

INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND MECHANISMS

14. The Republic of Korea is a party to several of the core human right treaties, but it is yet to ratify the Second Optional Protocol (OP) to the International Covenant on Civil and Political Rights (ICCPR), the International Convention for the Protection of All Persons from Enforced Disappearances (ICPED), the Third OP to the Convention for the Rights of the Child (on individual communications), the OP to the Convention Against Torture (on the Subcommittee on the Prevention of Torture), the OP to the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Convention for the Protection of the Rights of All Migrants Workers and Members of Their Families (ICRMW).

15. The Republic of Korea has failed to adhere to the following periodic reporting deadlines to the treaty bodies:

- Submission of its fourth periodic report to the Human Rights Committee (HRCttee), due on the 2 November 2010;
- Submission of its combined 15th and 16th periodic reports, due on 4 January 2010, and of its 17th report, due on 4 January 2012, to the Committee on the Elimination of All Forms of Racial Discrimination (CERD), and
- Submission of its third periodic report to the Committee against Torture, due on 7 February 2012.

16. The Republic of Korea has extended a standing invitation to the Special Procedures as of 3 March 2008, and has no pending requests for visits by any Special Procedure mechanism.

RECOMMENDATIONS

17. The ICJ calls upon the Working Group and the Council to urge the Government of the Republic of Korea to:

Concerning the implementation of the Convention on the Rights of the Child:

- 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;
- ii). Require the inclusion of child rights indicators and parameters for reporting and specific assessments on business' impacts on child rights;
- 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;

- iv). Undertake the necessary legislative changes to hold criminally liable all companies domiciled in the Republic of Korea that use child labour, including their suppliers and business partners, whether operating within the state or abroad;
- v). Carry out human rights impact assessments before entering into trade and investment agreements;
- vi). Promptly establish a specialized and independent children's rights division within the National Human Rights Commission;
- vii). Withdraw its reservation to Article 40(2)(b)(v) of the Convention and ensure that every child has the right to appeal;
- viii). Ensure that the principle of the best interests of the child is taken into account in all judicial, legislative and administrative proceedings;
- ix). Undertake measures, including considering further legislation, to ensure that all the provisions of the Convention are adequately applied in its judicial decisions;
- 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;

Concerning international instruments and mechanisms:

- xi). Become party to the Second OP to the ICCPR, the ICPED, the Third OP to the CRC, the OP to the CAT, the OP to the ICESCR, and the ICRMW;
- xii). Provide without delay its fourth periodic report to the Human Rights Committee, its 15th, 16th and 17th periodic reports to the Committee on the Elimination of All Forms of Racial Discrimination, and its third periodic report to the Committee against Torture;
- xiii). Present to the Council, as soon as possible after adoption of the outcome document for the UPR of the Republic of Korea, a national plan of action for the implementation of accepted recommendations and voluntary pledges and commitments; and
- xiv). Present to the Council, two years after adoption of the outcome document, a mid-term progress report on the status of implementation of recommendations and voluntary pledges and commitments.

ENDNOTES:

- ¹ Committee on the Rights of the Child, *General Comment No 5, General Measures of Implementation of the Convention on the Rights of the Child (arts 4, 42 and 44 para 6)*, UN Doc CRC/GC/2003/5 (2003), para 60.
- ² The Hankyoreh, *Asian CSR expands human rights indices*, by Hwang Ye-rang, 30 May 2011, available at http://www.hani.co.kr/arti/english_edition/e_business/480368.html (last accessed on 17 August 2011).
- ³ National Human Rights Commission of Korea, *NHRCK Held a Joint Seminar on Business Management Integrated with Human Rights*, 6 July 2011, available at http://www.humanrights.go.kr/english/activities/view_01.jsp?board_id=HIGHRIGHTS&seqid=1453&BOARD_TYPE=A (last accessed on 22 August 2011).
- ⁴ ASrIA, *South Korean Companies Embrace Environmental Sustainability, but Human Rights and Board Independence Remain Key Challenges*, 21 April 2010, available at <http://www.asria.org/news/press/1272250157> (last accessed on 14 August 2011).
- ⁵ Allens Arthur Robinson, *'Corporate Culture' as a basis for the criminal liability of corporations*, Report for the United Nations Special Representative of the Secretary-General on Human Rights and Business, February 2008, available at <http://www.business-humanrights.org/Updates/Archive/SpecialRepPapers> (last accessed on 31 August 2011) p. 56.
- ⁶ *Ibid.*, pp. 56-57.
- ⁷ Committee on the Rights of the Child, *Concluding Observations: Republic of Korea*, UN Doc. CRC/C/KOR/CO/3-4, 6 October (2011), para. 27(b).
- ⁸ Yonhap New Agency, *S. Korea, Uzbekistan sign string of economic cooperation agreements*, by Chang Jae-soon, 24 August 2011, available at <http://english.yonhapnews.co.kr/national/2011/08/24/98/0301000000AEN20110824004600315F.HTML> (last accessed on 24 August 2011); Eurasianet.org, *German NGO Pursues Uzbek Human Rights Complaint with EU Cotton Traders*, by Catherine A. Fitzpatrick, 29 October 2010, available at <http://www.eurasianet.org/node/62261> (last accessed on 17 August 2011); Cotton Campaign, *Slave Nation: new report from the Environmental Justice Foundation*, 25 February 2010, available at <http://www.cottoncampaign.org/2010/02/25/slave-nation-new-report-from-the-environmental-justice-foundation/> (last accessed on 17 August 2011). See also ILO Committee of Experts on Application of Conventions and Recommendations, *Individual Observation concerning Worst Forms of Child Labour Convention, 1999 (No.182) Uzbekistan (ratification :2008)*, 2011, Ilolox : 062011UZB182, available at <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloilc&document=779&chapter=3&query=C182%40ref%2B%23YEAR%3D2011&highlight=&querytype=bool&context=0> (last accessed on 18 August 2011).
- ⁹ Survival International, *Exposed : Ethiopia gives farmland to foreigners while thousands starve*, 25 July 2011, available at <http://www.survivalinternational.org/news/7518> (last accessed on 31 August 2011) ; AFP, *Ethiopia land lease risks displacement : report*, by Jenny Vaughan, 29 July 2011, available at <http://www.google.com/hostednews/afp/article/ALeqM5hURPr3NAFSTH794ZxOHq3wYAuYfA?docId=CN.G.1046baaee64b2f1d60afa5a979a5d3a0.91> (last accessed on 31 August 2011) ; Bloomberg, *South Korea to expand overseas farming on rising food costs*, by Sungwoo Park, 10 July 2011, available at <http://farmlandgrab.org/post/view/18931> (last accessed on 31 August 2011).
- ¹⁰ News 24, *Another Scramble for Africa*, by Andreas Späth, 31 August 2011, available at <http://www.news24.com/Columnists/AndreasSpath/Another-scramble-for-Africa-20110831> (last accessed on 31 August 2011).
- ¹¹ Committee on the Rights of the Child, *General Comment No. 11, Indigenous Children and their rights under the Convention*, UN Doc CRC/C/GC/11 (2009), para 35.
- ¹² Committee on the Rights of the Child, *Concluding Observations: Republic of Korea*, UN Doc. CRC/C/KOR/CO/3-4, 6 October (2011), para. 27.
- ¹³ *Ibid.*, para. 11.
- ¹⁴ *Ibid.*, para. 33.
- ¹⁵ *Ibid.*, para. 8.
- ¹⁶ *Ibid.*, para. 83.
- ¹⁷ Constitution of the Republic of Korea 1987, Article 33(3).
- ¹⁸ International Trade Union Confederation, *Annual Survey of Violations of Trade Union Rights, Republic of Korea-Trade Union Rights in Law*, 2011, available at <http://survey.ituc-csi.org/Korea-44-Republic-of.html#tabs-3> (last accessed on 31 August 2011).
- ¹⁹ Committee on the Rights of the Child, *Concluding Observations: Republic of Korea*, UN Doc. CRC/C/KOR/CO/3-4, 6 October (2011), para. 7.
- ²⁰ Committee on the Rights of the Child, *General Comment No. 2, The Role of independent national human rights institutions in the promotion and protection of the rights of the child*, UN Doc CRC/GC/2002/2 (2002), para 1.