**Republic of Korea’s Birth Registration of Migrant Children:**

**Current Status and Problems**

Submitted by Save the Children Korea

Contact: Yeo Joung Suh

E-mail: yeojoung.suh@sc.or.kr

Mobile: 82-10-7921-2580

In 2012, Save the Children proposed a research survey on the 「Birth Registration of Migrant Children in the Republic of Korea」. Korean government received recommendations to “reform its system and practice of birth registration in order to promote the right of the child regardless of parents’ legal statues and origin” from the United Nations Committee on the Rights of the Children (2011), the Committee on the Elimination of Racial Discrimination (2012), and the Human Rights Council - Universal Periodic Review (2012). During the UPR, the Korean government provided no comment in response and didn’t recognize it as a problem. Therefore, Save the Children conducted research to address this lack of understanding and to gain a better assessment of the situation. Based on the research and from other resources, this paper would like to explore the current circumstances and problems surrounding the ROK’s birth registration policy.

**ROK Migrant Children: a vulnerable group unable to register**

Children living in the ROK with a migrant background are categorized into a variety of designations. For example, they may be categorized as children born to a Korean and foreign national (multi-cultural family child), born to migrant workers, immigrated youth from a divorced foreign marriage-based immigrants, North Korean youth defector, refugee or born to refugee applicants or children born to stateless persons. In cases where children are stereotyped or inaccurately categorized, it is impossible to differentiate between those whose births can and cannot be registered. For these reasons, Save the Children’s 「Birth Registration of Migrant Children in the Republic of Korea」 report has used the following categories. .

Among the migrant children residing in the ROK, those with citizenship are differentiated from those without. Usually, the latter group consists of children of migrant laborers, children accompanied by migrant brides, refugees, and children of refugee applicants.

This letter group is further divided according to whether they were born overseas or domestically. In the case of children born overseas, the child’s country of origin has a primary duty to register the birth; therefore it can be seen that the Korean government doesn’t have the duty of birth registration. However in the case of children born domestically, a nation has a duty to ensure “universal birth registration” for all children within its territory according to international human rights law.

Some children can be registered in their embassy, but for other children (whose status may not be recognized by their parents’ country of origin), particularly refugee children, children of refugee applicants, children of undocumented foreign laborers, and children of displaced persons, their status prevents them from being registered. (Refer to picture below)

Children born in Korea to parents classified as stateless persons are an exception and can be registered according to the ‘Nationality Law’.

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| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Migrant Children** |  | **Korean Nationality possessed**  |  |  |  |  |  |  |  | **Able to register birth** |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  | **Doesn’t have Korean Nationality**  |  | **Born Overseas** |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  | **Born in Korea** |  | **No Problem with the Country of Birth** |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  | **Problem with the Country of Birth** |  | **Refugee****Undocumented****Statelessness Person** |  | **Unable to register birth** |
|  |  |  |  |  |  |  |  |

**Statistics of unregistered children**

The government does not provide statistics on the number of unregistered children. Therefore, the only way to estimate this number is through reviewing various statistical data.

After the ratification of the 『Convention on the Status of Refugee」 in 1992 to late 2011, the total number of people that were recognized as refugees was 260. Thirty-four of them were children under the age of 18. This is in contrast to the 136 children who were among the 3,926 applicants for refugee status. Although a majority of the applicants did not receive refugee status, 144 received “humanitarian status”, including 18 children. The majority of these children were most likely born in Korea without being registered by their parents’ embassy or the ROK government.

According to the 2008 「The Current Human Rights Situation of Refugee in Korea」 published by the National Human Rights Commission of Korea (NHRCK), among the children born in the ROK, only 19.4% of the parents said they registered their children “at the embassy of their country of origin” (Kim Jong Chul et. al, 2008). In the 2010 Ministry of Justice Survey on the Current Status of Refugees in the ROK, among the 41 respondents who reported giving birth to children in Korea, only 10 indicated that they registered their child’s birth at their respective country’s embassy (Kim Hyun-mee, et al. 2010).

* **Case of Unregistered Migrant Children**

**Case 1.** Children born in Korea to Parents from the Democratic Republic of Congo who received/not received refugee status

|  |  |  |  |
| --- | --- | --- | --- |
| **Nationality** | Stateless  | **Place of Birth** | Republic of Korea |
| **Age**  | Age 5 | **Sex** | Female |
| **Residence**  | Gyeonggi-do Pyungtaek City  | **Education** | Attended preschool before quitting |
| **Family****relationship** | Three member family (Mother, Father, Child) | **Refugee Status of Parents** | Refugee status rejected - Currently illegal residents |
| **Year of Entry** | Father 2005, Mother 2006 | **Refugee Status of Child**  | Refugee status rejected - Currently illegal resident |

* **Legal Status of Child**
* Status of birth registration and place of registration: Have not registered birth at the embassy of the country of origin and currently only have the birth certificate given by the hospital
* Status of Refugee Application and Refugee Acknowledgement: Applied for refugee status with a parent but was rejected
* Status of foreign resident registration and sojourn qualification: During the application procedures for refugee status, the ROK government provided a foreign registration card but this was confiscated upon rejection of the application

**Case 2.** Status of Children whose parents received humanitarian residence status in the ROK

|  |  |  |  |
| --- | --- | --- | --- |
| **Nationality** | Stateless | **Place of Birth** |  Korea |
| **Age** | Age 2,4,and 5 |  **Sex** | Female, Male, Male |
| **Resident** | Gyeonggi Ansan City | **Education** | Did not enroll, Preschool, Kindergarten |
| **Family****relationship** | Five member family (Mother, Father, Children) | **Refugee Status of Parents** | Refugee status rejected; however received humanitarian residence permits |
| **Year of Entry** | Father 1997, Mother 2006  | **Refugee Status of Child** | Assumed to be humanitarian resident |

* **Legal Status of Child**
* Status of birth registration and place of registration: During the research, it was indicated that the children’s births were registered at the Jongro ward office. However, as both parents were foreign nationals, their application fell under the special filing process. From this procedure, the child received acceptance certificate of the document, however this cannot be official document of the child’s birth.
* Status of Refugee Application and Refugee Acknowledgement: As the refugee status of the parents is transferred to the child, it is assumed that the humanitarian resident status is also transferred.
* Status of foreign resident registration and sojourn qualification: In possession of G1-6 Visa (Among those whose refugee status application is rejected, they may obtain humanitarian resident status)

**Case 3.** Children born in the ROK to undocumented foreigners in a De Facto Marriage relationship

|  |  |  |  |
| --- | --- | --- | --- |
| **Nationality** | Vietnam (presumed) | **Place of Birth** | Korea |
| **Age** | N/A  | **Sex** | N/A |
| **Residence** | N/A | **Education** | N/A |
| **Family** | Three member family (Mother, Father, Child) | **Status of Parents** | Undocumented |
| **Year of Entry** | N/A | **Status of Child** | Undocumented |

**Legal status of Child:**

* Status of birth registration and place of registration: The Vietnamese couple parents were unable to register their marriage as well as their child’s birth at the Vietnamese embassy as both were undocumented migrants. However, the DNA test results of the child are preserved and will be used upon the return of the parents to Vietnam
* Status of Refugee Application and Refugee Acknowledgement: As undocumented migrants, they are not in refugee status
* Status of foreign resident registration and sojourn qualification: As undocumented migrants, they are not in refugee status
* **Barriers blocking a universal birth registration policy**

**1. Legal Obstacles**

According to Korean legislation, if the parents of a child born in Korea are of foreign nationality, their child is ineligible to be registered in Korea. This is stated in “the registration regulation in the case registrant is a foreigner” under Article 314 of the Family Relationship Registration Regulation. Clause 2 elaborates on this; if both parents are foreign nationals the child must be of Korean nationality for the family to establish a family registry. If the child is a foreign national, then the only time the child is eligible to be registered is when he or she is “recognized as a national, adopted, or surrogate adopted” (clause 4).

As a result, children born to foreign nationals must be registered according to the laws of the parents’ country of origin. In such cases, if the country does not have an embassy or consulate in Korea, then the parents must return to the country to register the child’s birth.

This poses a problem when an overseas registration process is unavailable or the parents are persecuted or no longer recognized as citizens by the country of origin. Refugees, refugee applicants, and the stateless encounter these obstacles that deprive them of protection. Undocumented migrant are particularly vulnerable as their residency status prevents them from registering their children and receiving embassy assistance.

**2. Administrative Obstacles**

The ROK family registry system is only eligible for ROK nationals. When parents of foreign origins submit birth registration papers to local governments, they are considered “persons ineligible to register as they are not registered in the family registry system and/or are not able to register”. The local civil servant will process their application as an “incomplete application of the family registration other than the family relationship registration”. The registration attempt will be recorded in a special file until a family registration comes into existence.

Those with refugee status, refugee status applicants, or those who are undocumented and therefore unable to register their child use this method as a form of registration. However, the birth registration application is kept as a “special document file”. The parents will receive a ‘receipt certificate’ from the ward. While this provides proof of an application, it cannot function as an official birth registration certificate as the child hasn’t been registered.

Undocumented families may avoid this procedure due to the Immigration Control Law’s obligation of “notification.” This places a duty on public servants to report directly to the Ministry of Justice’s immigration department when they “discover a person that has violated the immigration requirements”. The only instance this obligation of ‘notification’ may be waived is if “the act of notification hinders the pursuit of one’s duties.” In such cases, “the servant is exempt from reporting”. However, this may not allay the fears that undocumented foreigners experience.

**3. Economic and Physical Obstacles**

Research conducted in the Busan Metropolitan area found that in many cases, the embassy of the parents’ country of origin does not register the children if the parents are undocumented. Undocumented Vietnamese and Uzbekistani respondents described this, indicating difficulty in registering the births of their children. In the case of a person of Chinese origin, due to China’s one-child policy, those in violation may be penalized 2 million KRW (20 Thousand USD) for a second child. Therefore, many Chinese do not report the birth of a second child (Kim Sagang, 2011). For the Vietnamese Embassy, children born overseas to parents of Vietnamese origin can be registered at the embassies. However, registration must be done within 60 days of the birth. If it’s done beyond 60 days, the parents must complete a late registration, which incurs a fee ranging from 5 to 15 USD. There could be additional fees for “illegal residents” or an expired visa.

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