

**Mandates of the Special Rapporteur on trafficking in persons, especially women and children;
and the Special Rapporteur on contemporary forms of slavery, including its causes and
consequences**

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on trafficking in persons, especially women and children; and Special Rapporteur on contemporary forms of slavery, including its causes and consequences, pursuant to Human Rights Council resolutions 44/4 and 42/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **“Act on the Prevention of Human Trafficking-Exploitation, the Protection of Victims, Etc.” (Bill No. 6912), and amendments proposed to the “Immigration Control Act” (Bill No. 6907).**

The purpose of the Act on the Prevention of Human Trafficking-Exploitation, the Protection of Victims, Etc.” (Bill No. 6912), as enumerated under Article 1, is to further the promotion of human rights by preventing “human trafficking-exploitation”¹, to protect and assist victims of “human trafficking-exploitation”. It is reported that on 17 March 2021 the Bill No. 6912 will be presented to the Committee on Gender Equality and Family. If it passes the review by the Committee on Gender Equality and Family, it will go to the Plenary Session at the National Assembly. The date for the session will be fixed and announced at a later stage.

Your Excellency's Government has previously enacted anti human trafficking legislation by amending the Criminal Code. However, this legislative framework has been the subject of repeated calls for reform, including by the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Elimination of Discrimination against Women (CEDAW) and civil society organizations.

Both the CERD and CEDAW have called for a comprehensive law on trafficking in persons that complies with the standards under the Palermo Protocol and consolidates the laws currently dispersed across sectoral legislation, (CERD/C/KOR/CO/17-19, paras 25—6 and CEDAW/C/KOR/CO/8 paras 24—25). Prevention of human trafficking within the E-6-2 visa system, referred to as Artist, Entertainer and Athlete visa, and fishing industry, as well as victim identification and protection, have been described as among the most urgent challenges that need to be addressed in the country. It was noted by both Committees that migrant women, who were granted E-6-2 visas to work in the entertainment industry, often became victims of human trafficking.

We would like to refer to article 6 of the Convention on the Elimination of All Forms of Discrimination against Women, which your Excellency's Government ratified in 1984, which recognizes that trafficking constitutes a violation of human

¹ Term used in Article 2 the Bill No. 6912.

rights and establishes State obligations in this regard. We wish also to recall the Committee on the Elimination of Discrimination against Women (CEDAW)'s general recommendation No. 38, on trafficking in women and girls in the context of global migration.

According to the information received, there are several areas of particular concern in the proposed Bill No. 6912 as outlined below:

As regards to Article 2 the Bill No. 6912 on definitions, the separation of the terms, "human trafficking", "human trafficking-exploitation", and "human trafficking-exploitation crime" may create confusion and negatively impact potential investigations and prosecutions of perpetrators. It may also hinder identification and referral for assistance of victims and potential victims.

There are also concerns over the absence of a penalty provision specifically for the expansive definition of "human trafficking-exploitation", and its definition serves only as an identifier. Under Article 2.2, "human trafficking-exploitation crime" refers to existing penalty clauses in different laws that reportedly cover all human trafficking cases. It is alleged that there are gaps in the current anti-human trafficking framework as it covers only some forms of trafficking in persons, and does not encompass the diverse acts that can constitute human trafficking as described in Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), ratified by your Excellency's Government on 5 November 2015.

There are concerns that the use of term "human trafficking-exploitation", which would provide victim protection, signals that the punishable act within the Criminal Code, i.e. "human trafficking" or "trafficking in persons", are separate. This would mean that perpetrators would not be punished under the definition of "human trafficking-exploitation". These purported gaps indicate that an additional criminal law provision would be required to introduce criminal sanctions that covers all forms of human trafficking and related offences, as required by the Palermo Protocol, which specifically declares that effective action to prevent and combat trafficking in persons, especially women and children, requires (...) measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

In addition, the language in Article 2.1(b), "taking advantage of another person's strained circumstances" or "abuse of another person's strained circumstances", is a marked difference from "abuse of a position of vulnerability" upheld under Article 3(a) of the Palermo Protocol. The language reflected in the Palermo Protocol seems to set a higher standard. Your Excellency's Government is reminded that the language in the Bill No. 6912, and amendments proposed to the Bill No. 6907 should properly reflect international legal obligations as well as address the reality of the circumstances of trafficking victims within the county, so to ensure effective identification, assistance and protection.

Furthermore, it is reported that the Bill No. 6912 fails to introduce developed indicators for victim identification under Article 14, "Indicators for Identification of Victims of Human trafficking-exploitation, Etc.". The bill does not include any provision relating to identification procedure.

The criteria and indicators of trafficking in persons for the purpose of labour exploitation should be strengthened in accordance with the benchmarks and indicators for ensuring trafficking-free supply chains proposed by the Special Rapporteur on trafficking in persons, especially women and children (A/HRC/23/48/Add.4, appendix I and A/HRC/35/37). Moreover, we would like to remind your Excellency's Government of the indicators of forced labour issued by ILO.² It should be noted that the presence of a single indicator in a given situation may in some cases imply the existence of forced labour. Forced labour is considered a contemporary form of slavery.

Another problematic area of Bill No. 6912 is Chapter V, which instead of stipulating protection guarantees for migrant victims, potential victims of trafficking, refers to a partial amendment to the "Immigration Control Act" (Bill No. 6907). The protection offered to migrant victims in the "Immigration Control Act" Bill No. 6907 is limited, and does not meet the State's international legal obligations, including of non-discrimination in all measures taken to combat trafficking in persons. In fact this Bill would not prevent the immigration authority from issuing deportation order and/or detention order to migrant victims, nor would it guarantee residence, nor protection safeguards to ensure that returns are voluntary, and that the international legal obligation of non-refoulement is ensured in practice, including through prevention of re-trafficking or other human rights violations on return.

We would also like to bring to your attention the recommendations made by the Special Rapporteur on trafficking in persons, especially women and children in her report to the Human Rights Council, A/75/169. In this report, she notes that the non-punishment provision is a key element in any system of protection of victims of trafficking. It is critical for an effective implementation that the non-punishment principle is practically applied from the starting point of the detection of a victim of trafficking. In addition, we wish to refer to Articles 1, 2 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by your Excellency's Government in 1978.

Moreover, the procedure for victim protection would be further complicated by Article 42 in the "Immigration Control Act" (Bill No. 6907), which would add another approval mechanism. The current amendments would seek to establish a Deliberation Committee within the Ministry of Justice and regional immigration service to examine applications filed by migrants for an extension of the period of stay, suspension of deportation and temporary release from immigration detention. To qualify for these requests migrants confirmed as trafficking victims by the Minister of Gender Equality and Family would have to be approved again by a Deliberation Committee in order to receive the protection offered, in Article 25-5 and 62-2 of Immigration Control Act" (Bill No. 6907), which includes extension of period of stay, suspension of executing deportation order.

² https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_203832.pdf

According to the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, States have an international obligation not only to identify traffickers but also to identify victims of trafficking. This is a positive obligation on the State. A failure to identify a trafficked person correctly is likely to result in a further denial of a victim's rights. We also would like to refer to Principle 13 of these recommended Principles and Guidelines, which provide that "States shall effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors".

In view of the aforementioned observations, we wish to express our concerns that some of provisions contained in Bill No. 6912 and amendments to Bill No. 6907 are incompatible with your Government obligations under international law.

We take this opportunity, as the Republic of Korea moves towards with a reform of the anti-human trafficking system, to remind your Excellency's Government of the purpose and objectives of the Palermo Protocol and of international human rights law, which requires States to implement measures to protect victims of trafficking, prevent such trafficking, and punish perpetrators.

Current discussions on the efforts to bring human trafficking laws in accordance with international standards, provide an opportunity to address concerns, specifically in relation to the definition of human trafficking, victim identification, safeguards for migrant victims, effective access to assistance and protection and investigation and prosecution of trafficking offences.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned information.
2. Please provide detailed information on how your Excellency's Government intends to proceed with regard to Bill for the "Act on the Prevention of Human Trafficking-Exploitation, the Protection of Victims, Etc." (Bill No. 6912) and amendments proposed to the "Immigration Control Act" (Bill No. 6907)., as well as how its provisions comply with your Excellency's Government obligations under the international legal framework of human rights law relating to trafficking in persons and related practices such as contemporary forms of slavery.
3. Please provide information on any measures that your Excellency's Government has taken or intends to take in order to implement the recommendations by human rights bodies, referred to above.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

In the meantime, we urge your Excellency's Government to immediately review Bill No. 6912, as well as related amendment related to the protection of migrant victims in Bill No. 6907.

Please accept, Excellency, the assurances of our highest consideration.

Siobhán Mullally

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Tomoya Obokata

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