

**Questionnaire of the Special Rapporteur on the human rights of migrants:  
Ending immigration detention of children and seeking adequate reception  
and care for them**

Republic of Korea

Submitted by: Network for the Rights of Children and Adolescents  
with Migrant Background

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- 1. Please provide information on any legislation or policy that prohibits or restricts the use of immigration detention of children and their families in your country. Grateful if you could kindly submit the original text of the legislation or policy, accompanied by an English translation if it is in a language other than English, French or Spanish.**

#### 1.1. Background

Under the current Immigration Act, there are no specific provisions regulating or limiting detention of children in violation of Immigration Act and subject to deportation/detention order. Therefore, there have been continuous cases of immigration detention of children in the Republic of Korea ("South Korea"). According to an investigative report published by the Korean Bar Association ("KBA") in 2015<sup>1</sup>, 67 migrant children had been detained at Hwaseong Immigration Detention Center, the largest immigration detention center in South Korea, from 2013 to 2015. 70 migrant children over 14 years of age had been in detention in 2016. The statistics provided by the Ministry of Justice ("MOJ") show that the average duration of immigration detention of children amounts to 7.7 days, while the longest case of detention of children lasted for 140 days.<sup>2</sup> The current status of detention of unaccompanied migrant children in the last 5 years is as follows.

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<sup>1</sup> Korean Bar Association, Report on the Situation of Foreigner Protection Facilities, 2015 (in Korean), available at:

<https://www.koreanbar.or.kr/pages/news/view.asp?teamcode=&category=&page=7&seq=967&types=1&searchtype=&searchstr=>

<sup>2</sup> MOJ Response to a Freedom of Information Request made by migrant organizations, 2019.

	2015	2016	2017	2018
Hwaseoung Immigration Detention Center	25	24	24	24
Cheongju Immigration Detention Center	7	13	8	25
Yeosu Immigration Office Detention Facility	2	4	3	4

In 2019, 69 migrant children were detained, 50 of whom were detained solely for reasons of violations of Immigration Act.<sup>3</sup>

The Administrative Rules on Detention of Foreigners has provisions on education and protection of children in immigration detention. Even if such education or special protection are provided, negative impact of detention on children cannot be negated. Moreover, as revealed in the KBA report, the existing Rules are not fully complied with either.

	Hwaseong	Cheongju	Yeosu
Family Room	YES	NO	YES
Educational Services for Children	NO	NO	NO
Delegate Educational Support to Welfare Organizations	NO	NO	NO
Face-to-Face interviews every two weeks	YES	YES	YES

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<sup>3</sup> Ministry of Justice, "We are making efforts to minimize number of protection orders and period of protection of minor migrant children", Feb 2020 (in Korean), available at:

[http://www.korea.kr/news/actuallyView.do?newsId=148869462&call\\_from=naver\\_news#goList](http://www.korea.kr/news/actuallyView.do?newsId=148869462&call_from=naver_news#goList)

The response of the MOJ to the Freedom of Information Request in 2019 also discloses that in cases of detention of children under 14 years of age, designated public officials are allocated to interview them, in order to review the needs of detained children for special treatment including education, exercises, and medical treatments. The MOJ claims that it conducts face-to-face interviews, and if necessary receives interpretation support from interpreters, officers who can speak foreign languages, or the Immigration Contact Center 1345 (call center for migrants), in order to hear the opinions of the detained children.

## 1.2. Relevant Law

### The Immigration Act

#### Article 2 (Definition)

(11) The term "detention" means an immigration control official's enforcement activities taking into custody or impounding a person having reasonable grounds to be suspected of falling under persons subject to deportation under the subparagraphs of Article 46(1) at an immigration detention unit, immigration detention center or other place designated by the Minister of Justice;

### The Immigration Act

#### Article 56-3 (Respect, etc. of Detainees' Human Rights)

(3) The head of the competent Regional Immigration Service shall provide a detainee with treatment adjusted to his/her specific needs, if the detainee is:

4. A person under 19 years of age

The Immigration Act defines "detention" (the Act avoids using the term 'detention' in Korean and instead refers to the act as 'protection') as enforcement activities impounding foreigners subject to deportation at immigration detention centers. The Act does not have specific provisions regarding detention of non-citizen children except for Article 56-3 stating

that "a person under 19 years of age" shall be provided with special treatment adjusted to his/ her specific needs.

#### Administrative Rules on Detention of Foreigners

##### Article 4 (Detention of Foreigners)

1. The head of the Immigration Office, the head of a branch office of the Immigration Office, or the head of the immigration detention center, etc (hereinafter "the heads") may grant permission to a detainee to bring a child under the age of 14 who is not subject to detention into the detention facility, if the detainee is the sole guardian of the child. A detainee may also bring a child under the age of three into the detention facilities, even when there is another person who may support the child, if the detainee is the child's parent.
2. The child who is granted the permission to stay with the parent may borrow or be provided with daily necessity as prescribed by this Rule, and their activities may be limited for the safety of the detention facilities and the maintenance of order. In this case, the limit shall be in the minimum level needed.
3. The Heads may, in accordance with the age of the child, provide educational services or delegate educational support to welfare organizations for children who are detained for more than one month.
4. The heads shall nominate a responsible officer for the detainee under Article 56-3 of the Immigration Act for special treatment.
5. The responsible officer nominated and allocated under subsection (5) shall take face-to-face interviews at least once every two weeks. After the interview, the officer shall report to the heads in writing if any special needs for detainees, such room assignments, education, exercise, food distribution, medical treatment, etc. are required.

Article 4 of the Administrative Rules on Detention of Foreigners states that "the head of a detention center may grant permission to a detainee to bring a child under the age of 14 who is not subject to detention, if the detainee is the sole guardian of the child", and a detainee "may also bring a child under the age of three into the detention facilities, even

when there is another person who may support the child if the detainee is the child's parent". In many cases, however, the parents often have no alternatives for protection and support of the child, making the detention of children de facto mandatory. Therefore, there exists a practice of migrant children, especially younger children, being detained with their parents.

**2. Please provide information on existing non-custodial alternatives to immigration detention of children in your country (e.g. community-based reception solutions) and elaborate how these alternatives effectively enhance the protection of the rights of migrant children and their families.**

The only available alternative to immigration detention in South Korea is the “temporary release”. According to Article 65 of the Immigration Act, the head of the local immigration offices may temporarily release the detainee on conditions that includes deposit of a bond of 20 million KRW and restrictions on his/ her residence, in consideration of the circumstances of the detainees, grounds for requesting the temporary release, assets and other matters. The temporary release depends on full discretion of the heads of immigration offices who arrested the detainee, is only granted in special and very rare cases. To apply for the temporary release, the detainee is required to submit documents to prove the reasons for application, and ability to pay the bond. The immigration authorities usually demand a guarantor to vouch for the detainee. The same applies to the temporary release of migrant children. Since there exists no available child protection system for migrant children, when it comes to the cases of unaccompanied children, protection of the released children is likely to fall into the hands of the person who vouched for the children. As the immigration authorities prioritize implementation of the deportation order over the best interests of the child, children are not automatically considered for temporary release. Only after when someone makes an application for the temporary release of a detained child, the age of the child will be considered in the decision on whether to temporarily release the child. Also, as far as the civil society knows, there is no existing guidelines for detention or temporary release of children.

**3. Please provide information on any existing good practices or measures taken in your country to protect the human rights of migrant children and their families while their migration status is being resolved, including inter alia their rights to liberty, family life, health and education(e.g. by ensuring effective access to inter alia adequate reception, healthcare, education, legal advice, family reunion).**

3.1. Internal MOJ guideline of "Plan to Support the Right to Education for Illegal Migrant Students"

While not explicitly mandated by law, migrant children in South Korea are able to receive compulsory public education regardless of their parents' immigration status. The Ministry of Justice also has in place an internal guideline of "Plan to Support the Right to Education for Illegal Migrant Students" that provides undocumented migrant children suspension of deportation until they complete elementary, middle, and high school, by suspending the deportation of illegal migrant student until graduation. Parents of such children are, "in principle, subject to deportation but are provided suspension of detention and temporary residence in unavoidable circumstances".

Such policy is 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 while they receive education. Still, there exist a significant number of children who are not protected by the Plan, such as 1) pre-school children; 2) children outside of school; and 3) high school graduates. They are subject to deportation pursuant to the Immigration Act,



and as explained above, there indeed exist children who have been detained because of their lack of lawful immigration status.

### 3.2. Exemption from Obligation to Report

There exists reporting obligations for public officials who discover violations of the Immigration Act, including undocumented status, to the immigration agencies. Since 2012, the Ministry of Justice has exempted reporting obligations for public officials working at schools. This provides some protection for migrant children attending schools, and after 2012 there have not been any reported cases where undocumented migrant students were denounced.

However, the exemption does not extend to childcare centers and kindergartens, and there have been reported cases where childcare centers refused to receive undocumented migrant children because public officials inspecting the schools would report any undocumented migrant children they discover. The exemption also suffers from its inherent limitation of being a mere 'exemption', not the prohibition. Regardless of the current practice, it is possible for public officials to report to the immigration agencies of their own volition.

Article 92-2 (Exemption from Obligation to Notify) of the Enforcement Decree of the Immigration Act

"Circumstances prescribed by Presidential Decree" in the proviso of Article 84(1) of the Act mean any of the following:

1. Where a public official of the State or a local government becomes aware of personal information of an alien student in relation to his/her school life from a school defined in Article 2 of the Elementary and Secondary Education Act.

**4. Please indicate any challenges and/or obstacles in the development and/or implementation of non-custodial alternatives to immigration detention of children and their families.**

While there have been public awareness campaigns<sup>4</sup> and legislative efforts to prohibit immigration detention of children,<sup>5</sup> they have failed due to the lack of interests within the legislature as well as the MOJ's negative reaction. For instance, in regards to the recently proposed amendment to the Immigration Act to limit the detention of migrant children, the MOJ has replied to the legislature that the amendment "would hinder preventive management of migrant children who have high probability of flight and committing criminal acts", and requested "careful review" of the amendment, as it would make it difficult for the MOJ to maintain immigration control.<sup>6</sup>

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<sup>4</sup> <https://vimeo.com/143124499>

<sup>5</sup> Amendment to the Immigration Act, Bill number 7661 (2017)

[http://likms.assembly.go.kr/bill/billDetail.do?billId=PRC\\_C1R7F0S6I2J9A1V0S0I8P4X0S9K4M3](http://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_C1R7F0S6I2J9A1V0S0I8P4X0S9K4M3)

<sup>6</sup> Legislation and Judiciary Committee, National Assembly, Review Report of the Amendment to the Immigration Act (7661), 2017 (in Korean)

[http://likms.assembly.go.kr/bill/billDetail.do?billId=PRC\\_C1R7F0S6I2J9A1V0S0I8P4X0S9K4M3](http://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_C1R7F0S6I2J9A1V0S0I8P4X0S9K4M3)

**5. What support could other stakeholders (other than your Government) provide to strengthen the development and/or implementation of non-custodial alternatives to immigration detention of children and their families that enhance the protection of their rights?**

5.1. The National Human Rights Commission of Korea (NHRCK)

Article 24 of the National Human Rights Commission Act provides that the NHRCK may visit detention facilities, including immigration detention centers. In 2009, the NHRCK made recommendations to the MOJ to detain migrant children as a last resort only, and when detained for the protection of children, family-friendly rooms should be provided to realize the best interests of the child. More recently, the NHRCK conducted an investigation in 2017-2018, led to a new recommendation to amend the Immigration Act to include provisions limiting the detention of migrant children.

5.2. Korean Bar Association (KBA)

Korean Bar Association, as the unified bar association in Korea, has traditionally positioned itself as a human rights defender. Rights of refugees and migrants have been one of its areas of interest for the past years. It had conducted site inspection of the detention facilities in 2015 and 2018, and has published detailed reports subsequent to its inspections, which included recommendations to the MOJ to improve human rights violations related to immigration detention.

### 5.3. International treaty bodies

The Republic of Korea has ratified international instruments relevant to regulating and limiting the immigration detention of children, including CCPR, CERD, CAT and CRC (but not CMW). South Korea has also ratified optional protocols providing for individual complaints for CCPR, CERD and CAT. While the judiciary of South Korea has claimed that the decisions made by treaty bodies are not binding *per se* on the domestic court, recent court decisions have given the decisions considerable weight (by expressing the view that the government should respect the Human Rights Committee's views, and should make sufficient efforts to implement them<sup>7</sup>. Recently, there was a court case holding that the statute of limitations for state tort had been tolled until the CERD decision finding the illegality of the state action<sup>8</sup>). However, the Republic of Korea has not yet ratified the third optional protocol of the CRC, the treaty body most well-positioned to determine the best interests of the child in individual immigration detention cases.

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<sup>7</sup> Constitutional Court Decision 2011HunMa306, rendered on Jul 26 2011

<sup>8</sup> Seoul Central District Court Decision 2018KaDan5125207, rendered on Oct 29 2019