

**NGO Thematic Alternative Report on the Rights of Migrant Children  
to the Committee on the Rights of the Child**

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MINBYUN-Lawyers for a Democratic Society

Network for the Rights of Children and Adolescents with  
Migrant Background

Network for Universal Birth Registration

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## Table of Contents

1.	Background.....	4
2.	Birth Registration.....	6
3.	Childcare.....	8
4.	Education.....	10
5.	Right to Health.....	12
6.	Child Protection, Support, and Welfare.....	15
7.	Immigration Detention of Children.....	18
8.	Right to Stay and Deportation.....	21

## 1. Background

Migrant children in the Republic of Korea are being excluded from or limited in the application of laws and policies for children on protection, support, and welfare, only because they do not have Korean nationality. Among them, undocumented migrant children are categorized as “illegal stayers,” and consequently, are denied the rights of the child, and subject to detention and deportation.

Civil society in the Republic of Korea had initiated comprehensive legislation to ensure the rights of migrant children in accordance with the CRC. Two bills were submitted to the National Assembly in 2010 and 2014 respectively, both of which included the rights to birth registration, childcare, education, and health, as well as the rights not to be detained but to stay of undocumented migrant children as a measure of humanitarian intervention. However, both bills were discarded due to the objection from the relevant government ministries, as well as anti-migration and xenophobic sentiments among the public.

Data collection and policy development for migrant children are not being carried out in the Republic of Korea. Immigration Statistics published by the Ministry of Justice do not present the number of migrant children under 18 years of age separately, while the number of migrant children without immigration records, or those who were born in Korea but not registered as foreigners, are not recorded in the Statistics. Also, Statistics of Foreign Residents by the Ministry of the Interior and Safety do count the number of children of multicultural families, and exclude the children both of whose parents are foreigners. The First Basic Plan for Child Policy established in 2015 by the Ministry of Health and Welfare and other relevant government ministries set children under 18 years of age residing in Korea as its policy targets, yet only addressed the issues of the children with Korean nationality at first. The issues of non-national migrant children were included later, after the opposition raised by the civil society.

In March 2018, the Ministry of Justice announced that it will conduct research regarding the situations of undocumented migrant children. However, its proposal raised concerns that the research may end up violating the rights of migrant children and undermining research ethics, because the Ministry required participating research teams to submit the personal information on undocumented migrant children and their families collected during the research. It also announced that it would make a reasonable “management plan” for “illegally staying children” based on the results. Under these circumstances, recommended strategic budgets for children of refugees or migrant workers by the Committee in 2012 have never been allocated properly.

This report is prepared by coalition of NGOs working on issues regarding migrant children to inform the Committee about the human rights conditions of migrant children who are in vulnerable states in the Republic of Korea. We hope this report will help the Committee to urge the South Korean government to provide migrant children with all the rights stated in the CRC without any discrimination.

## 2. Birth Registration

### Concluding Observations 36-37 | State Report 59

The 5<sup>th</sup> and 6<sup>th</sup> Periodic Report to UN Committee on the Rights of the Child by the Government of Republic of Korea (hereinafter "State Report") replied that "a child born in the Republic of Korea to foreign parents is birth registered pursuant to the laws of the country of either parent. Even if a child's father or mother is an unregistered immigrant, the child can be birth registered pursuant to the laws in the parents' nations." Contrary to the position taken by the Government of Republic of Korea (hereinafter "Korean Government"), migrant children born in Republic of Korea (hereinafter "Korea") face severe restrictions in exercising their right to register their births.

First of all, refugees, humanitarian status holders, and refugee applicants find it difficult or impossible to report their children's birth to a governmental agency of their home country, which is likely to be the agent of prosecution that they have fled from. The Korean Government responds that "alien registration for their children can be done with a doctor-issued birth certificate attached".<sup>1</sup> The Korean Government's position seems to be that entering personal information of these children into the foreigner registration system of Korea is sufficient.

However, this falls far short of universal birth registration because (1) it is not possible to verify a child's legal identity and provide legal identification of the child through a system designed for immigration control, not civil registration; (2) alien registration card or proof of alien registration can serve as documentary evidence of immigration status, but not fact of birth; (3) there exist cases where an immigration official or the parents have arbitrarily given children certain nationality during alien registration, when they were actually *de jure* or *de facto* stateless due to laws of their parents' country or because they have not registered their birth at their parents' country<sup>2</sup>; and (4) at any rate, children of undocumented parents cannot be registered as foreigners as they do not have the right of residence. Ultimately, children of refugees, humanitarian status holders, and refugee applicants are *de facto* stateless because they could not register their births; cases where a refugee child was not able to register his birth for 16 years have been reported.<sup>3</sup>

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<sup>1</sup>State Report [59]

<sup>2</sup>Kim Chul Hyo, etc., Registration of Birth Registration for Children with Migrant Background, Save the Children, 2013, 57.

<sup>3</sup>Kim Yae-yoon, Dong-a Ilbo, "I want to make a music that mixes the culture Myanmar, the country of parents, and Korea. - [Shadow children] The dream of 16-year-old Joshua who acquired an alien registration

Also, children of undocumented migrants face practical barriers to registering their births to the embassies of their parents' country. Because the Korean government routinely request sending countries to make efforts to reduce the number of undocumented migrants, embassies of such countries often place obstacles to the undocumented migrants in reporting their children's birth, such as confirming their documented status first or demanding to return to their country for birth registration. Cases of requiring excessive fees for undocumented migrants have also been reported. Thus, it can be said that the Korean government is effectively blocking all registration of these children's birth, by denying them alien registration and also by hindering birth registration at the embassies of their parent's home country. In addition, it is often difficult for migrants living in the province to visit the capital where their embassies are located, and there are more than 30 countries without their embassies in Korea.

To date, even an estimated number of unregistered migrant children is nonexistent. As the acknowledgement and awareness of migrant children's existence is the first step for protection of their rights, which is severely lacking in several aspects as discussed below, universal birth registration for all children is of high importance.

#### **Suggested Recommendations**

The State Party should:

- Provide all foreigners, regardless of their residency status, identity, or nationality, with the duty and the right of birth registration.
- Ensure that access to administrative services for birth registration is not hindered due to absence of right to residence.

### 3. Childcare

#### State Report 93

The State Report states that parents receive supports from the government to raise their children in the best possible environment, and that free childcare and education services for infants are provided to everyone using day-care centers and kindergartens. This, however, is limited to children who have the nationality of the Republic of Korea (hereinafter "Korean nationality"), thus children without Korean nationality cannot receive such supports.<sup>4</sup> This is because the current Infant Care Act states that all "nationals" have responsibility to nurture children in a healthy manner, and the state and local governments should strive to secure the necessary resources. It is interpreted that non-nationals are excluded from this childcare responsibility, and supports from the state and local governments.

According to the 2017 Research on <Monitoring basic rights of foreigners in Gyeonggi Province> conducted by Gyeonggi Institute of Research and Policy Development for Migrants' Human Rights (GMHR), 22.4% of preschool children do not attend day-care centers, and 68.2% of parents are not able to use day-care centers due to financial reasons. The average childcare fee for migrant children amounted to 277,054 won, which was four times higher than the average childcare fee of 69,000 won for Korean children in 2017.<sup>5</sup> Migrants who cannot afford to pay for such fees had to leave their children alone at home, take children to workplaces that are inappropriate for children, or leave children in the care of unqualified people.

In addition, even when they can pay for childcare, migrant children are occasionally refused enrollment in day-care centers. Under the current system, migrant children can be registered in the Childcare Integrated Systems even when they do not have required documents, such as alien registration card, passport, or birth certificate. However, it has not been widely publicized, thus staffs at day-centers who are not aware of the fact require such documents for enrollment.

Also, there have been cases of migrant children being refused to day-care centers with reasons such as 'not having valid visa', 'not likely to adapt with different skin color', 'there's no children

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<sup>4</sup>According to the guidelines provided by the Ministry of Health and Welfare, recognized refugees are eligible for childcare and child support programs. However, the guideline is not sufficient enough as guidelines can be revised at any time.

<sup>5</sup>2017 results of the <Monitoring basic rights of foreigners in Gyeonggi Province> conducted by Gyeonggi Institute of Research and Policy Development for Migrants' Human Rights, Child Policy Research Institute (2017), "Estimate of infant education and childcare costs (V)."

who came from African countries in this day-care center', 'there's no foreigners here', 'it must be hard for the child because he/she doesn't speak Korean', 'Korean parents do not like having foreigners with their children', etc. As a result, migrant children have no choice but to go to daycare centers far from their residence, or expensive or unauthorized centers. Even when they are accepted, some centers ask parents to sign a memorandum that the day-care center would not be held responsible when accidents occur, or to have a Korean guarantor.

Migrants who stay in Korea for a long time have to raise their children in Korea. However, there is no way for migrants to invite their parents or family members to get supports, unless the child has Korean nationality.<sup>6</sup> Single-parent migrants, in particular, who are not subject to childcare supports from the government, need to do economic activities. Hence, they often send their children to their families in their home countries and bring them back to Korea when they reach certain age.

In other words, lack of childcare support leads to an inappropriate environment for migrant children, leaves them with insufficient language and social abilities, and even creates unstable circumstances of children going back and forth to their parents' home country and South Korea.

#### **Suggested Recommendations**

1. Under the Infant Care Act, the child care responsibility should be extended to all people living in the country from 'citizens', and financial support for child care should be provided to all children regardless of their parent's nationality or residency status.
2. The procedure for being registered in the integrated childcare information system should be simplified so that migrant child can be registered in the system even when they don't have all the required documents. Also, it should be widely promoted.
3. Measures should be taken to prevent day-care centers from rejecting migrant children due to discrimination and prejudice against migrant children.

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<sup>6</sup>If a marriage migrant conceives or gives birth to a child of Korean nationality, she may invite a parent or a blood-related female cousin. The invited family member can change their status of residence to F-1, and stay in Korea for up to 4 years and 10 months until the child becomes 7 years old.

#### 4. Education

##### Concluding Observations 64-69 | State Report 162-167

The State Report states that the government has tried to ensure the right of undocumented migrant children to education by exempting public officials' obligation to report to the immigration agency when they acquire information on undocumented migrant children in schools. This exemption is, however a mere 'exemption', not a prohibition. There is no provision under the Immigration Act or any other laws to prevent public officials from informing the immigration agency if they are willing to report to the immigration.

Migrant children in the Republic of Korea are able to receive compulsory public education regardless of their parents' status of sojourn. Undocumented migrant children are subject to suspension of deportation until they complete education. Nevertheless, the principles of non-discrimination and the best interests of the child as set forth in the CRC have not been fully implemented in South Korea.

As the Framework Act on Education states that only 'citizens' have a right to receive compulsory education under the Act, the notice to enroll into elementary school is not delivered to migrant children and their families. Migrant children may apply for the admission or transfer to the heads of elementary or middle schools in the residences' school district under Article 19 and Article 75 of the Presidential Decree of the Elementary and Secondary Education Act. It is, however up to the heads' discretion whether to accept the admission or transfer, and there's no provision the responsibility of heads of schools to accept the admission of migrant children. The State report states that elementary and secondary education of the equivalent level to natives is guaranteed for minors in families of recognized refugees and refugee applicants<sup>7</sup>, there was a case in 2015 where the admission of about 10 refugee applicants living in Yeongjongdo Refugee Reception Center was denied due to the possibility of "emotional conflict" between refugee children and Korean students. The children had to commute to a public school, 1 hour away from the Center by bus.

In many cases, migrant children, including undocumented migrant children and children of marriage migrants are refused admission to schools without any valid reasons. Moreover, undocumented migrant children are sometimes not well-protected from bullying or schools

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<sup>7</sup>State Report [165]

violence when the teaching staff who are not aware of the current law, wrongly advise them that undocumented children are not able to transfer to another school. Also, as some parents are not able to obtain enough information about the education system in Korea, some migrant children of school age are neglected at home for several months.

Currently, there are preparatory schools established to promote academic ability of migrant children, however they are scarcely placed, and tend to be too far from the residence, thus not many migrant children benefit from such institutions. Also, with regard to undocumented migrant children, even when they successfully enter schools, they are excluded from social and educational services for students, such as education benefits and student bank account. Talent contests and competitions where children can show their abilities normally do not provide opportunity for undocumented children to participate. Also, undocumented migrant children in Korea are basically not able to enter universities which lead to the dropping out of schools for the migrant children.

#### **Suggested Recommendations**

To implement and enforce relevant policies for migrant children to easily access and adapt to the compulsory public education, the State Party should:

1. Amend the Framework Act on Education to guarantee that migrant children also have a right to receive the compulsory education.
2. Reform relevant provisions so that migrant children can transfer to or enters into schools without fear of rejection, deliver the notice to enroll into elementary schools to migrants so that no children are left behind, and provide administrative guidance and directions to the teaching staff about the rights of undocumented migrant children in terms of education.
3. Establish the multilingual interpretation system for education for migrant children to adapt, and parents not to be excluded from educational information or events.
4. Regardless of social status or status of sojourn, ensure that no migrant children are discriminated in educational services.

## 5. Right to Health

### Concluding Observations 55-56 | State Report 125

In relation to the recommendations of the Committee on the right to health, the State Report reports that children aged 0 to 12, including undocumented migrant children, are eligible for free vaccination.<sup>8</sup> As described in the State report, children born and living in Korea under the age of 12 can now receive vaccination free of charge through the Korea Centers for Disease Control and Prevention's 'National Immunization Program for Children' regardless of their status of sojourn. Previously all children were able to be vaccinated in private hospitals and public health centers, however, since the implementation of the Control Number Issuance Guide in 2014, undocumented migrant children without Alien Registration Numbers could receive free vaccinations only at public health centers.<sup>9</sup> Due to this change, migrant families in remote areas living far away from public health centers and who have no other measures than going to the nearest private hospitals, have to pay all medical expenses. Although there is a free vaccination program provided by a national undertaking, by limiting undocumented migrant children to only go to public health centers, is still burdening the families financially.

During the National Assembly's audit of the state administration, the National Assembly requested the Korea Centers for Disease Control and Prevention to identify the cause of regional disparities in the vaccination coverage rate of children aged 4 to 6 years. The National Assembly also required to produce a multilingual brochure for foreign children and children of multicultural families.<sup>10</sup> Following these requests, multilingual brochure in nine languages was produced. However to increase the vaccination rate effectively, access to free vaccination has to be expanded beyond public health care centers.

The Korean National Health Insurance system is divided into two parts – employee insured registration and self-employed insured, also known as the regional registration. Children can be registered under their parent's health insurance program. However, undocumented migrants are not eligible for both health insurance programs, and the registration rate for migrants with valid status of sojourn is about 60%, which is significantly lower than the national insurance coverage

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<sup>8</sup>State Report 125.

<sup>9</sup>The Korea Centers for Disease Control and Prevention, Information on issuing foreign registration number. Dec 10, 2014.

<sup>10</sup>The Government of the Republic of Korea, Report on the results of the 2017 audit and the corrective action requirements (subsidiary of the Ministry of Health and Welfare). Apr, 2018, 135-136

rate of over 95%. Such statistics shows that many migrant children are excluded from the health insurance benefits. In particular, it is required for migrants to wait for 3 months after entering the country to apply for the national health insurance system. Furthermore, unlike Korean nationals who are charged according to the level of income and possession of property, most migrants are charged above the previous year's average premium price rate making it more difficult to enroll in the national health insurance system.

Recently, the Ministry of Health and Welfare has announced the revision of current Health Insurance system for Korean nationals and foreigners. It is announced by the Ministry of Health and Welfare that it will make six months from three months from the entrance of the country as the waiting period for application of the self-employed insured program for foreigners from 2019. It also announced that it will charge more than the average premium for all migrants except permanent residents and marriage migrants. Moreover, without documents issued by the Korean government's verification agency proving the family relations, migrant children will not be eligible to enroll in the health insurance under their parents, thus more migrant children are expected to be excluded from the medical care.

Meanwhile, migrant children are also being excluded from the current Medical Care Assistance Act, since it is only available to those who are recognized as refugees under the Refugee Act, and to marriage migrants residing in Korea. Most migrant children, therefore are unable to afford medical expenses. Through the 'Medical Service Program for Marginalized Groups including Migrant Workers' the Ministry of Health and Welfare does provide support for children under the age of 18. However, due to the complicated selection process and limited number of medical institution for services, the accessibility is very limited, hence only a few migrant children are receiving these benefits.

In addition, the State Report states that the government has provided support for living, housing, medical, and educational expenses for recognized refugees and refugee applicants. Nevertheless, only 3.2 percent (436 out of 13,294 people) received such assistance in 2017 due to lack of budget.<sup>11</sup>

### **Suggested Recommendations**

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<sup>11</sup>Administrative information disclosure result, Ministry of Justice's refugee department.

1. Mandatory immunization for all migrant children should be guaranteed, regardless of legal status. Also, the accessibility to medical services should be reinstated by expanding eligible medical institutions for vaccinations beyond public health centers.
2. The National Health Insurance system should be improved for migrant children to be able to join national health insurance system regardless of their parents' or their own legal status. Also, the Medical Care Assistance Act should be amended to include migrant children as recipients of medical aid.
3. The Regional Public Health Act should be amended to clearly include migrants and migrant children in the category of 'local resident', and to establish a Regional Healthcare Plan to cover migrant children residing in the region, regardless of their legal status.
4. The Ministry of Health and Welfare should secure the budget of Medical Service Program for Marginalized Groups including Migrant Workers, and establish a health support system for migrant children.

## 6. Child Protection, Support, and Welfare

Concluding Observations 45, 48, 52, 61

With regards to the Committee's recommendation regarding the protection of abused children, the State Report states that the identification, notification and protection systems are in place. The abused migrant children, however often fail to receive adequate support and care. This is mainly because laws and policies regarding immigration control are not able to take into account the interests of migrant children, and apply the same standards with adult migrants in terms of the status of sojourn.

According to the Ministry of Health and Welfare, the number of suspected child abuse cases regarding migrant children has increased from 24 in 2013 to 64 in 2014, and 94 in 2015. On the other hand, the number of children who entered the child protection agencies for protection from child abuse, was only 2 in 2013, 2 in 2014, and 5 in 2015. Among them, the number of children receiving financial support has diminished to 1 in 2013, 1 in 2014, and 1 in 2015.<sup>12</sup> Furthermore, the figures released by the Ministry of Health and Welfare show that the government does not even recognize the precise conditions of abuse and protection of migrant children as it is significantly different for the number provided by the civil society.

The Child Welfare Act defines the term 'child' under the Act as 'a person' under 18 years of age, not a 'citizen'. The Act also clearly states that children shall grow up without experiencing any kind of discrimination, whether having handicaps or not, birthplace, race, etc. of themselves or their parents. Nevertheless, migrant children are not fully covered by the Child Welfare Act. Since the National Basic Living Security Act, which supports children living in child welfare facilities or children from poor families, excludes migrant children from the list of beneficiaries, they do not receive any financial support for living expenses, housing expenses, and medical expenses.

The Ministry of Health and Welfare claims that they try to provide appropriate protection for migrant children, and support the cost of living for them by the local government.<sup>13</sup> However, under current Korean law and policies, the government 'may', not 'must' provide support for migrant children, thus the migrant children are not subject to stable and consistent support. Since the medical expenses under the Medical Care Assistance Act are not available for migrant children,

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<sup>12</sup>Data submitted by the Ministry of Health and Welfare to the National Assembly MP Kim Sang-hee in Sep2016

<sup>13</sup>2018 Ministry of Health and Welfare

migrant children who use child welfare facilities have to bear the cost to enroll the health insurance. Moreover, it is expected that the burden will be even greater as the premiums for insurance is supposed to be increased from 2019.<sup>14</sup>

Among migrant children in need, some are children who have been undocumented from the beginning, but most of them are children who acquired a status of residence concomitantly with their parents. When children are abused by their parents, the children's status of sojourn may be hard to maintain or extended. In the case of serious abuse requiring separation from parents, it may be necessary for the child to stay in Korea and receive protection even if the parent leaves or deported from the country. In such cases, it is left to the discretion of the immigration authorities. In Korea, there is no ministries or authorities responsible to determine the 'best interests of the child' for migrant children. Also, each government department that is responsible for each life-cycle is not communicating each other, therefore it is highly unlikely for migrant children to expect adequate protection and support.

For children with disabilities, they must be registered as persons with disabilities under the Act on Welfare of Persons with Disabilities to receive support for education, treatment, and rehabilitation. The current Welfare of Persons with Disabilities limits its beneficiaries to Korean nationals and foreigners with permanent residency, marriage migrants, and recognized refugees. The Act also has a provision stating that the welfare program for people with disabilities may be limited for foreigners considering the budget, therefore most migrant children with disabilities do not receive any assistance from the government.<sup>15</sup> In 2016, there was a case of a driver making a mistake to accidentally confine a migrant child in a kindergarten bus for several hours. As a result of this mistake, the migrant child suffers from a permanent disability and is being treated at a hospital. The entire family is having an extremely difficult time not just mentally but also financially as they

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<sup>14</sup>Migrant children who are under the care of child welfare facilities are either undocumented for not obtaining a status of residency along with their parents or have F-1 visa without a guardian. In the former case, children cannot enroll in health insurance at all. In the latter case, children have to join the health insurance area at their own expenses. So far, F-1 visa holders have been paying health insurance premiums on the same basis as domestic Koreans, so the premiums for these children were only 2 ~ 3,000 won. However, if the above average premium is imposed from 2019, the cost is expected to exceed 100,000won.

<sup>15</sup>In 2017, the Act on Welfare of Persons with Disabilities was amended to allow migrant children recognized as refugees with disabilities to register as a person with disabilities under the Act, and the guidelines of the Ministry of Health and Welfare were also revised so that they can receive financial support.

cannot receive any financial supports from the government as the child cannot be registered under the Act on Welfare of Persons with Disabilities.<sup>16</sup>

### **Suggested Recommendations**

1. The principle of non-discrimination under the Child Welfare Act (Article 2) should state clear that it also applies to migrant children.
2. In order to guarantee the best interests of the child for those who are abused, an independent body should be established to consider the protection of children as well as the extension of the stay or the grant of the status of residence. With this body's decision, measures should be taken to give stable status to children.
3. Relevant legislation should be amended to ensure migrant children in need receive supports for living, housing, medical care, and education.
4. The Act on Welfare of Persons with Disabilities should be revised so that migrant children with disabilities can be registered as a person with disabilities under the Act, and receive services such as treatment, rehabilitation, and education.

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<sup>16</sup>ChosunIlbo. 2017.07.20. "A year after the oven bus incident, the child has yet to wake up."

## 7. Immigration Detention of Children

Concluding Observations 68-69 | State Report 167

The Immigration Act defines 'detention' (under Korean law, the term 'protection' is used in lieu of 'detention') as enforcement activities impounding foreigners subject to deportation at immigration detention centers. Under the current Act, there are no specific provisions regarding detention of non-citizen children except for Article 56-3 prescribing that 'a person under 19 years of age' shall be provided with treatment adjusted to his/her specific needs. Under Article 4 of Administrative Rules on Alien Detention, the head of an immigration detention center may grant permission to a detained alien to bring a child not subject to detention when the child is under 14 years of age, the detained alien supports the child and no other person desires to support the child; a child under 3 years of age may be granted permission to be with a detained alien who is his/her parent even when another person desires to support the child. Therefore, a child under 14 years of age can be detained when a deportation order is issued to his/her parent and the parent gives consent for the child's detention. As the parents often have no alternatives for protection of the child, detention of children is practically compulsory. Therefore, it can be said that there exists a practice of detaining migrant children, including infants and toddlers, together with their parents.<sup>17</sup>

The Korean government in its State Report responds that "to ensure the right of unregistered immigrant children to education, in 2012 the Government exempted public officials' obligation to report to the immigration agency even if they acquire information on unregistered immigrant students in schools"<sup>18</sup>. However, the government practice is insufficient in effectively preventing detention of children, because (1) the exemption of reporting obligations do not actively block public officials' reporting undocumented migrant students to immigration authorities, thus falling short of being a firewall for undocumented migrant children; and (2) out-of-school students are not protected under the practice.

67 migrant children have been detained in the last 3 years at Hwasung Immigration Detention

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<sup>17</sup>26 children under 8 years of age have been detained at immigration detention unit or center throughout Korea from 2013.1 to 2015.6. Among them, a 3-year-old boy a 2-year-old girl were detained for 30 days and 81 days respectively. Kim, Jongcheol, *Toward Elimination of Detaining Children of Migrants and Alternatives to Detention*, April, World Vision, 2015, 5

<sup>18</sup> State Report [167]

Center, the largest detention center in Korea.<sup>19</sup> 70 migrant children over 14 years of age were in detention in 2016<sup>20</sup> and the total number of migrant children under 18 years of age who have been in detention centers throughout Korea from January 2015 to December 2017 is 225.<sup>21</sup> Administrative Rules on Alien Detention include provisions on education and protection of children in migration detention. However, even if such education or special protection are provided, negative impact of detention on the children cannot be offset and as examined in a recent report, the Rules are not being complied with

Table: Compliance with the Administrative Rules on Alien Detention or Enforcement Regulations

	Hwa-Sung Immigration Detention Center	Cheong-ju Immigration Detention Center	Yeo-su Immigration Control Office
Family Room	○	×	○
Education according to age and capability	×	×	×
Education provided by professional welfare facilities	×	×	×
Interview with public officials once in two weeks (under 17 years of age)	○	○	○

Source: Korean Bar Association, 2015 Report on Survey of Immigration Detention Center, 2015, p.25.

### Suggested Recommendations

The State Party should:

- Detain migrant children only as a last resort. If detained for reasons such as child protection, family room, education, food and medical care should be provided to realize the best interests of the child.
- Revise the "Immigration Act" so that, in principle, foreigners who have children under

<sup>19</sup>Korean Bar Association, 2015 Report on Survey of Immigration Detention Center, 2015, 25.

<sup>20</sup>Korean Bar Association, 2015 Report on Survey of Immigration Detention Center, 2015, 25.

<sup>21</sup>National Human Rights Commission of the Republic of Korea, Opinion on Revision Bill on Immigration Act, 2018. 7. 26.

their care are not detained in detention centers.

- Revise the "Immigration Act" to include provisions related to the principle of best interests of the child, in order to duly reflect rights of the child in all immigration decisions

## 8. Right to Stay and Deportation

Concluding Observations 68-69 | State Report 167

The current Immigration Act does not have specific provisions for detention and sojourn of migrant children. Therefore, migrant children who do not have a documented status or whose period of residency has expired are, in principle, subject to deportation pursuant to Article 46 of the Immigration Act. The Korean government has not yet implemented a regularization policy for undocumented children. Internal regulations of the Ministry of Justice provide some protection for children of undocumented migrants attending elementary, middle, and high school, by deferring from deporting them until graduation. Parents of such children are, in principle, subject to deportation but are provided suspension of detention and temporary residence in unavoidable circumstances.<sup>22</sup>

The above regulations do not have legal basis, and there is no published data on whether they are being consistently enforced. It is true that such policies are meaningful to the extent that it explicitly acknowledges the need for educational rights of migrant children and guarantees their right to stay for a certain period. Still, there exist a significant number of children who are not protected under these regulations, such as (1) pre-school children; (2) children outside of school; and (3) high school graduates. Therefore, these children are subject to deportation pursuant to the Immigration Act, and there indeed exist children under the age of 18 who have been detained for deportation because of their undocumented status.<sup>23</sup>In addition, because the regulations do not grant the children a status of residence but merely suspend their deportation orders, it is difficult to derive their right to stay therefrom, no matter how long they have resided in Korea.

Unstable status of residence hampers the child's psychological development and social relations. Leaving school before completion of education gives rise to problems of discontinued learning and maladjustment after returning home. The greatest problem is that the children are detached from the identity and relationship they have established in Korea. Migrant children who completed the compulsory education in Korea are likely to have established a stronger identity as a Korean, and hence find the language, culture, and society of their home country unfamiliar. Since deportation for these undocumented children are usually accompanied by prohibition of re-entry for many years (the deportation order generally prohibits entry for five years, the exit order

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<sup>22</sup>Ministry of Justice, Measures to Support Educational Rights of Illegal Migrant Children, 2013.

<sup>23</sup>Ministry of Justice, Response to Inquiries by MP Keum, Tae-sup, 2017.

prohibits entry for 1 to 5 years), making it extremely difficult to restore the severed relationship that they have built in Korea.<sup>24</sup>If there are siblings who are still enrolled in school, they will be separated from their families for a long period, unless they abandon their studies in Korea.

The Committee, in a joint general comment with Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, recommended "implementation of regularization mechanisms as a means to promote integration and prevent exploitation and marginalization of migrant children and their families," taking into account best interests of children.<sup>25</sup> The Committees also recommended that "States provide avenues for status regularization for migrants in an irregular situation residing with their children, particularly when a child has been born or has lived in the country of destination for an extended period of time, or when return to the parent's country of origin would be against the child's best interests."<sup>26</sup>

However, Korea does not have any laws or policies providing regularization paths to long-term resident migrant children. The Ministry of Justice has taken the position that additional regulations are unnecessary since pursuant to Article 61 of the Immigration Act<sup>27</sup> and Article 76 of the Enforcement Decree of the Act,<sup>28</sup> deportation may be suspended for undocumented migrant

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<sup>24</sup>There exist reports of being denying entry visas due to past violations of Immigration Act

<sup>25</sup>Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, para. 44.

<sup>26</sup>Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, para. 29.

<sup>27</sup>Article 61 (Special Cases on Permission to Stay)

(1) In making a decision under Article 60 (3), even where the objection is deemed groundless, if a suspect was a former national of the Republic of Korea, or in exceptional circumstances under which a suspect need to stay in the Republic of Korea, the Minister of Justice may permit his/her stay.

(2) In granting permission under paragraph (1), the Minister of Justice may impose necessary conditions, such as the period of stay.

<sup>28</sup>Article 76 (Obligation to Repatriate)

The captain of a ship, etc. or a forwarding agent operating a ship, etc. on which any of the following aliens embarked shall immediately repatriate such alien out of the Republic of Korea at his/her expense and on his/her own responsibility:

1. A person who fails to meet any of the requirements under Article 7 or 10 (1);
2. A person whose entry is prohibited or refused under Article 11;

children.<sup>29</sup> However, there are no provisions indicating when the standard of "special circumstances to reside based on humanitarian grounds" is applicable, making it difficult for the addressees of the law to predict the outcome. Furthermore, there is no safeguard against arbitrary management of the system. Indeed, there exists concern that the Ministry of Justice is making arbitrary determinations of "special circumstances." Of the total of 35 special residency permits granted in 2016 and 2017, 19 cases<sup>30</sup> were on the grounds that they were "foreigners of Korean origin." The Ministry of Justice has not disclosed why this fact is material to the decision or how much weight is given to it.

In 2012, a Mongolian high school student who entered Korea as a child and graduated from both elementary and middle school in Korea was investigated by the police for trying to stop a fight of his classmates. When the police confirmed his undocumented status, he was transferred to the immigration office and was later deported. In 2017, the case of a Nigerian teenager ("F") received media attention. All five siblings including F were born and raised in Korea, but due to their father being deported they were living in Korea with their mother without documented status. All of them graduated or are currently attending elementary, middle or high school in Korea. They have been assimilated with Korean society in all relevant aspects, including language, culture, and lifestyle. All ties between relatives and friends in Nigeria have been essentially disconnected. After graduating from high school, he began to work at a factory but after a few months was caught in a crackdown in 2017 and was given deportation order.<sup>31</sup> F won the administrative lawsuit<sup>32</sup> filed in the district court, and the Ministry of Justice forewent appealing the decision, finalizing it on June 6, 2018. However, the Ministry of Justice has announced that its decision not to appeal the court decision is based on specific background and circumstances of F, and upheld its position to

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3. A person whose entry is not permitted by any reason attributable to the captain of the ship, etc. or the forwarding agent under Article 12 (4);

4. A crew member who has landed under Article 14 or a passenger who has landed for tourism under Article 14-2 fails to return to the ship, etc. on which he/she embarked until the ship, etc. departs from the port;

5. A person who falls under Article 46 (1) 6 or 7, and subject to a deportation order.

<sup>29</sup>Ministry of Justice, Response to Migrant Children Rights Act, Inter-ministry discussion (second) related to Legislator Jasmine B. Lee's proposed Migrant Children Rights Act, Dec 17 2013.

<sup>30</sup>MOJ, The past two years of objections to decisions and special permission to stay, response to Inquiry to Legislator BaekHye-ryun, 2017.

<sup>31</sup>Cho-Eun-ah, "'Even pleas that I had to work to feed my little brothers and sisters had no effect' Favour's Tears", Dong-ah Ilbo, May 17 2017,

<http://news.donga.com/3/all/20170517/84395038/1#csidxa286b016214e5babe0bd35ba09a7aa4>

<sup>32</sup>2017KuHap2275, Cheongju District Court, rendered on May 17 2018

"pursue strong policies to curb and reduce illegal migrants" in the future.<sup>33</sup>Also, since the District Court decision does not bind other courts, it is difficult to expect legal/institutional changes to the current situation.

### **Suggested Recommendations**

The State Party should:

- Amend the Immigration Act to establish a special provision for granting regular status to migrant children
- Specify criteria for granting regular status in the law to prevent arbitrary or limited interpretation of the law
- Amend laws to specifically provide that the status of residence of parents and children will not have negative effect, and that qualification for permanent residency and naturalization does not exclude or penalize residence status granted in accordance with above amendments
- Add a provision in the Immigration Act providing the principle of best interests of the child, in order to consider the rights of the child in all decisions pertaining to immigration; and suspend their parent's deportation to ensure that the child is not separated.

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<sup>33</sup>Ministry of Justice, Press Release: "Explanations on not appealing the court's decision on Favour's lawsuit against deportation order", June 12, 2018