



12 August 2010

Dear Sir or Madam,

We have the honour to address you pursuant to Resolution 13/20 in which the Human Rights Council:

“*Invites* the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative to the Secretary-General on Violence against Children to cooperate on themes of mutual interest within their respective mandates and to report to the Council at its sixteenth session on **effective and child-sensitive counselling, complaint and reporting mechanisms to which children can safely report incidents of violence, including sexual violence and exploitation**; and invites them in so doing, to cooperate with States and relevant partners such as the Committee on the Rights of the Child, the Special Representatives of the Secretary-General for Children in Armed Conflict and on Sexual Violence in Conflict, national human rights institutions and ombudspersons for children, United Nations agencies, regional organizations, civil society organizations and children themselves.”

In this regard, we kindly request the collaboration of your organization and invite you to provide all relevant information and/or documentation on the issue of effective and child-sensitive counselling, complaint and reporting mechanisms to which children can safely report incidents of violence, including sexual violence and exploitation. It would be particularly helpful to receive the following information from your organization:

**A. Name and date of creation**

- National Human Rights Commission of Korea  
- 25. Nov. 2001

**B. Status of the institution**

Conformity with the Paris Principles and General Comment no. 2 of the Committee on the Rights of the Child

**C. Mandate and Competences**

- Which general principles are contained in the mandate of the institution?
  - Which laws? Which treaties?
    - National Human Rights Commission Act
  - Affirmation of the principle of independence?
    - Yes. The National Human Rights Commission Act Article 3(2) provides that the Commission independently addresses matters which fall within the purview of its authority.

- Best interests of the child?
- The provision of “best interests of the child” is not specified in the National Human Rights Commission Act. However, the Act is interpreted to protect the best interests of the child since the provisions of the Convention on the Rights of the Child are duly integrated in the National Human Rights Commission Act.
  - \* NHRC Act Article 2(1) : The term "human rights" means any rights and freedoms, including human dignity and worth, guaranteed by the Constitution and Acts of the Republic of Korea, recognized by **international human rights treaties** entered into and ratified by the Republic of Korea, or protected under international customary law).
- What is its overall mission?
- The National Human Rights Commission is established to contribute to the realization of human dignity and worth and the safeguard of the basic order of democracy and to ensure the protection of the inviolable and fundamental human rights of all individuals and the promotion of the standards of human rights. (NHRC Act Article 1)
- Which powers has it been attributed?
  - Jurisdiction: public sector/private sector?
  - The Commission has jurisdiction in both sectors. However, the Commission is mandated to handle only discriminatory acts in private sector.
  - Powers of investigation:
    - Referral powers different than those for adults? Can it take up cases as of right?
      - The Commission can initiate investigation on its own motion. The Commission can also refer the cases to relevant authorities. There is no distinction for adult and child victims in terms of procedures.
    - Visit places for children without need for prior authorization (detention centres, schools, hospitals, workplaces, children’s centres, etc.)
      - Yes. The Commission is mandated to visit detention facilities, mental hospitals and other facilities for children (NHRC Act Article 31(4)). It can also conduct investigation on its own initiative if it deems that there exists reasonable cause to believe that human rights violations or discriminatory acts have been committed and that the cases are serious (NHRC Act Article 30(3)).
    - Obligation for other actors to provide documentation and/or testimony upon request?
      - Yes (National Human Rights Commission Act)
    - Possibility for the institution to refer a case to the courts?
      - No
  - Advice and recommendations on laws and policies:
    - Possibility for the institution to make recommendations regarding the adoption of or amendments to laws, in

particular with respect to the right to effective protection from violence and sexual exploitation?

- Yes (National Human Rights Commission Act)

- Possibility for the institution to provide advice on draft laws in order to ensure conformity with the Convention on the Rights of the Child, in particular with respect to the right to effective protection from violence and sexual exploitation?

- Yes (National Human Rights Commission Act)

- Responsibility to promote child participation and taking children's views into account in all matters affecting them?

- Yes

- Responsibility to promote human rights/child rights education?

- Yes (National Human Rights Commission Act)

- Advice provided to children directly?

- Yes

- Is a system/mechanism of individual complaints established and operational within the institution?

- Yes (National Human Rights Commission Act)

#### **D. Level of intervention (to tick)**

- The National Human Rights Commission can intervene human rights matters in the territory of South Korea, from local level to national level.

#### **E. Functioning of the institution**

- How is the head of the agency appointed?

- The Chairperson of the National Human Rights Commission of Korea is appointed by the President of the Republic of Korea.

- Which authorities are involved in the process? What is the role of civil society in such a process? Child participation?

- The procedures for civil society consultation or child participation are not established.

- Conditions of eligibility? (age, functions, competencies)

- Expertise and experience in human rights. No age requirement.

- Conflicts of interest?

- Under the National Human Rights Commission Act Article 10, Chairperson and commissioners shall neither concurrently take the office falling under any of the following subparagraphs nor perform the duties thereof during his/her tenure of office:

① A member of the National Assembly or any local council;

② A public official of any other state institution or local government (excluding a public educational official); and

③ Other positions or affairs as determined by the rule of the Commission.

The commissioners including Chairperson shall neither join a political party nor participate in political activities.

- Conditions of resignation?

- Under the National Human Rights Commission Act Article 8, a commissioner (including Chairperson) shall not be removed from his/her office against his/her will unless he/she has been sentenced to imprisonment without labor or a heavier punishment; however, in the event it is difficult or impossible for him/her to perform

his/her duties due to any physical or mental handicap, he/she may be dismissed from his/her office by the resolution of consent of 2/3 or more of all commissioners.

➤ How is the staff selected?

Staff members of the National Human Rights Commission have status of civil servants. Therefore, the recruiting follows recruitment procedures for civil servants.

- Child rights specialists?
  - In general, human rights officers handle policy and law review, investigate human rights violation and discrimination cases, and provide human rights education. There is no specific designation or recruitment of child rights specialists.
- Lawyers? Psychologists? Social Workers?
  - Approximately 10 lawyers. The Commission has many staff members who majored in law or social work.
- Full time or part time staff?
  - Approximately 170 full-time staff members (No part-time staff)
  
- If there is a complaints mechanism within the institution, how is its budget allocated?
  - Portion of the overall budget of the institution?
    - 36% (This percentage does not include costs for human resources, facilities and maintenance.)
  - Budget for a hotline?
    - Approximately \$200,000 per year
  - Allocated by the Executive? By Parliament?
    - Allocated by the Executive, and approved by Parliament
  - Possibility to raise funds from other sources? (eg. private sector, international organizations, NGOs, etc)
    - No.

#### **F. Participation of civil society and of children in the functioning of the complaints mechanism**

- Specific system for child participation? Representation of children within the institution? If so, of what nature? Representation of girls or of children in difficult circumstances?
  - We do not have specific system for child participation.
- Mechanism of coordination/advice involving civil society?
  - Civil society consultation in the form of seminars or forums
- What is the nature of cooperation between the institution and civil society organizations? Possibility of signing agreements?
  - Consultation and expertise-sharing

#### **Insofar as an individual complaints mechanism is in place:**

#### **G. Accessibility**

- To all children, without discrimination? Means by which children can access the mechanism and that are known to them (address, hotline, sms)
  - Yes.
- Physical accessibility: child-friendly reception (trained staff and child-friendly space)?
  - Yes. However, we do not have designated staff members or space for children only.

- Geographic accessibility (local branches? In areas frequented by children?) Does the mechanism depend on existing structures (NGOs, schools)? Effectiveness? Relationship between the national and local levels?
  - We do have three regional branch offices, but they are not specifically designed for children's geographic access.
- Practical/material accessibility (languages; access by children with disabilities)
  - Yes.
- Activities in place to provide information and advice to children, in a child-sensitive manner, particularly to child victims of sexual violence or exploitation?
  - No.
- Dissemination of information on the role and existence of the complaints mechanism to potential users?
  - Yes.

## **H. Protection**

- Description of allegations received and processed regarding violence against children, particularly cases of sexual violence and exploitation (numbers, nature, form)
  - The Commission is mandated to investigate human rights violations cases committed by state entities and discrimination committee by state or private entities. In this view, the Commission can investigate sexual violence cases when such violence is committed by the state entities. To date, no such complaints have been filed to the Commission.
  - The Commission may intervene cases where due process for victims is not ensured by the police or prosecution or where victimization is aggravated in the course of the investigation by the police or prosecution.
- Proactive in visiting structures and private spaces? (number, reports, results obtained)
- Contribution to child protection policies (legislative reform, child protection strategies)?
  - The Commission provides recommendations or opinions on the legislations or policies related to children.

## **I. Confidentiality and protection of the child's right to privacy**

- How does your institution ensure the protection of the confidentiality of the child?
  - It is clearly stated in the NHRC Act Article 52 (Prohibition of Disclosure of Secret) as follows: "A person, who is or was a commissioner, advisory member or staff member of the Commission, and any other person who performed or performs affairs of the Commission after having been dispatched or entrusted by the Commission, shall not disclose any confidential information that comes to their knowledge or is acquired by them during the course of performing their duties."
- What are the procedures for archiving documents?
  - All the official documents are stored by the in-house archivists. Personal information is protected according to documents archiving guidelines.
- What kind of relationships does your institution establish with parents/tutors of children?
  - The Commission listens to their opinion or ask for advice when necessary.
- Are there any mechanisms of coordination with NGOs, associations or institutions for children? With other human rights mechanisms?
  - Yes. The Commission cooperates with them through expert seminar, discussion forums, or groups meetings.

**J. Follow-up / Evaluation**

➤ Follow-up of judicial procedures?

- No.

➤ Follow-up of child victims, particularly child victims of sexual violence and exploitation?

- No.

➤ Obligation of annual reporting? If so, to which authorities?

- Yes. The Commission reports its plans and activities to the President and the National Assembly. The Commission may, if deemed necessary, present any other special report to the President of the Republic of Korea and the National Assembly.(NHRC Act Article 29).

**K. Challenges, Good practices and Recommendations**

The Special Rapporteur and the SRSG would be particularly grateful to receive information regarding your main concerns and lessons learned regarding effective and child-sensitive counselling, complaint and reporting mechanisms to which children can safely report incidents of violence, including sexual violence and exploitation, as well as any recommendations you may wish to make in order to strengthen the effectiveness of such mechanisms.

- The National Human Rights Commission of Korea has issued policy recommendations to prevent human rights violations against child victims of sexual violence. This year, it has been actively presenting its opinions to the Ministries of Justice and Gender Equality & Family, the Public Prosecutors Office and the Supreme Court concerning policies and legislations related to child protection.

Kindly send your contribution before 10 September 2010, through the Office of the High Commissioner for Human Rights, Palais des Nations CH-1211, Switzerland (to the attention of Ms. Dima Yared, [childrenstudy@ohchr.org](mailto:childrenstudy@ohchr.org)).

Sincerely,

Najat Maalla M'jid  
Special Rapporteur  
on the sale of children  
child prostitution and child pornography

Marta Santos-Païs  
Special Representative to the  
Secretary-General on violence  
against children