

**Joint submission to the UN Universal Periodic Review (Republic of Korea), Second Cycle,
14th Session**

The UPR Child Rights Network was formed in February 2012 specifically to promote child rights in the UN UPR Second Cycle, 14th Session.

Members include:

International Child Rights Center (InCRC)

Website: www.incrc.org

Save the Children Korea

Website: www.sc.or.kr

Truth and Reconciliation for the Adoption Community of Korea (TRACK)

Website: www.adoptionjustice.com

Introduction

1. While the government has made efforts to improve on satisfying its child rights obligations, several issues remain a deep concern. Despite being recommended to actively disseminate the Committee on the Rights of the Child (UNCRC) Concluding Observations in the UNCRC 2003 Concluding Observations (para. 26) and again in the UNCRC 2011 Concluding Observations (para. 86 and 87), the government continues to maintain a passive approach. This issue is further compounded by instances of the government omitting words when translating international texts to Korean.¹
2. In regards to implementing the UNCRC Concluding Observations; although the UNCRC recommended improvements in structural deficiencies, such as refining monitoring and clarifying vague mandates for government bodies, these and other critical problems persist. The division of child and youth responsibilities between the Ministry of Health and Welfare and the Ministry of Gender Equality has led to additional bureaucracy, confusion and conflicts over policies and roles for subordinate child welfare-related organizations. This is evident in the lack of staff and resources, as well as the ill-defined mandates for government organizations.
3. Despite implementing some recommendations, the government has failed to do so in a comprehensive manner; while still other recommendations continue to be ignored, specifically, eliminating all-forms of corporal punishment and combating the growing problems in school life for children. Corporal punishment represents a controversial issue in the Republic of Korea (ROK) as it is seen by the public as a form of discipline, and the government has done little to counter this. Issues in school life, such as stress and severe competition, continue unabated and are fostered by parents' competitive enthusiasm for education along with the government's lack of effort to curb such conditions.
4. All of these problems addressed in this introduction and further elaborated on below not only represent systematic weaknesses in the government of the ROK to uphold and abide by its obligations of child rights-related UN treaties, but also its passive efforts in mainstreaming the rights of the child.

I. BACKGROUND AND FRAMEWORK

A. Scope of international obligations:

¹ In one instance, the ROK government omitted “at home” on UPR recommendation article 29: “To urgently amend relevant legislation to expressly prohibit corporal punishment in schools and at home and implement educational measures promoting positive and non-violent forms of discipline (Italy)”

The Republic of Korea's treaty participation - ratifications and reservations

5. Despite ratifying many international conventions, several omissions remain. In 2011, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women (CEDAW) recommended in their respective Concluding Observations that the government of the ROK ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol).²
6. Since 2003, the UNCRC has recommended the government to sign and ratify the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.³ The delay in ratification is of concern because other international conventions applicable to the ROK are affected by this, such as the Optional Protocol on Sale of Children, Child Prostitution and Child Pornography (OPSC). On Article 3(1)(a)(ii)⁴ the government issued a declaration, stating that it is only applicable to states party to The Hague Convention on Intercountry Adoption.

B. Structural measures needed for the realization of children's rights

7. The UNCRC Concluding Observations recommended that the government of the ROK should amend its legislation to ensure that children have the right to express their views and have these taken into consideration in all decisions affecting them. Although it was reiterated in the previous recommendations,⁵ it has yet to be fulfilled.
8. As recommended in the Eighth UPR (recommendation 29), and in the UNCRC Concluding Observations⁶, relevant legislation and regulations should be amended to prohibit corporal punishment in the home, at schools and at other institutions
9. The UNCRC also recommended that Ministry of Education, Science and Technology (MEST) ensure that school regulations facilitate children's active participation in decision-making processes and in political activities both within and outside schools and ensure that

² CRC/C/KOR/3-4 Para. 75 and CEWAW/C/KOR/CO/7 Para. 23 (g)

³ CRC/C/15/Add.197 Paras. 42-43

⁴ The article states that "improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption" must be fully covered under the state party's criminal or penal law, whether "offences are committed domestically or transnationally or on an individual or organized basis."

⁵ CRC/C/15/Add.197 Para. 37 and CRC/C/KOR/3-4 Paras. 40-41

⁶ CRC/C/15/Add.197 Para. 37 and CRC/C/KOR/3-4 Paras. 7 and 43-46

all children fully enjoy their right to freedom of association and expression.⁷ This has also been stated in the Eight UPR (recommendation 6), but remains unfulfilled.

10. The government persists in ignoring the freedom of expression and assembly of students despite several UNCRC Concluding Observation recommendations covering this issue.⁸ A Student Rights Ordinance (Ordinance), which protects the freedom of expression and assembly, as well as freedom from corporal punishment and discrimination, addressed some of these shortcomings. However, the Ministry of Education, Science and Technology sought a court injunction on the Ordinance, leading to revisions of the Enforcement Decree of the Elementary and Secondary Education Act that resulted in the Ordinance's invalidation.

11. We recommend that the government of the ROK:

- Revise the Enforcement Decree of the Elementary and Secondary Education Act by 2013 and guarantee the implementation of the Student Rights Ordinance.
- Revise the Elementary and Secondary Education Act by 2013 to guarantee children's active participation in decision-making processes.

1. Budget for children

12. The budget for children accounts for only a small proportion of the entire government budget. Welfare expenditure per child is lower than the budget amount for the underprivileged, including the elderly and disabled. The welfare cost per child in 2008 was 8,800 Korean won (KRW)⁹ which is equivalent to €5.85¹⁰. This does not include the expenditures transferred to local governments or the budgets of other departments. Child and family expenditures amounted to 1.7% of public expenditure, which is one tenth of Northern Europe countries, and the lowest level among countries of the Organisation for Economic Cooperation and Development (OECD). According to the 2009 OECD Family Database, the ROK ranked the lowest among 26 members. According to the 2011 Board of Health and Welfare's Capita Welfare Budget Spending, the per capita amount of money allocated to people with disabilities (266,806 KRW or €177.36) and children who are aged 6~17 (20,019 KRW or €13.31) is much lower than the amount allocated to the elderly (850,933 KRW or €565.64) and infants (826,275 KRW or €549.25). Much of the budget for children aged 6 ~ 17 is dedicated to education. However, these allocation levels should be adjusted so they're in line with the average OECD level.

13. Another concern is the inequality caused by the variations in the child welfare-budgets of municipal governments. Since 2005, nine child welfare projects for abandoned, abused or at-risk children were transferred from the central government to the municipal governments.

⁷ CRC/C/KOR/3-4 Para. 41

⁸ CRC/C/15/Add.197 Para. 36-37 and CRC/C/KOR/3-4 Paras. 40-41

⁹ Child welfare expenditure of the Ministry of Health and Welfare only

¹⁰ Based on the Korean won-Euro exchange rate in 2008

14. As a result, depending on the fiscal independence of the municipal governments, or their intention to implement child policies, different qualities and quantities of services are being offered to children with the same needs. The UNCRC has raised these issues in its 2003 Concluding Observations (para. 20), and they were repeated in the 2011 Concluding Observations (para. 19).

15. **We recommend that the government of the ROK:**

- Increase the budget for children to align it more closely to the average OECD level by 2013, especially with regard to the budget for children in need of protective care, which should be under the authority of the central government to minimize regional variations in budget support in conformity with the recommendations stated in the UNCRC 2003 (para. 20) and 2011 (para. 19) Concluding Observations.
- Address the inequalities between municipal governments in terms of child health and welfare and carry out budget reforms that ensure a more balanced distribution for children and people with disabilities.
- Increase the transparency and recording of budgetary allocations and investments to ensure the effectiveness of budget expenditures.

C. Institutional and human rights structures for children's rights

1. Child Policy Coordinating Committee¹¹

16. The ROK government established the Child Policy Coordinating Committee (CPCC) in 2004 under the Prime Ministerial Office and operated it until 2007 based on the recommendations of the UNCRC. During its operation, the CPCC coordinated tasks and led consultations among child-related departments. However, it lacked a secretariat with the necessary authority and held meetings irregularly.

17. Recently, conflicts have arisen in the system of implementing policies for children and youth. The National Youth Committee merged under the Ministry of Health and Welfare in 2008. In March 2010, policies for children and youth were divided with the Ministry of Health and Welfare overseeing policies for children and the Ministry of Gender Equality overseeing policies for youth. As a result, the CPCC ceased to function in 2008. Although it will be revitalized in April 2012, there are concerns that the previous problems will persist.

¹¹ 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

18. While reforming the laws related to children and youth as part of its efforts to unify the system for implementing child and youth policies in 2008, the Children and Youth Policy Committee was considered as a replacement for the CPCC. However, it is limited to coordinating policies falling under departments related to child welfare in the Ministry of Health and Welfare, and does not fully assume the lead in coordination within the government body. Considering the significance of the CPCC's activities, the government still needs to establish a permanent body that deals with child-related issues and promotes coordination and cooperation across ministries.

19. **We recommend that the government of the ROK:**

- Address operational problems of the revitalized Child Protection Coordinating Committee by 2013 and explicitly provide it with a comprehensive mandate and adequate financial and human resources to enable it to systematically collect data, formulate a comprehensive long term policy framework, develop strategies, and evaluate implementation.

2. Korean Monitoring Center for Children's Rights¹²

20. The mandate of the Korean Monitoring Center for Children's Rights (KMCCR), which was tasked with monitoring children's policy, suffered from several limitations in terms of independence, consistency, and effectiveness. Further exacerbating these problems was that it lacked legal status and that the Ministry of Health and Welfare controlled its budget.

21. Rather than actively monitoring or investigating child rights violations as it was meant to do, the KMCCR operated as a national research organization. Upon the request of the government, it published the state reports on the World Fit for Children (WFFC), the Convention on the Rights of the Child (CRC) and the Optional Protocols. After its mandate ended, the Ministry of Health and Welfare finalized its plan to grant monitoring status to a local NGO. However, this is contrary to international standards, and demonstrates that the government continues to regard monitoring as a project-based NGO-type activity.

22. During its operation, the KMCCR suffered from insufficient human resources with a staff that included the director general, a researcher, a research assistant and several non-permanent ombudspersons. It was therefore infeasible for the KMCCR to perform active and specialized monitoring on child rights.

23. **We recommend that the government of the ROK:**

¹² 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

- Define the legal status for an independent child rights monitoring body and provide substantial human and financial resources to fulfill its mandate, and ensure that it complies with the Principles Relating to the Status of National Institutions on Human Rights.
- Consult child rights experts with regard to the development and operation of the monitoring body's authority, mandate and functioning, and take into account their opinions when assessing whether the monitoring body will function as mandated.

II. PROMOTION AND PROTECTION OF CHILD RIGHTS ON THE GROUND

A. Implementation of international human rights obligations

1. Education: Child rights

24. While the government of the ROK has made efforts to reduce the stress of school students and improve their conditions, severe competitiveness persists in the education environment, notably because of parents' zeal for their children's education, to the detriment of children's well-being. Particularly worrying is the consistent growth and widespread use of private tutoring and education taking place outside of the curriculum. Besides exposing children to physical and mental stress that interferes in the fulfillment of their rights as children, it also exacerbates the socio-economic gap between the highest and lowest quintiles of society. In addition to the financial burden placed on parents, the disproportionate amount of stress and lack of parental supervision from being in either a classroom or educational institution has led to an increase in juvenile delinquency and crime.

25. **We recommend that the government of the ROK:**

- Strengthen the public education system, determine the causes for people's reliance on private extra-curricular education, and develop a plan to address these issues.¹³
- Provide child rights training programs for educators and the general public to reinforce the importance of recognizing and respecting the rights of the child, including the right to health and play, in compliance with the recommendations in the UNCRC 2003 Concluding Observations (para. 53) and UNCRC 2011 Concluding Observations (para. 63).

2. Education: Freedom of expression and assembly

26. While the government of the ROK made efforts to follow through on the UNCRC 2003 and 2011 Concluding Observations¹⁴, which urged the revision of legislation to guarantee

¹³ CRC/C/KOR/3-4, para. 63 (b)

children's freedom to express their opinions in all decision-making processes that affect their rights, this has not been thoroughly executed.

27. The Enforcement Decree of the Elementary and Secondary Education Act, Article 59(4), Provision 3, which was established in 2011, allows a student representative to provide opinions on school life to the school steering committee. This was recently established at the state level via school regulations, and in public schools via municipal or provincial regulations. However, the steering committee does not include any students as members, nor is the enforcement decree a mandatory regulation.
28. In 2008, during the Anti-Mad Cow Demonstrations, the Seoul Education Office dispatched assistant principals and administrators to prevent student participation. Another instance occurred when a student of the Seoul Broadcasting High School protested against standardized testing by wearing a badge, and had it forcefully removed.
29. The law on assembly does not explicitly prohibit student participation, nor does it explicitly state such a prohibition under the freedom of expression. Several local municipal governments established the Student Rights Ordinance (also known as the Regulation for Human Rights in Education), but the Ministry of Education, Science and Technology filed a lawsuit with the Supreme Court challenging the Ordinance, resulting in an injunction to suspend its implementation and eventually this led to revisions in the Enforcement Decree of the Elementary and Secondary Education Act.
30. **We recommend that the government of the ROK:**
 - Guarantee the participation of student representatives in the school steering committee.
 - Revise governmental guidelines and regulations concerning school management by 2013 to facilitate children's participation in decision-making processes and political activities outside school grounds, and to protect children's right to the freedom of expression and assembly, as recommended in the UNCRC 2003 Concluding Observations (para. 37) and reiterated in the UNCRC 2011 Concluding Observations (para. 41).

3. Birth registration

¹⁴ CRC/C/15/Add.197 Para. 37 and CRC/C/KOR/3-4 Paras. 40-41

31. Various international conventions¹⁵ ratified by the ROK provide that children shall be registered immediately after birth. However, because the ROK uses a birth “reporting” system rather than impartial “registration” that takes place at the hospital, it is estimated that 3,014¹⁶ children were adopted without using an agency and without recognition of the child’s biological parents in 2007.¹⁷ Moreover, Article 49(2) (2) of the Family Register Act requires that it be must reported whether children are born in or out of wedlock, which stigmatizes children born to unwed parents. It should also be noted that birth registration is not consistently available for children born to refugees, asylum-seekers, or those in irregular migration situations.

32. **We recommend that the government of the ROK:**

- Guarantee that immediate birth registration is available for all children regardless of their parents’ legal status and/or origin, and ensure and verify that the registration accurately indicates the biological parents of the child, in accordance with its international obligations and the UNCRC 2011 Concluding Observations (para. 37).

4. Adoption

33. Despite being recommended in both the UNCRC 2003¹⁸ and 2011¹⁹ Concluding Observations, the government has yet to remove its reservation on Article 21(a) of the CRC, which only permits adoptions authorized by ‘competent authorities’. The government claimed that requiring competent authorities to authorize adoptions may discourage potential adoptive parents who prefer to register their child as a biological child.²⁰ Thus, the

¹⁵ Article 7(1) of the Convention on the Rights of the Child, Article 18(2) of the Convention on the Rights of Persons with Disabilities, and Article 24(2) of the International Covenant on Civil and Political Rights

¹⁶ This number is the estimated number of babies born to unwed mothers who disappeared from the statistics. It was calculated by subtracting the number of children born to unwed mothers whose care can be counted (whether in an orphanage, domestic or intercountry adoption, raised by mother) from the total number of live births to unwed mothers.

¹⁷ *Reviewing Issues on Unwed Mothers’ Welfare in Korea: Intercountry Adoption, Related Statistics, and Welfare Policies in Developed Countries*, by Dr. Lee Mi-jeong for the Korean Women’s Development Institute (KWDI), 2009

¹⁸ CRC/C/15/Add.197

¹⁹ CRC/C/KOR/3-4 Paras. 9 and 50

²⁰ The ROK’s Written Responses to the List of Issues Raised by the Committee on the Rights of the Child on the Implementation of the Convention on the Rights of the Child explained the State’s reluctance to remove the reservation in section B.1:

government acknowledges “secret adoptions,” which fall outside of Korean law and violate its international obligations.

34. **We recommend that the government of the ROK:**

- Either withdraw its declaration²¹ under Article 3(1)(a)(ii) OPSC, which criminalizes improperly inducing consent for adoption under applicable legal instruments, or expand its understanding to include the CRC as an international instrument applicable to adoption by 2013.
- Launch the ratification process and ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children by the next UPR of the ROK at the latest.
- Sign and launch the ratification process on the Hague Convention on Intercountry Adoption and provide concrete priority measures before the next UPR of the ROK.
- Take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child are in conformity with applicable international legal instruments by 2013²².
- Strengthen cooperation with governmental and non-governmental bodies to prevent, detect, investigate, prosecute and punish the sale of children.²³

5. Regular financial monitoring of adoption agencies

35. Article 21(d) of the CRC guards against “improper financial gain” for those involved in inter-country adoption. The ROK holds no reservation against this article.

36. During the National Assembly audit, it was found that adoption agencies committed various abuses ranging from the miscategorization of donations to the misuse of government funds allocated for the living costs (food, medical care, clothing, etc.) of children being fostered before adoption.

37. **We recommend that the government of the ROK:**

- Hold a discussion with relevant stakeholders and civil society on the reservation to Article 21(a) of the CRC and lift it by the next UPR of the ROK at the latest.
- Annually audit the financial records of adoption agencies by 2013 to effectively implement Article 21(d) of the CRC, which requires the government of the ROK

²¹ The government of the ROK declares that this article is only applicable to parties to the Hague Convention on Intercountry Adoption.

²² OPSC Article 3(5)

²³ OPSC Article 10(1)

to ensure that in intercountry adoption, the placement doesn't result in improper financial gain for those involved in it.

6. The mandate and function of the central authority on adoption

38. Beginning in August 2012, the Korea Central Adoption Resources (KCARE) will serve as the designated central authority on adoption under the amended Special Adoption Law. However, several serious issues have arisen that could severely hamper KCARE's ability to execute its mission.
39. In 2011, there were 3,366 visits to adoption agencies by adoptees, presumably for family search. However, only one employee works in family search, and it is therefore infeasible to conduct searches. In addition to being understaffed, KCARE doesn't physically hold any records and is dependent on the private agencies for information.
40. KCARE has failed to recognize that the vast majority of intercountry adoptees were not raised in Korean-speaking environments and therefore cannot participate in the ROK government's decisions about their lives without translation into English and French, the primary first or second language for most adoptees. In addition, conducting searches to find intercountry adoptees on behalf of Korean birth families requires competence in Western languages that the agency lacks.
41. **We recommend that the government of the ROK:**
- Ensure the participation of affected parties in the creation and operation of the central authority by establishing a board of advisers composed of relevant stakeholders that includes adoptees and birth families by the end of 2013.
 - Increase the number of qualified employees to execute birth searches and to coordinate KCARE's activities in English and French.
 - Provide adequate funding and a clear mandate for KCARE.
 - Issue the necessary regulations to guarantee the full implementation of the amended Special Adoption Law, including translating the relevant decrees in English.

7. Children of migrant workers

42. The rights of children of undocumented migrant workers continue to be a concern, specifically their exclusion from education and certain forms of health care. Certain health care services, such as hospital outpatient care and day surgery, are guaranteed for the nearly 17,000 undocumented migrant children, and they're legally protected to use these services regardless of their immigration status. However, this protection doesn't extend to services covered by national insurance, such as general care, health screenings, and immunizations.

Thus, if a child seeks such services, he or she could suffer legal ramifications based on his or her immigration status. Furthermore, only 77 clinics throughout the country offer health care services to migrant children, severely limiting access.

43. Although the combination of the Framework Act on Education and the Primary and Secondary Education Act requires that children attend elementary and middle school, migrant children are only able to transfer schools at the discretion of the principal. Thus, the law may not apply equally to all children.

44. **We recommend that the government of the ROK:**

- Amend the Immigration Control Act so that it includes the right to education for children regardless of their parents' legal status and/or origin.
- Enact the Security Act of Immigrant Children Rights, which was proposed in 2010 and remains in Parliament.
- Consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as stated in the UNCRC 2003²⁴ and 2011²⁵ Concluding Observations.

8. Social safety nets for children

45. Beginning in 2005, nine projects²⁶ relating to the child welfare budget for abandoned, abused or at-risk children were transferred to municipal governments. A majority of the nine projects greatly affects the survival and development of children and serves as a baseline of protection for children in need of protective care.

46. For instance, resettlement funds for children having left child welfare institutions in the Ulsan Province support over 1,000 for the price that it would cost for a single student's tuition. However, children from the provinces of Gangwon, Chungchung, and Cholla lack any support, illustrating the inequalities between municipal governments in terms of child health and welfare. Children, who are from single-parent households or who's grandparents serve as legal guardians, are especially vulnerable to abuse, neglect, kidnapping or sexual violence because their guardians are often unable to provide full-time care. Children from low-income households may be exposed to bullying, abuse or neglect due to domestic instability brought on by poverty. Thus, social safety net benefits serve as a vital type of support.

²⁴ CRC/C/15/Add.197 Para. 59(b)

²⁵ CRC/C/KOR/3-4 Para. 69

26. [Enforcement regulation of the Local Subsidy Act] Paragraph 13 (Project of the Decentralized Allocation Tax)

47. We recommend that the government of the ROK:

- Establish a social security policy, as well as a clear family policy by 2013 to address discrepancies in coverage and develop effective strategies for using social safety net benefits.
- Place management of social safety net benefits under the central government to ensure equality in service and care for all children and counter any variations in the quality and delivery of child welfare benefits.

9. Child maintenance obligations

48. Under the National Basic Livelihood Security System, people may not receive government support unless they have no family or unless the whole family, including siblings, is in poverty. Child-rearing unwed mothers often receive no support from their family, and because their whole family isn't in poverty, they're ineligible for government support. Moreover, they do not systematically receive child support payments because laws to compel fathers to pay are still not enforced. Mothers are responsible for collecting the money from the fathers, which may cause more conflict and abuse by the child's father.

49. We recommend that the government of the ROK:

- Enforce child maintenance obligations based on a court order or agreements between parties in a manner that does not stigmatize the child or his or her custodial parent(s).
- Establish a national fund by 2013 to ensure payment of overdue child maintenance obligations to the custodial parent(s) while enforcement measures are enacted.
- Establish a child support system that can automatically deduct child maintenance obligations from the salaries of the employees concerned.²⁷

10. Social and economic discrimination against children of single mothers and in alternative care

50. Financial hardship is a primary cause for family separation. The government's priorities for support fail to uphold the principle of subsidiarity. The government's rate of support per month, per child, is as follows: family group home facility 1,070,000 KRW (€711.74); child welfare facility (orphanage) 1,050,000 KRW (€698.43); foster care 250,000 KRW (€166.29); domestic adoptive parents: 100,000 KRW (€66.52); single parents, including unwed and divorced parents: 50,000 KRW (€33.26).

²⁷ CRC/C/15/Add.197

51. Orphanages may receive a government subsidy, per child, as long as the child resides there, providing an incentive to keep the child. However, orphanage directors should be compelled to make efforts to reunite children with parents and extended family members. The UNCRC expressed concern that only the administration was assessed, leaving vulnerabilities in the provision of adequate child care.

52. **We recommend that the government of the ROK:**

- Encourage and provide family-based support measures over adoption or institutional care, in accordance with its international obligations and the UNCRC 2003 Concluding Observations.²⁸
- Develop a national plan of action implementing the UNCRC 2011 Concluding Observations that recommend the ROK to provide adequate support to single mothers and to establish comprehensive guidelines and dates for periodic reviews on the placement of all children in public and private institutions.²⁹
- Ensure that institutional child care aims to reunite and reintegrate children into a family environment.³⁰
- Allow children in alternative care settings to establish and/or maintain contact with their parents.³¹

11. Criminalization of child abuse³²

53. In cases where the perpetrators are family members, the crime falls under the Child Welfare Law, not under the Criminal Code. Thus, when perpetrators of child abuse are punished under the Child Welfare Law, the sentence is lighter than under the Criminal Code. Therefore, if a perpetrator harms or kills a child, the severity of the punishment is higher than if the perpetrator were to abuse or kill his or her own child.

54. Due to an overlap between the Child Welfare Law with the Criminal Code, acts of child abuse will be dealt under the law that offers the lightest sentence. Therefore, punishment for child abuse often results in a fine or a light prison sentence despite the high likelihood that the perpetrator will be a second offender.

55. **We recommend that the government of the ROK:**

²⁸ CRC/C/15/Add.197 Para. 41

²⁹ CRC/C/KOR/CO/3-4

³⁰ CRC/C/15/Add.197

³¹ CRC/C/KOR/CO/3-4

³² Chan-Yeub Lee: A study on criminal in child abuse. *Ilkam Law Review*, 20, pp. 343~373

- Establish clear sentencing guidelines according to the special law and impose a great diversity of penalty regulations, such as the reinforcement of severe penalties and residency restrictions in child abuse cases.

12. Prohibition of torture and inhumane treatment: Corporal punishment

56. The government of the ROK reported to the UNCRC that article 31(8) of the Enforcement Decree for the Act, which permitted corporal punishment in certain circumstances, had been amended in 2011 to explicitly prohibit corporal punishment “using parts of the human body or a tool to cause physical pain to students”.
57. However, this amendment does not apply to all forms of corporal punishment. Indirect punishment, such as children being forced to maintain painful positions or perform punitive physical exercises, remains at the discretion of principals, who can adopt these forms of punishment as part of school regulations.
58. Corporal punishment at home remains beyond regulation. While the revision of the Child Welfare Law permits some forms of child abuse to be reported to a child protection professional, doctor, teacher or other appropriate party, it only applies to cases in which children show physical harm or injury. Because people continue to regard corporal punishment as a form of accepted discipline and any intrusion is regarded as a violation of parental authority; cases cannot be filed whether such actions occur inside or outside the home. However, the elimination of all forms of corporal punishment has been covered in the UNCRC 2003 Concluding Observations (para. 7) and reiterated in the UNCRC 2011 Concluding Observations (para. 46), indicating this has been a persistent problem requiring a more aggressive response by the government.
59. **We recommend that the government of the ROK:**
- Prohibit all forms of corporal and humiliating punishment under the Elementary and Secondary Education Act whether it is direct or indirect punishment.
 - Develop and launch programs that provide parents education on forms of non-violent discipline that can replace corporal punishment.

13. Mental health and well-being of children

60. Among the several indicators (health condition, satisfaction level of school life, and awareness of individual well-being) selected by UNICEF as representative of one’s subjective well-being, children in the ROK rank the lowest among OECD member states in satisfaction level of school life and awareness level of individual well-being.ⁱ These results may manifest themselves in unhealthy mental behavior such as suicide and addiction. For

instance, at a suicide rate of 6.8% per 100,000 children, the ROK has the highest child (age 15-19) suicide rate among OECD countries. As a response, the government established 32 mental health service centers, but the trend persists with the rate climbing from 6.3% in 2000 to 8.3% in 2010 among youths aged 15-19. Internet addiction also remains a concern as the rate among youth increased from 980,000 in 2006 to 1.03 million in 2007 before declining to 877,000 in 2010. In spite of this decline, this rate is still unacceptably high.

61. **We recommend that the government of the ROK:**

- Establish a national plan of action with a clear time line to improve the quality and delivery of comprehensive mental health care services by notably redesigning the diagnostic tool to prevent violations of children's right to privacy, as stated in the UNCRC 2011 Concluding Observations (Para. 56).
- Hold consultations with children and relevant stakeholders to identify and address social and family factors that may contribute to addiction, depression and suicide before establishing a national plan of action.

14. Child labour

62. According to a report in 2012 from the Ministry of Employment and Labor (MEL), 918 businesses were suspected of violating labor laws and 837 of them were found to be in violation. The majority of these violations (98%) were related to the working conditions of children. The MEL also found that employers at gas stations, convenience stores, and fast-food restaurants failed to comply with local labor laws. This had been highlighted as a concern in the UNCRC 2011 Concluding Observations (para. 70), specifically regarding the employment of children over the age of 15 being subjected to working at night and below minimum wage and working children being exposed to sexual abuse and violence. The lack of adequate labor inspections only exacerbates these problems, allowing them to continue unnoticed.

63. **We recommend that the government of the ROK:**

- Establish a comprehensive plan of action to ensure the strict enforcement of child labor laws, including regulations that prohibit night work and enforce the requirement of minimum wage.
- Increase the number of labor inspections and expand them to comprehensively monitor all working environments and to address violence and sexual harassment.

15. International cooperation

64. The 2011 4th High Level Forum on aid effectiveness included several topics on aid effectiveness that ensured that the realization of child rights is a primary priority of

international cooperation agreements established with developing nations. However, the government of the ROK has yet to show this commitment by establishing guidelines of international cooperation based on child rights issues. If the government gradually increases its official development assistance allocation of its gross national product, its current ODA of 0.13 percent will reach the internationally agreed upon target of 0.7 percent of the GNP by 2015.

65. **We recommend that the government of the ROK:**

- Integrate a more child rights-based approach by allocating financial resources to child rights issues.
- Mainstream child rights, with the CRC serving as the legal basis, in all aspects of international cooperation by 2013.

ⁱ Behaviors and Risks and Subjective Well-Being of Children in OECD Member States