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

Members include:

- TRACK: Truth and Reconciliation for the Adoption Community of Korea
Web Site: www.adoptionjustice.com
- KoRoot
Web Site: www.koroot.org
- KUMFA: Korean Unwed Mothers and Families Association
Website:
http://cafe.naver.com/missmammamia.cafe?iframe_url=/ArticleRead.nhn%3Farticleid=3274& (Korean language only)
- Dandelions (parents who lost children to intercountry adoption)

Monitoring South Korean Intercountry and Domestic Adoption From a Human Rights Perspective

I. Introduction

1. What distinguishes the Republic of Korea from most all other countries is its high rate of adoption, especially intercountry adoption. This paper identifies two types of failures of the State to make satisfactory progress in realizing human rights: failures to regulate abuses in adoption processes, and failures to protect social and economic rights, which are key push-factors in the high rates of adoption.
2. Despite Korea's long history of intercountry adoption, despite its full knowledge of the widespread abuses in adoption processes, despite its economic capability to provide regulation, and despite repeated calls to take remedial action, South Korea does not take appropriate action. This paper identifies some major problems, and makes recommendations for action.

II. Situation in the ROK

3. South Korea maintains the world's longest continually running intercountry adoption program, and has sent more of its citizens for adoption than any other country. Even today, nearly 60 years after a truce was declared on the Korean Peninsula, South Korea remains in the top four countries that send children for intercountry adoption.
4. Officially, 164,894 children have been adopted internationally from South Korea until 2010,¹ but perhaps tens of thousands of adoptions by U.S. military personnel, etc. have been undocumented. In 2010, 1,013 children were sent overseas for adoption.
5. Officially, there have been 94,281 recorded domestic adoptions since 1939. There were 1,462 officially recorded domestic adoptions in 2010. However, the actual number of domestic adoptions is always higher than the official number. It was estimated that 3,014 adopted children were domestically adopted in "secret" adoptions in 2007, a year in which there were 1,388 officially recorded domestic adoptions, a difference of 117 percent.²
6. About 120,000 of all officially recorded international adoptees have been children of unwed mothers, and since the 1990s, the rate has been at about 90% of international adoptees each year. The rate is 85% of recorded domestic adoptions, and it is presumed that

¹ All statistics related to child welfare and adoption are maintained by the Ministry of Health and Welfare.

² *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, 2009.

the thousands of infants who are “secretly” adopted domestically all come from unwed mothers.

7. We mention mothers not to exclude fathers, but to emphasize that in Korea’s patriarchal culture, the woman is still the person who takes the full blame for an unplanned pregnancy. In addition, it was socially acceptable until recent decades for married men to have affairs.

8. We use the term “unwed” because it is the term that the unwed mothers themselves use, and it distinguishes them from widows and divorced mothers, who do not face as much social discrimination.

III. The ROK and Treaties Relevant to Regulating Adoption

The Convention on the Rights of the Child

9. Despite repeated calls from the CRC Committee starting as early as 2003³, the ROK has not removed its reservation from Article 21(a) of The Convention on the Rights of the Child, which it ratified in 1991.

10. The paragraph requires States Parties to:

Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary.”⁴

³ CRC Concluding Observations, 2003

⁴ 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 in 2003 explained in section B.1 the State’s reluctance to remove the reservation to Article 21(a):

In most cases, adoptive parents have a strong tendency not to disclose adoption but to want the child registered as their biological child ... In these circumstances, if adoption requires authorization from competent authorities, as provided by the Convention, it may discourage potential adoptive parents from going through adoption, resulting in a decrease of domestic adoption.

In other words, the State is fully aware of the existence of these “secret adoptions,” where the adopted child is legally reported as the biological child of his adopters. These adoptions are completely outside the Korean law. However, the Government has considered such violations of human rights to be a necessary condition for domestic adoption, and as we can see from its statement, it had incorporated its knowledge of the practice into its logic and policy. (Domestic adoptions are now being promoted as an alternative to intercountry adoption by image-conscious South Korea, which seems to have asked itself the question “How can we decrease intercountry adoption?” instead of “How can we best care for children?”)

IV. Main Violations of Children's Rights

A. Use of Birth "Reporting" System Instead of Birth "Registration" System

11. Child-selling is made possible by Korea's voluntary birth "reporting" system, which takes place at city district offices. Infants born to unwed mothers may be reported as the biological children of adopters. This may happen when the adoption is arranged by a delivering doctor, and it may even happen when an adoption agency arranges the adoption because parents may write down whatever they want on the birth "reporting" form at the city office. This loophole is present because the birth certificate given at the hospital (sometimes even without the name of the child) is not a state or legal document. Moreover, a birth certificate is not required for the voluntary report at the city office, which is the legal document that provides future identification for the child. This voluntary family reporting system is a vestige of the past, when home births were common.

12. It is estimated that 3,014 children were adopted completely without an agency and without recognition of the child's biological parents in 2007. This number is the estimated number of babies who were born to unwed mothers who then disappeared from the statistics. It was calculated by subtracting the number of children born to unwed mothers whose form of care could be accounted for (whether through an orphanage, domestic or intercountry adoption, or raised by mother) from the total number of live births to unwed mothers.⁵

In its written replies to the CRC Committee in 2011, the ROK stated:

In June 2011, the National Assembly Standing Committee passed an amendment to the Act on Special Cases Concerning the Promotion and Procedure of Adoption which requires persons who want to adopt a child to submit an adoption request for approval by the Family Court. Through this, the Government is preparing to withdraw the reservations made to Article 21(a) of the Convention on the Rights of the Child.

It is significant that the aforementioned law revision was a combination of four bills integrated into one law by the National Assembly Health and Welfare Committee. Of the four, only the bill sponsored by Rep. Choi Young-hee was a full amendment. Our NGOs representing adult adoptees, unwed child-rearing mothers, and parents who lost children to adoption worked for three years with the Gonggam Public Interest lawyers to fully draft this amendment, which was sponsored by Rep. Choi. In other words, the fact that the law was fully amended is mostly due to the efforts of civil society, not the Government.

The announcement in March 2012 that the law would be enforced drew media attention. An article called "Adoption law revision draws fire" in *The Korea Herald* quoted an adoption agency social worker as saying, "Going to the court means that adoption becomes a public matter which will undergo all the legal steps. Then, adoptive parents will find it difficult to keep their adoption private and secret. They would rather look for single moms who are willing to put their babies for adoption out of the court."

This means that the private adoption agencies still believe that violating the child's human right is a necessary and justifiable condition for domestic adoption. There is no state child placement service in Korea. All of the adoption agencies are private.

⁵*Ibid*, Lee Mi-jeong (2009)

13. This is a violation of 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 – all which dictate that children shall be registered immediately after birth.

14. The CRC's 2003 concluding observations noted that "domestic adoptions may be arranged without authorization or involvement of the competent authorities and that such arrangements do not necessarily take into account the best interests of the child."

15. The CRC's concluding observations of 2011 again stated that "current legislation and practice in the State party are inadequate in providing for universal birth registration by the biological parents of children in all situations. In particular, the Committee is concerned that birth registrations can be undertaken by adoptive parents or persons holding public authority, resulting in the occurrence of de facto adoptions in absence of proper judicial oversight, including in situations concerning single adolescent mothers. The Committee is further concerned that birth registration is not practicably or consistently available for persons in refugee, asylum-seeking or irregular migration situations."

16. Article 49(2)(2) of the Family Register Act requires children to be registered as legitimate or illegitimate, unfairly stigmatizing children born to unwed parents.

Recommendations

- 17. New legislation amending the Family Register Act of 2007 should ensure that babies are immediately legally registered upon birth by the attending doctor, midwife, or facility, instead being voluntarily reported by parents at the city office. The law must provide penalties for false information.
- 18. The Government should ensure that birth registration is available to 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.⁶ In addition, the registration should be done in a way that does not permanently stigmatize unwed mothers' children.

B. Failure to Regulate Adoption in Accordance with International Human Rights Standards

Abuses in Consent and Counseling Related to CRC

19. We are concerned about the section in Article 21(a) of the CRC regarding "informed consent" to adoption "on the basis of such counselling as may be necessary" both because the

⁶ CRC Concluding Observations, 2011

ROK holds a reservation to it, and also because this area has been a problem historically. If the reservation is withdrawn, we are concerned that because the practice of separating children from mothers as “social welfare” has existed as long as the ROK itself, the State will not adequately regulate counseling and relinquishment, nor will social workers be adequately trained to counsel mothers in any other way.

Conflict of Interest in Counseling

20. So-called counseling is done primarily by commercial enterprises that have conflicts of interest: They are simultaneously fee-based adoption agencies and residential care for pregnant women, and care facilities for babies separated from their parents during the period the mother is considering placing the child for adoption.

21. Recognizing this, Parliament passed a law in 2011 stipulating that adoption agencies may not establish or run maternity homes from July 1, 2015. Unwed mothers’ homes currently run by adoption agencies should be closed or changed into social welfare facilities for one-parent families.

22. However, in an effort to circumvent the spirit and purpose of the law, the adoption agencies are already requesting permission to continue giving “counseling” for unwed mothers after the law change.

No Minimum Standards for Counseling

23. The state has no laws or regulations that require counseling to meet minimum standards. These requirements might pertain to the rights of the parents and the child; the laws pertaining to relinquishment of parental rights, legal consequences of relinquishment and adoption; support services (material, emotional, extended family counseling and mediation), etc.

Withholding Essential Information or Giving False Information

24. Mothers in crisis are not given necessary information or counseling: They are not given objective, factual, and essential information (for example, information on child-rearing) when considering placing their babies for adoption.

25. Mothers are counseled to “choose” intercountry adoption if they want an open adoption in which they can exchange letters and pictures with the adoptive parents and talk on the phone with their child. (Adult Korean intercountry adoptees and currently adopting parents know that such adoptions are nonexistent on a systematic level.)

26. On the other hand, mothers are counseled to give their children for domestic adoption if they wish to never be reunited, since domestic adoptees usually do not know that they are adopted due to “secret adoption.”

State Allows Relinquishment By Coerced Consent or Without Consent

27. Cases have been reported in which the parents of a minor unwed mothers release their grandchildren for adoption. There is no law that states this is permissible; rather, it is culturally acceptable. The concluding observations of the CRC in 2011 noted, “The Committee also remains concerned at ... The fact that the overwhelming majority of children born to single adolescent mothers are given up for adoption and that the parent(s) or legal guardian(s) of single adolescent mothers are allowed to authorise the release of their children for adoption in absence of their consent”.

28. Cases have also been reported in which fathers were not notified that their child was relinquished by the mother for international adoption. Adoption agencies compel mothers to sign papers claiming they are solely responsible for their children, meaning agencies try to avoid the responsibility of consulting with biological fathers. This violates the parental rights of fathers, who may not even know the child was born.

29. Mothers report that even during the first session of counseling at adoption agencies, social workers ask them to sign a memorandum of understanding (MOU) to relinquish their parental rights. Although this MOU has no legal meaning under the civil code, mothers are not informed that it is meaningless, and it is used to bully them if they want to take their children back later.

Adoption Agencies Enforce Separation of Babies from Mothers

30. Biological families who decide to take back children whom they initially left at adoption agencies are asked to pay a daily rate for childcare. Agencies want cash, not credit cards. If mothers do not have cash, they cannot take their children back; the children are therefore held like hostages until the mothers can find enough money.

31. One woman who stayed at an adoption-agency run unwed mother’s home reported to KUMFA that after she gave birth, she decided to keep her baby. To punish her for that decision, the agency did not allow the mother to see or nurse her baby, even though the baby was being held in the same building and her breasts were painfully swollen.

State Does Not Provide Information on Rights or Services

32. The state does not provide adequate information on rights and services through brochures, Web sites, or outreach. There is one Web site run by the Ministry of Gender Equality that provides information for single parents. However, adoption and child welfare is under the Ministry of Health and Welfare. There is no effort by the ministry actually responsible for child welfare to disseminate information.

33. Therefore, the most readily available “unwed mother counseling” is performed at adoption agencies, which counsel women toward adoption without providing information on child-rearing or other resources. Adoption agencies advertise such “services” through signs, subway ads, and Web sites. Typing “unwed mother” into a Korean search engine yields a page full of links to adoption agency-run unwed mother facilities, meaning vulnerable mothers encounter adoption as the most obvious “choice.”

Cases of Procedural Abuses Reported by Adult Adoptees

34. TRACK brought a sample of cases representing abuses in Korean intercountry adoption procedures to the Anti-Corruption and Civil Rights Commission in 2008. These cases from the 1970s-1980s included examples of unclear relinquishment papers and forgery; kidnappings of children and relinquishment for adoption by extended family members without parental consent; misrepresentation of the adoptee’s social history to adopters; forgery of the child’s birth registration papers; identity switching, etc. In addition, birthparents were misled to believe that adoption was like a study abroad program and that children would continue to have communication with their families after adoption. Adoptive parents’ social backgrounds, such as their occupations, were misrepresented to Korean families.

35. The Ministry of Health and Welfare is also aware of these abuses because they were the impetus for our law revision.

Recommendations

The Government should:

- 36. Set a target date to remove the reservation to the CRC Article 21(a) and take concrete priority measures as recommended by the Council.
- 37. “Implement measures to ensure that all adoptions, including those in an inter-country context, are subject to authorisation by a clearly mandated central authority with adequate capacity to provide judicial oversight and regulation.”⁷
- 38. “Ensure that the consent of single adolescent mothers is mandatory for the release of their children for adoption and that they are provided with conditions that ensure that such consent is not obtained under de facto or actual duress.”⁸
- 39. Protect mothers against the forced release of their children for adoption.⁹

⁷ CRC Concluding Observations, 2011

⁸ CRC Concluding Observations, 2011

⁹ The CRC Concluding Observations of 2011 refer to the forced release of the children of adolescent mothers. We believe this protection should also be extended to adult women.

- 40. Strictly adhere to the enforcement date of the law separating unwed mothers' homes from adoption agencies, and ban adoption agencies from circumventing the spirit of the new law by offering "counseling."
- 41. Make a transition plan to prepare for the law change in 2015 that will separate unwed mothers' homes from adoption agencies. The plan should include training for adoption agency social workers to work in areas such as family preservation and support for child-rearing unwed mothers.
- 42. Set minimum standards for counseling, and offer objective counseling independent from adoption agencies.
- 43. Regulate the contractual obligations between biological parents and commercial enterprises (adoption agencies).
- 44. Require both biological parents to relinquish a child for adoption, and carefully check their identification.
- 45. Ban adoption agency use of an MOU of relinquishment of parental rights or require that the paper state clearly that it is not a legally binding contract under the civil law.
- 46. Criminalize holding relinquished children hostage until their biological families pay to get them back.
- 47. Enforce Article 3(4)(1) of the Special Adoption Law, which holds the State responsible for researching the actual conditions of adoption. A systematic understanding of all aspects of the adoption process would help the ROK implement the Hague Convention on Intercountry Adoption. Adoption practices both present and past should be studied because adoption impacts people for a lifetime; the birthfamily search is undertaken by adoptees in adulthood. Research planning should include adoptees and their families.

Lack of Transparency and NGO Participation in "Competent Authority"

48. The CRC Committee's 2011 concluding observations expressed concern over "the absence of a clearly mandated central authority to provide regulatory oversight on adoptions and legislation codifying the obligation of the State party's competent authorities to intervene in inter-country adoption procedures."

49. The legal basis for already-existing KCARE to become Korea's "Central Adoption Authority" was established by an amendment to the Special Adoption Law, which was

passed by Parliament on June 29, 2011. The law will come into force August 5, 2012. We are concerned about the implementation of the law because according to Article 26(1) and 26(3), the Health and Welfare minister must establish and operate KCARE, and its articles of association must be approved by the Health and Welfare Ministry.

50. Our organizations repeatedly requested relevant parties for formal participation in decision-making processes on drafting the articles of association for the Central Adoption Authority, to no avail. As with the process to amend the Special Adoption Law, we were repeatedly blocked out of Government processes.

51. KCARE has no adoptees, unwed mothers, or birthfamily members with valuable experience on its staff. It has failed to recognize that the vast majority of intercountry adoptees were not raised in Korean-speaking environments and therefore cannot participate in Government decisions about their lives without translation into English and French as a minimum.

52. On March 9, 2012, adult adoptees were informed, along with the rest of the public, that they were allowed until March 29, 2012 to respond to the “legislation notice” issued by the Health and Welfare Ministry that included the draft of the enforcement ordinance and regulations for KCARE. The 68-page draft in legal language was issued only in Korean, on a Korean-language Web site, in a software file format (.hwp) that only Koreans use. We were informed at the time that simultaneous English-Korean interpretation would be provided at an information session on June 5, 2012, although at that time, the deadline for creative input will have already passed.

53. Article 25(3) of the amended Special Adoption Law states that a Presidential Decree shall decide what work shall be conducted by heads of adoption agencies on behalf of overseas adoptees.

54. Article 36(4) of the same law states that a Presidential Decree shall determine the scope of information, application methods, and procedures on disclosure of information related to adoptees’ birthfamily search. To date, there has been no effort by the Government to involve adoptees in drafting decrees.

Inadequate Birthfamily Search Services

55. As of this writing, there is only one person at KCARE working in birthfamily search. This one employee is the sole contact for both searching adoptees and birthparents. According to the Ministry of Health and Welfare, last year, there were 3,366 visits to adoption agencies by adoptees, presumably for birthfamily search. It is impossible for KCARE to do its job of searching for birthfamilies because it is understaffed. In addition, conducting searches to find intercountry adoptees in Western countries on behalf of Korean birthfamilies requires competence in Western languages, cultures, and systems that the culturally Korean organization KCARE simply lacks.

56. The CRC Committee's 2011 concluding observations expressed concern over "the paucity of post-adoption services available, particularly for children who had been adopted inter-country and including with regard to addressing the linguistic difficulties faced by such persons seeking information on their biological origin."

Recommendations

The Government should:

- 57. Translate all documents pertaining to intercountry adoptees into the languages of the countries where they were sent for adoption, with English and French as a minimum.
- 58. Include unwed mothers, adoptees, and birthparents on KCARE's working staff. These parties would bring valuable knowledge and insight to the operation of KCARE that board members cannot, since board members are often "in name only" in Korea, and have no practical function.
- 59. Adoption records should be physically kept by the neutral third party of KCARE and made accessible to adoptees.

Improper Financial Gain

60. 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.

61. NGOs may request information from the Government during the annual Parliament audit. Our groups requested information in 2008 and found 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. To our knowledge, there was no punishment for the agencies over these abuses.

Recommendations

The Government should:

- 62. Annually audit the financial records of adoption agencies to enforce Article 21(d) of the CRC.

C. Non-conformance with Other Treaties

The Hague Convention on Intercountry Adoption

63. The ROK has not announced a firm target date for ratifying the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

64. The ROK stated in 2011 that before it ratifies the Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption, it needs to “sufficiently review and seek opinions on how to manage authorization-based adoption and how to deal with expected problems. To this end, the Government plans to set up and operate an interagency task force in the second half of 2011.”¹⁰

65. It should be noted that while private adoption agencies are routinely consulted when the Government makes new adoption policy, our NGO groups representing people affected by these policies have not been consulted in this process at all. Our requests to participate in the task force have gone unanswered.

The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

66. The Government ratified the OPSC on Sept. 24, 2004, but declared that it understands that Article 3(1)(a)(ii) is applicable only to States Parties to the Hague Convention on Intercountry Adoption.

67. The article in question 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.”

68. The ROK is the only non-signer of the Hague convention to make such a declaration.

69. In addition, the ROK is not actively carrying out its treaty obligations under of Articles 3(5), 10(1), and 10(3) of the OPSC.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

70. The ROK has not yet ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. This was recommended in the concluding observations of both CRC and CEDAW in 2011.

¹⁰Written replies by the ROK Government to the List of Issues Raised by the Committee on the Rights of the Child, 2011.

Recommendations

The Government should:

- 71. Set a target date to ratify the Hague Convention on Intercountry Adoption and undertake concrete priority measures as recommended by the Council.
- 72. Modify its interpretation of OPSC Article 3(1)(a)(ii) and criminally punish adoption agency workers, lawyers, doctors, and other people who as intermediaries who improperly induce consent for adoption.
- 73. Use Capacity-building and Technical Assistance from the Hague Conference / International Centre for Judicial Studies and Technical Assistance in order to take concrete steps toward implementing the Hague Convention on Intercountry Adoption. The ROK has not yet made any requests for assistance to the Hague.
- 74. Set a target date to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.
- 75. Take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments¹¹
- 76. Strengthen cooperation with Governmental and non-Governmental bodies to prevent, detect, investigate, prosecute, and punish child-selling¹²
- 77. Address root causes contributing to the vulnerability of children to sale.¹³

V. Main Violations of Unwed Mothers' Rights

A. Violations of Social Rights

78. In January 2012, a 20-year-old woman who had been severed from her family for becoming pregnant out of wedlock telephoned KUMFA, the only unwed mothers' group run by the unwed mothers themselves in Korea. The woman was afraid for her baby's health because she had not eaten for three days, and she had no shelter. Because KUMFA's shelter has space for only two unwed mothers, and those spaces were already taken, and because

¹¹ OPSC Article 3(5)

¹² OPSC Article 10(1)

¹³ OPSC Article 10(3)

KUMFA has no funds for medical care, the only thing that KUMFA could do was to recommend that the woman go to the Holt adoption agency.

79. South Korea ratified CEDAW in 1984. The convention binds countries to take measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women, and gives the same rights and responsibilities to parents, irrespective of their marital status. Article 12 says that states “shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.”

80. In addition, the International Covenant on Economic, Social and Cultural Rights states that the “widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society.” Our groups believe that a single parent and a child may be considered a family unit. The ROK acceded to ICESCR in 1990.

81. If the ROK would uphold its treaty obligations to fulfill its citizens’ social and economic rights by adequately providing public services to pregnant women, regardless of marital status, it would not be necessary for them to turn to a private, international adoption agency to secure the basics of life. The existing few shelters for unwed mothers, in particular those that provide services to help mothers raise their children, cannot meet the need. In addition, there has been no Government campaign to decrease social discrimination against unwed mothers, and therefore these women continue to suffer from discrimination, even from within their own families.

82. In the 2011 Gender Gap Index by the World Economic Forum, South Korea ranked 117 out of 135 countries in the category of women’s economic participation, and 107 in terms of gender equality overall. In the category of high-income countries, only three countries ranked lower than Korea.

B. Discrimination Against Children Being Raised by Unwed Mothers

83. Children face discrimination when their mothers are unmarried. For instance, at a Kindergarten, a member of KUMFA overheard a married mother saying that if she discovered that her child’s classmate was an unwed mother’s child, she would remove her own child from that school. She referred to the unwed mother’s child as a “thing,” not a person. Such prevalent attitudes are a violation of Article 2(2) of the CRC, which says that States Parties shall take all appropriate measures to ensure that children are protected against all forms of discrimination on the basis of the status or activities of their parents.

84. Still relevant are the 2003 concluding observations of the CRC, which noted that “most recommendations in the concluding observations adopted following its consideration of the State party’s initial report have been insufficiently addressed, particularly those regarding ... the development of public education campaigns to combat discriminatory attitudes towards

girls, disabled children and children born out of wedlock.” It also noted “the limited amount of information regarding acts of discrimination against children from single parent families, children born out of wedlock, children with disabilities. It is also concerned that the Constitution does not explicitly prohibit discrimination on the grounds of factors including disability, birth or other status, as stated in the Convention.”

C. Violations of Unwed Mothers’ Economic Rights

85. The workplace is also a site of social and economic rights violations. After being interviewed in local media, one KUMFA leader was dismissed from her job. Other unwed mothers are cut from their jobs when their pregnancies start to show, or their employers refuse to renew yearly contracts with them. Mothers often fall into poverty if they choose to rear their children.

86. This discrimination is a violation of Article 11 of CEDAW, which states that women may not be discriminated against on the grounds of marriage, pregnancy, childbirth, and childcare, and that States Parties shall prohibit dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status.

87. Under the National Basic Livelihood Security System, people may not receive Government support unless they have either no family or the whole family is in poverty. Child-rearing unwed moms often receive no support from either their family or the Government. Moreover, they do not systematically receive child support payments from their children’s fathers because laws requiring fathers to pay child support are not enforced by the State. Mothers are responsible for collecting money themselves, which may cause more conflict with the child’s father. Therefore, most unwed mothers do not even try to collect child support.

88. Article 18 of the CRC states that parents have joint responsibility for children, and the 2003 concluding observations of the CRC still hold true. “The Committee is concerned at the high number of divorced and single parents, primarily mothers, who do not receive the child maintenance payments to which they are legally entitled.”

89. The concluding observations of the CRC in 2011 said, “The Committee is concerned at the multiple forms of discrimination that continue to persist in the State party, children with disabilities; and, single mothers, particularly those who are adolescent, including with regard to their preclusion from State support measures.”

90. The Government’s priorities for support are the reverse of what they should be under international human rights guidelines. The Government’s rate of support per month, per child, is as follows:

- Family group home facility: 1,070,000 won
- Child welfare facility (orphanage): 1,050,000 won

- Foster care: 250,000 won
- Domestic adoptive parents: 100,000 won
- Single parents, including unwed and divorced parents: 50,000 won (US\$44)

VI. Institutionalization

91. Lack of support for mothers can lead to the institutionalization of their children.

According to Mission to Promote Adoption in Korea, there are about 20,000 children living in 280 institutions in Korea, 80% of whose parents are divorced. In order to facilitate the adoptions of these children, Parliament passed a law in December 2011 that allows the automatic termination of parental rights of parents who have not parented their children for three years. The law will go into effect on July 1, 2013.

92. The state must try harder to reunite separated families, preserve families, and remove financial incentives for institutionalization. Orphanages may receive a Government subsidy, per child, as long as the child lives there. Orphanage directors should be compelled to make efforts to reunite children with parents and extended family members.

93. CRC Article 25 recognizes the “right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.”

94. In its concluding observations in 2011, the CRC Committee noted “with concern that the assessment of such alternative care institutions only evaluates the administrative management of such institutions, and does not assess the quality of care, skills and training of the professionals and treatment provided” and also expressed concern at “the absence of a tracking system for children who have lost contact with their parents.”

Recommendations

The Government should:

- 95. Enforce Article 2(2) of CRC by eliminating discrimination against unwed mothers’ children. One way to do this is to include education on the violation of social rights within current campaigns against school violence.
- 96. Uphold CRC Article 2, regarding discrimination against children and their parents; Article 8, regarding the preservation of identity with regard to both illegally conducted secret adoptions and legally conducted adoptions, in which the original identity of the child and the identifying information of his parents is erased; Article 9, regarding non-separation from parents, except when necessary; Article 20, entitling children to protection and assistance “provided by the State” when deprived of their family environment; and Article 35 on the abduction, sale and trafficking of children.

- 97. Act on the CRC Committee’s concluding observations of 2003, which expressed regret that “most recommendations in the concluding observations adopted following its consideration of the State party’s initial report have been insufficiently addressed, particularly those regarding: (a) The withdrawal of reservations; (b) The development of public education campaigns to combat discriminatory attitudes towards girls, disabled children and children born out of wedlock.”
- 98. Provide financial and psychological support for unwed mothers and promote information campaigns to combat societal prejudice against them.¹⁴
- 99. Campaign to reduce discrimination against unwed mothers and their children. Budget the campaign to be at least commensurate with the Government budget for “Adoption Week.”¹⁵
- 100. Provide adequate support to single mothers, including those who are adolescent.¹⁶
- 101. Perform a “periodic review of placement of children in all public and private institutions, that takes into account the views and best interests of the child, and, wherever possible, aims to reintegrate children into a family environment.”¹⁷
- 102. 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 ... For instance, the State party might consider establishing a national fund to ensure payment of overdue child maintenance obligations to the custodial parent while enforcement measures are enacted, or introducing a system in which child support payments are automatically deducted from salaries of those employees with child maintenance obligations.”¹⁸
- 103. Strengthen the Ministry of Labor’s supervision to prohibit discrimination against unmarried mothers in the workplace.¹⁹
- 104. Amend the Single-Parent Family Welfare Act and the National Basic Livelihood Security Act to provide a minimum cost of living subsidy to all unmarried mothers.²⁰

¹⁴ ICESCR Recommendations, 2009

¹⁵ Special Adoption Law Article 5

¹⁶ CRC Concluding Observations, 2011

¹⁷ CRC Concluding Observations, 2003

¹⁸ CRC Concluding Observations, 2003

¹⁹ CEDAW Shadow Report, 2011

²⁰ CEDAW Shadow Report, 2011

- 105. Provide children in alternative care settings with adequate support for establishing and/or maintaining contact with their parents.²¹

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²¹ CRC Concluding Observations, 2011