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국제학석사학위논문

Migrant Children in South Korea:

A Focus on Undocumented Children

한국내 이주 아동:

미등록 이주 아동을 중심으로

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임완주

## **Abstract**

# **Migrant Children in South Korea: A Focus on Undocumented Children**

**Lim, Wanjoo**

The Graduate School of International Studies

Seoul National University

South Korea is in the process of transforming from homogenous society to multicultural society. Such transformation requires the country to uphold the rights of “everyone” which includes undocumented children. With the increasing number of refugees and undocumented migrant workers in the country, the number of undocumented children has been increasing constantly. However, despite the fact that the South Korean government is a party to various international human rights conventions, the treatment of foreigners, especially undocumented children, still seems discriminative. Therefore, the thesis aims to address the rights of undocumented children based on political and legal aspects. The paper presents and compares two groups of undocumented children, firstly those who were born to refugee parents and secondly the children who were born to undocumented low-skilled migrant worker parents. The paper studies various international conventions such as the 1951 Refugee Convention, the UN Convention on Statelessness, and Convention on the Rights of the Child to address the country’s international responsibility

committed by joining these conventions. The paper examines the basic rights of healthcare, education and birth registration for undocumented children and investigate the core elements of international conventions on these rights. By examining related policies and laws of South Korea, the thesis discovered that the international conventions were not fully implemented onto South Korea's domestic policies and laws. Also, the thesis found out that the two different groups those with background of migration and those who are undocumented share similarities and eventually experience similar human rights deprivation. Regarding the findings, the paper further traces the deep-rooted causes of discrepancies between international conventions and domestic implementation.

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Keywords: Undocumented Children, Migrant Children, Refugees,  
Migrant Workers, International Conventions

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# 1. Introduction

## 1.1 Background

South Korea has transformed from a country of emigration to a country of immigration<sup>1</sup>. Since the beginning of 1990s, South Korea's foreign populations have been increasing constantly that the country is no longer able to be called a 'homogenous' society. South Korea have introduced multicultural and immigration policy that are comparatively progressive among East Asian countries. As South Korea is a party to many of international human rights conventions, the country now must protect the rights of foreign nationals as well. Accordingly, the government established its own refugee law in 2012 which made Korea the first country with such a law in Asia. By introducing the refugee law, the country has shown its commitment towards universal value of human rights. Yet, there are still concerns that needs to be addressed. As South Korea has entered a 'multicultural' society, harmonization of people with different culture, language, and ethnicity became important. Since South Korea was a homogenous society for long, the need for legal and political provision to protect individual right of different people has newly arose. There are various laws and policies that are available for international-marriage families or documented white-collar workers. However, there are group of people that are marginalized and vulnerable to human rights deprivation due to lack of legal and political protection. The number of

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<sup>1</sup> Seol, D. H., & Skrentny, J. D. (2009). Why Is There So Little Migrant Settlement in East Asia? 1. *International Migration Review*, 43(3), 578-620.

foreign populations in South Korea exceeded 2million in 2018 and among them, more than 300,000 are living undocumented<sup>2</sup>. Moreover, along with the rise refugee movement in Europe, the number of asylum seekers in South Korea is increasing simultaneously. However, the South Korean government's recognition rate is absolutely lower than other refugee-hosting countries that many of asylum seekers live under an unstable circumstance. When an asylum seeker is not able to be recognized as a refugee, the asylum seeker must live either undocumented in Korea or return to the country of origin where the person's survival is not guaranteed. There are many consequences that comes with the increasing number of undocumented residents, but the consequences become intergenerational when undocumented people marry and settle down in South Korea. When a child is born to parents without papers or who are not recognized as refugees, the child becomes undocumented and stateless. Undocumented children tend to become vulnerable especially in healthcare, education and birth registration. As aforementioned, South Korea has relatively progressive laws and policies regarding immigration and human rights in East Asia. However, in practice, the international conventions that the government has signed are not implemented and not practiced accordingly that many of undocumented children still has to live a rights-deprived life – as if they do not exist. I hence saw it meaningful to shed a light to the rights of undocumented children in South Korea according to the international conventions that South Korea has joined. The thesis aims to answer the

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<sup>2</sup> 권태훈. (2018). 불법체류자 30만 명 넘어...취업 알선 브로커 등 집중단속.  
Retrieved from [https://news.sbs.co.kr/news/endPage.do?news\\_id=N1004804047](https://news.sbs.co.kr/news/endPage.do?news_id=N1004804047)

question of “Why does South Korea encounter discrepancies in protecting the rights of undocumented children even though it has the most progressive immigration law/ migration law in East Asia?” Firstly, this thesis commences with addressing international conventions that South Korea has signed. It explains different rights that are available for undocumented children in South Korea. Secondly, the paper examines the current legal and policy provisions that are related to the first part of the paper. The section aims to examine what are the rights undocumented children have and how the South Korean government protects these children under its legal political system. The third section of the paper moves on to two specific cases, children who were born to refugee parents and low-skilled migrant worker parents. By addressing the cases, it aims to study undocumented children’s accessibility to healthcare, education and birth registration. Further, the section stipulates the difficulties and obstacles that they encounter in current system in Korea. Lastly, the final section of the paper focuses to answer the research question. It shows the deep-rooted causes of discrepancies between international conventions and domestic system.

## **1.2 Literature Review**

In order to analyse the issue more carefully, this paper will start with reviewing existing literatures. Regarding the issue of immigrants, especially on undocumented migrants, the literatures by Hannah Arendt are fundamental. Hannah Arendt, who herself has been a stateless person for more than a decade, illustrates what ‘statelessness’ means in her book “Origins of Totalitarianism”. She commences her book with addressing

reformation of nation-states and rise of minority's rights in Europe starting from the World War 1 till the end of the World War 2. Where, she sees as the first time that the rights of minorities were discussed on the table and lawful protection were made between European states. Along with the Minority Treaties, the issue of refugees and stateless persons newly arose which was a result of newly created states. However, it could not prevent stateless peoples becoming "rightless". She further emphasizes that a refugee may be stateless, but not all stateless persons are refugees. A refugee is a stateless due to lack of national protection. Arendt's literature tackles that core element of human rights for marginalized people is to have "a right to have rights."<sup>3</sup> Her idea of fundamental right is to be included in a society and to be able to live as a member in the society. The fundamental rights according to her is nothing abstract, but it must be practical as a membership. In this case, the right to have rights means the right to belong to a democratic and powerful nation that can respect and protect human rights. Her literature is fundamental in understanding stateless persons as she first started to shed light for stateless people. However, her literature does not give a full answer to how we can operate this idea of "right to have rights".

Arendt puts emphasis on the fundamental rights of stateless persons, but scholar like Seyla Benhabib concentrates on migrants' rights in liberal democracies. In her book "*the rights of others*", Seyla Benhabib addresses tensions between transnational migration, universal human rights, state sovereignty and democratic politics. She describes

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<sup>3</sup> Arendt, H. (2017). *The origins of totalitarianism* (pp. 267-302). London: PenguinBooks.

these as “the constitutive dilemma at the heart of liberal democracies.”<sup>4</sup> She challenges to merge this debater through, on one hand, promoting porous borders; and on the other, emphasizing that sovereign states should uphold the authority to dictate their own paths to full citizenship, as long as they adhere to international human rights law. Her ideas are heavily influenced by the German Philosopher Immanuel Kant. She starts her opinion from Kant’s view of universal hospitality that everyone has rights to go everywhere without being afraid of hostility in the host countries. She argues that universal hospitality should be available not just for short-term visitors but also for long-term residence like refugees. However, she goes further than Immanuel Kant and Hannah Arendt in terms of operationalizing the concept of universal rights and citizenship.

Since this thesis aims to concentrate on children, Jacqueline Bhabha’s “Arendt’s Children: Do Today’s Migrant Children Have a Right Have Rights?”<sup>5</sup> is an important reference. Bhabha studies with the unstable status of today's migrant children, specifically on stateless children to examine their ultimate rights and legal protection under international agreements. Jacqueline Bhabha sees the problem of stateless or undocumented children as the problem of unequal social structure and it is so deeply rooted that blocks these children to present their rights adequately which eventually lead them to become rightless. Individual states and the societies are not politically and legally willing

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<sup>4</sup> Benhabib, S. (2005). Borders, boundaries, and citizenship. *PS: Political Science & Politics*, 38(4), 673-677.

<sup>5</sup> Bhabha, J. (2009). Arendt's Children: Do Today's Migrant Children Have a Right to Have Rights?. *Human Rights Quarterly*, 31(2), 410-451. doi: 10.1353/hrq.0.0072

to “see” these children, but the government avoid treating them accordingly because they are considered not as “our” children. This literature explains how children’s lack of access to education, healthcare and birth registration could affect their entire life and how their unstable status could be a vicious cycle. Her book is focused on Europe; however, it well shows how a social structure and malfunctioning policies can be inefficient in implementing laws and policies.

Paper written by Yongjin Kwon and Youngduk Lim “a study on right to access to health care for undocumented migrants”<sup>6</sup> well explains the concerns over the access of healthcare of undocumented children in South Korea. It helps to understand the actual rights of the undocumented children that are residing in South Korea. They argue that South Korea has joined different types of international conventions that are related to human rights in general and the rights of children. However, undocumented children in South Korea still face difficulties in accessing minimum healthcare service which is closely linked to their survival. They argue that even though undocumented children do not have nationality, according to the Convention on the Rights of the Child, the government is obliged to protect their rights.

The Paper written by Ok-Ju Shin “A Comparative Study on Human Rights Enhancement: Undocumented Children”<sup>7</sup> examines the legal rights of undocumented children in general by analyzing different

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<sup>6</sup> 권용진, & 임영덕. (2011). 일반 논문: 미등록 이주아동 의료접근권에 관한 고찰. 고려법학, 63, 243-285.

<sup>7</sup> 신옥주. (2016). 미등록 이주아동의 인권제고를 위한 비교법적연구. 유럽헌법연구, p.289-291

legal bases for undocumented children especially in access to healthcare and education. She argues that access to healthcare and education for undocumented children should be recognized as basic social rights. By considering it as basic social rights, the rights should not be limited to certain target group, rather it should be available to everyone regardless of one's legal or political status. So far in Korea, most of protection for undocumented children is done in policy level without introducing a legitimate legal protection; and Shin argues that such protection has definite limitation which requires further improvement.

Most of the literatures focus on current level of protection in South Korea and general concept of undocumented or stateless children. However, this paper aims to address further on the root causes of legal and policy discrepancies between international conventions and domestic legal and political protections. Such examination is necessary as without addressing the root causes of discrepancies, it is hard to make improvements. By doing so, the paper will suggest different perspectives on current immigration and asylum policy in Korea. It also aims to link the loopholes that still lacks research necessary for South Korean society and for better implementation of international conventions.

### **1.3 Research question**

South Korea is a party to various international human rights conventions. As soon as the government becomes a party to such conventions, it has an obligation to implement and practice the convention domestically as if it's a domestic law. Despite South Korea's progressive attitude towards international human rights conventions,

protection for undocumented children is still lacking in South Korea. Hence to investigate such discrepancies, the paper will answer following question:

- *Why does South Korea encounter discrepancies in protecting the rights of undocumented children even though it has the most progressive immigration law/ migration law in East Asia?*

## 2. Analytical Framework<sup>8</sup>

### 2.1 Definition

In advance to the next chapter, defining different words that are used in the paper is important. Since there certain vocabularies are similar to one another, clarification is necessary to avoid confusion. Firstly, the word “undocumented children” will be used the most. This paper defines undocumented children as someone who is under the age of 18 with no legal status in South Korea. It includes children who are born to low-skilled migrant worker parents (hereafter migrant worker parents) or refugee parents. In both cases, children live without papers and most importantly they are stateless. Therefore, undocumented children signify both children who are living without legal status (visa) and who are stateless. Normally, these people are called “illegal”, but this paper sees the term is discriminatory and politically incorrect. Staying in a country without extending their stay is a civil violation rather than a crime. It impacts public perception and it leads society to “accept that people should be prosecuted and punished”.<sup>9</sup> Therefore, the paper avoids using the term “illegal”, rather, it uses the term “undocumented”.

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<sup>8</sup> The analytical framework section was extracted and rewritten from my own thesis that I wrote in KU Lueven, Master of European Studies in 2018 June.

<sup>9</sup> Smith, A., & LeVoy, M. (2017). *Cities of Rights: ensuring Health Care for Undocumented Residents* (p. 8). Brussels: PICUM.

**Table1. *De jure* vs. *De facto* statelessness**

	<i>De Jure</i> Statelessness	<i>De facto</i> Statelessness
<b>Definition</b>	“who is not considered as a national by any state under the operation of its law” (UNHCR, 1954, p. 6)	“ineffective nationality”, yet there has not been legal concept internationally. (De Chickera, 2010)
<b>What is covered by the convention?</b>	Covered under 1954 Convention and 1961 Convention	Not covered in any of the international conventions
<b>What are the rights that they have?</b>	Able to seek for international protection if the home country is engaged the conventions (Shewly, 2017).	“Inaccessible to any rights even though they have the rights” (Shewly, 2017).

Source: author

The chart shows the difference between the *de jure* statelessness and *de facto* statelessness. Statelessness is understood in various categories, however this paper will study solely *de jure* and *de facto* statelessness.

When a person has no access to legal citizenship is categorized as *de jure* stateless and a person without an access to “effective nationality” is considered as *de facto* stateless.<sup>10</sup> Based on the definition in international conventions, *de facto* stateless persons are recognized as stateless persons due to its link to certain states even though the link is ineffective. The major cause of the problem is the early understanding on the concept of statelessness, that *de facto* stateless persons were considered equally as refugees where supposed *de jure* stateless persons

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<sup>10</sup> De Chickera, A. (2010). Unravelling anomaly (pp. 63-69). London: Equal Rights Trust.

as the only stateless group.<sup>11</sup> However, *de jure* and *de facto* status share similar consequences even though their status may vary.<sup>12</sup> Including 1954 Convention and 1961 Convention, none of the international conventions define *de facto* statelessness that it extends the vagueness of *de facto* statelessness. According to Hannah Arendt, “there are one million "recognized" stateless, there are more than ten million so-called "de facto" stateless”<sup>13</sup>. Actually, the boundary between the definition of statelessness and refugees is quite blurry because stateless persons may become a refugee due to persecution in their home country however also a refugee may become stateless if they have fled their country. However, in the case of *in situ* statelessness who has never fled their home country or crossed any borders, do not overlap with the stateless and refugee statuses.<sup>14</sup> People get trapped in *de facto* statelessness in the setting of migration even though they have nationality, when “whose status where they resided is not legal because they are illegal, irregular, or undocumented migrants in their current location”.<sup>15</sup> According to international conventions, these people are defined as a group of persons who are “at risk of becoming stateless” instead of recognized as *de facto*

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<sup>11</sup> Bloom, T. (2013). Problematizing the Conventions on Statelessness (pp. 7-19). UNU-GCM.

<sup>12</sup> Ibid.

<sup>13</sup> Arendt, H. (2017). The origins of totalitarianism. London: *PenguinBooks*, p.279.

<sup>14</sup> Albarazi, Z., & Waas, L. Norwegian Refugee Council. Retrieved from [http://www.institutesi.org/stateless\\_displacement.pdf](http://www.institutesi.org/stateless_displacement.pdf), p.8

<sup>15</sup> Tucker, J. (2013). Questioning De Facto Statelessness by Looking at De Facto Citizenship. SSRN Electronic Journal, 3. doi: 10.2139/ssrn.2317141

stateless persons.<sup>16</sup> Due to such issue, the UNHCR decided not to use the categorization of *de facto* and *de jure* statelessness, yet they define and categorize *de facto* statelessness as the group of people who are at risk of statelessness.<sup>17</sup>

## **2.2 International Conventions**

South Korea has joined various international human rights conventions. In 1991, South Korea joined the Convention on the Rights of the Child (CRC), and it has aroused the country's interest to uphold the rights of children. Article 6(1) of the Constitution of the Republic of Korea states that the "Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea." Further, even the status of foreigners shall be "guaranteed as prescribed by international law and treaties." Therefore, regardless of one's nationality, race or religion, as long as South Korea has agreed with the international treaties and conventions, the government has responsibility to abide by these international standards.

### **● Universal Declaration of Human Rights (UDHR)**

The Universal Declaration of Human Rights (UDHR) is a

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<sup>16</sup> Sardelić, J. (2015). Romani Minorities and Uneven Citizenship Access in the Post-Yugoslav Space. *Ethnopolitics*, 14(2), 168- 169. doi: 10.1080/17449057.2014.991154

<sup>17</sup> Ibid.

fundamental international convention that ensures universal protection for human rights. The Declaration guarantees “*basic rights and fundamental freedoms to which all human beings are entitled.*”<sup>18</sup> All states are expected to cope with human rights of all people regardless of individual’s legal bond to a state. However, in practice, sovereign state’s protection is limited to their own citizens which fails to provide full range of enjoyment of human rights for non-citizens. Based on anti-discrimination norm, states must provide basic protection and human rights for migrant children too. Article 26 of the UDHR is dedicated to the right to education, stressing both the right to access to and the right to equality in education. “*Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.*” Further, the UDHR emphasizes the right to healthcare in Article 25. The article states that “*everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care.*”<sup>19</sup> As UDHR emphasizes such article, it became fundamental and essential rights to be protected for and by everyone.

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<sup>18</sup> Humanrights.gov.au. (2018). What is the Universal Declaration of Human Rights? | Australian Human Rights Commission.

<sup>19</sup> Picum. (2008). Undocumented children in Europe: Invisible victims of immigration restrictions.

## ● Convention on the Rights of the Child

All articles in the Universal Declaration on Human Rights (UDHR), except for Article 16, are age neutral which means they do not specify age but addresses rights for “everyone”. Jacqueline Bhabha<sup>20</sup> argues that “the approach of the UDHR is to mandate nondiscrimination, rather than to directly promote substantive equality”.<sup>21</sup> Including ‘everyone’ emphasizes nondiscrimination, yet there should be an emphasis on children’s interest and human rights that could provide a genuine protection for the children. The CRC addresses specific rights of children by intensifying its normative approach to respect children’s freedom and individuality.<sup>22</sup> CRC Article7(2) ensures the rights of child that a child should “*be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents.*” Further, CRC guarantees more embracive approach towards child’s rights, such as against discrimination (Article2), right to healthcare (Article 24) and right to education (Article 28). The UDHR demonstrated the basis for embracing marginalized people’s rights, then the CRC provided an extra voice for children to assert their human rights. The CRC embraces the rights of undocumented children that have no legal status. A fundamental feature of the CRC is that children, no matter whether they are documented or undocumented,

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<sup>20</sup> Bhabha, J. (2009). Arendt’s Children: Do Today’s Migrant Children Have a Right to Have Rights?. *Human Rights Quarterly*, 31(2), 410-451. doi: 10.1353/hrq.0.0072

<sup>21</sup> *Ibid.* p.420

<sup>22</sup> *Ibid.*

deserve a ‘right to have rights’<sup>23</sup> in any situation. Although, it is hard to measure whether these Conventions have succeeded in efficiently protecting these children regardless of their status, the children enjoy greater individual rights than before the ratification of the CRC.

## ● Refugee Conventions

The 1951 Refugee Convention is the fundamental international legal document which protects the rights of refugees. It firstly explains the definition of who is a refugee and addresses the rights that are guaranteed for refugees and the commitment of states to protect refugees and asylum seekers.<sup>24</sup> The Convention was established at a United Nations conference in 1951 and came into effect in 1954. It was first initiated in response to large number of European refugees after the World War2. According to the Convention, refugees have various rights. Refugees have rights to travel documents, religious freedom, work rights and education rights for example. Refugees can also have “*the same rights as citizens in relation to religion, intellectual property, legal access and legal support, primary education, labor rights, and social security*”.<sup>25</sup> The Convention specifically address the rights of healthcare

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<sup>23</sup> Arendt, H. (2017). The origins of totalitarianism. London: *PenguinBooks*, p.296.

<sup>24</sup> Refugee Council of Australia. (2018). The Refugee Convention - Refugee Council of Australia.

<sup>25</sup> Refugees and international law. Retrieved from <https://legalanswers.sl.nsw.gov.au/hot-topics-77-refugees/refugees-and-international-law>

service for refugees in Article24(b). Article24(b) ensures the refugees to have social security and equal treatment as the nationals of contracting country. Article22 stipulates to guarantee rights to public education for refugees according to the treatment of nationals. The Convention upholds the rights to refugees in different aspects, especially their fundamental rights.

### ● **Convention on Stateless Persons**

Statelessness is frequently treated as a ‘blind spot on the international community’s agenda’.<sup>26</sup> Although the phenomenon of statelessness existed since the beginning of history, it emerged as an international challenge after World War II. The “citizenship-stripping” of German Jews was implemented under the Reich Citizenship Law in 1935 and it is still recognized as the furthestmost painful case for stateless persons.<sup>27</sup> For the betterment of the status of stateless persons, the 1954 Convention relating to the Status of Stateless Persons was enacted by providing “minimum standards of treatment for stateless people”.<sup>28</sup> It first legally defined stateless persons that the stateless persons mean “a person who is not considered as a national by any state under the operation of its law”

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<sup>26</sup> Bloom, T. (2013). Problematizing the Conventions on Statelessness. UNU-GCM, p.7

<sup>27</sup> Sardelić, J. (2017). The vulnerability of Roma minorities to statelessness in Europe ~ Denial and denigration: how racism feeds statelessness ~ Minority Stories.

<sup>28</sup> UNHCR. Ending Statelessness. Retrieved from <http://www.unhcr.org/stateless-people.html>

according to the Article 1 of 1954 Convention.<sup>29</sup> The Convention not only legally defines the status of stateless persons, but more importantly provides and legitimize appropriate protection for persons with stateless status.<sup>30</sup> As the Universal Declaration on Human Rights (UDHR) clearly advocates the rights to nationality for everyone, the rise of stateless persons and confrontation with refugees became more problematic and necessitated the response of governments.<sup>31</sup> Such situation accelerated the UNHCR to introduce 1951 Convention Relation to the Status of Refugees and the 1954 Convention Relating to the Status of Stateless Persons.<sup>32</sup> Soon after, it advanced into the 1961 Convention on the Reduction of Statelessness. However, the 1954 Convention and 1951 Refugee Convention were harshly criticized for its lack of consideration for every individual without nationality. Back in the time, the world leaders signed the Conventions only considering the persons who simply do not possess a nationality as *de jure* stateless persons but excluded *de facto* stateless persons.<sup>33</sup>

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<sup>29</sup> UNHCR. (1954) UN Convention Relating to the Status of Stateless Persons, p.6.

<sup>30</sup> Ibid.

<sup>31</sup> UN. (1948). Universal Declaration of Human Rights, Retrieved from [http://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf)

<sup>32</sup> Bloom, T. (2013). Problematizing the Conventions on Statelessness. UNU-GCM, p.7

<sup>33</sup> De Chickera, A. (2010). Unravelling anomaly (pp. 63-69). London: Equal Rights Trust.

## **2.3 Framework**

Various international conventions are introduced as analytical framework to assess domestication of international human rights convention in South Korea. Based on the analytical framework, this paper will look at the domestic law and policies to assess how these conventions are reproduced and applied appropriately. The paper will concentrate on the international conventions that are related to children's rights. More specifically, the paper will narrow down to certain articles that address children's rights to healthcare, education and birth registration which are considered as basic rights. Assessment on domestic law and policy is important because even though the international conventions acknowledge the importance of basic rights, if the government do delimit the rights from 'the rights of citizens' to 'the rights of all', undocumented children would not be able to enjoy their rights accordingly. Then in order to assess the domestic implementation, it will move on to investigate current legal and political provisions that are made based on the international conventions. The following diagram explains the framework.

**Table2. International Conventions that South Korea is a Signatory**

<b>Intl' Conventions</b>	<b>Healthcare</b>	<b>Education</b>	<b>Birth Registration</b>
Universal Declaration of Human Rights (UDHR)	Article25(1)	26(1) 26(3)	Article15(1)
Convention on the Rights of the Child (CRC)	Article6 Article24 Article26	Article28 Article29	Article7
Refugee Convention	Article24(b)	Article22	none

Source:author

**Table3. Domestic Laws and Policies Related to the International Conventions that South Korea Has Signed**

<b>Categories of Rights</b>	<b>Law</b>	<b>Policy</b>
<b>Healthcare</b>	1. Child Welfare Act 2. Refugee Act42 3. Enforcement Decree of Refugee Act Article20(1)	1. Ministry of Health and Welfare 2. Korea Centers for Disease Control and Prevention
<b>Education</b>	1. Child Welfare Act Article4(4) 2. Refugee Act Article33 3. Enforcement Decree of the Elementary and Secondary Education Act Acticle19&75	None
<b>Birth Registration</b>	None	None

Source:author

The paper must put an emphasis on the relationship between international politics and domestic politics. In a globalized world, international-level of politics has been more important than even before. Robert Putnam's two-level games well explains the linkage between international and domestic politics. The two-level-games method initiates by "*assuming that statemen are typically trying to do two things at once, that is they seek to manipulate domestic and international politics simultaneously*".<sup>34</sup> Putnam's idea was perhaps the first to shed light to the problems that easily rise in international politics. He argued that the international negotiations should be understood as what negotiators can "sell" to both domestic and international interest groups and counterpart.<sup>35</sup> Bruce Bueno de Mesquita and Alastair Smith stipulates that "*when one must convince both a foreign counterpart and domestic interests to accept a negotiated settlement, there is always the possibility that the negotiator is misrepresenting either her domestic constituency's bottom line or the foreign counterpart's bottom line*"<sup>36</sup>. In today's international system, the state is entrusted with primary responsibility for the implementation of human rights treaties by intervening between the international community and individuals and may fall short of securing legal force<sup>37</sup>. Keeping this in mind, the paper

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<sup>34</sup> Evans, P., Jacobson, H. and Putnam, R. (2010). Double-edged diplomacy: international bargaining and domestic politics. Berkeley, Calif: University of California Press, p.15.

<sup>35</sup> Bueno de Mesquita, B. and Smith, A. (2012). Domestic Explanations of International Relations. Annual Review of Political Science, 15(1), p.2.

<sup>36</sup> Ibid, p.2.

<sup>37</sup> 권용진, & 임영덕. (2011). 일반 논문: 미등록 이주아동 의료접근권에 관한 고찰.

aims to assess how the Korean government deals with legislation, policy direction, national values, and economic benefits in implementing international conventions into their domestic legal and political system.

## **2.4 Methodology**

This thesis paper utilizes qualitative policy analysis and legal research. Both primary and secondary sources will be used to achieve the objectivity of the research. This thesis emphasizes and approaches the issue in both policy and legal perspective, since the status of undocumented children is impacted and dependent on policy change and conventions. This paper begins with literature review mainly referring to the secondary sources from various scholars. In order to analyse the paper according to the international conventions, the second chapter will study analytical framework of international legal documents based on the primary sources. The third chapter firstly aims to study the rights of undocumented children in Korea according to various articles and journals. The sources are mainly from the South Korean government and other international organizations like UNHCR, IOM and Save the Children. Then the chapter four proceeds to the implementation of such rights by utilizing various interviews and studies done by NGOs supported and subsidies by the South Korean government and international organizations. Then lastly, the paper examines the discrepancies and root causes of discrepancies in policies and laws between international conventions and domestic implementation based on various sources but mainly from secondary source.

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고려법학, 63, 243-285.

## **3. Migrant Children and Their Rights in South Korea**

### **3.1 Migrant Children in South Korea**

Who are migrant children? Migrant children could be anyone who is under the age of 18 that were either born in foreign state and emigrated to South Korea or who was born in South Korea, but their parents have an experience of emigration. Migrant children can be categorized to two different types— documented and undocumented<sup>38</sup>. Among these two groups, this paper focuses on undocumented children. It is hard to estimate the number of undocumented children since they are afraid to reveal their status to others in general. When a child is born to parents with a legal status in Korea, their statuses are guaranteed and protected by their country of origin. However, there are certain children who are neither protected by their parents' country nor by South Korea where they were born. Most of these undocumented children were brought to South Korea not by their own will but by their parents' decisions. Their unstable statuses are passed down from their parents which discourage the life out of the vicious cycle. Therefore, to understand the status of undocumented children, we should firstly understand the status of their parents in South Korea.

Until the end of the 1980s, South Korea used to be a labour-

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<sup>38</sup> 이중희, & 구은미. (2016). 이주 아동의 인권에 대한 연구. 공공사회연구, 6(4), 297-323.

export country<sup>39</sup>. However, with its rapid economic growth in the 1990s, it has started to host tens of thousands of foreign populations that include foreign students, migrant workers - both white-collar workers and low-end industry workers, and “foreign brides.”<sup>40</sup> This inflow of migrant workers involved large number of workers from developing countries which are predominantly economically poor. In the 1990s, the South Korean government invited foreign workers through the Industrial Trainee System mainly from Asian countries to fulfill its labor shortage; this was the first inflow of migrant workers.<sup>41</sup> The second generation of wave started with the Employment Permit System. The program facilitated labour recruitment from fifteen Southeast and Central Asian countries in specific industries such as agriculture, fishery, and manufacturing.<sup>42</sup> These foreign labour recruiting programs allow workers to stay maximum three years with a possibility to extend for two more years. It was designated to regularize the stay of foreign workers but many of these workers overstayed and ended up being undocumented.

Recent wave of foreign population inflow is related to increasing number of refugees. South Korean government signed the 1951 Refugee

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<sup>39</sup> Moon, K. H. (2015). South Korea's demographic changes and their political impact. *East Asia Policy Paper*, 6(10).

<sup>40</sup> Ibid.

<sup>41</sup> Hahn, C. H., & Choi, Y. S. (2006, July). The Effects of Temporary Foreign Worker Program in Korea: Overview and Empirical Assessment. In *Korea and the World Economy Conference*, Seoul, Korea.

<sup>42</sup> Seol, D. H. (2012). The citizenship of foreign workers in South Korea. *Citizenship studies*, 16(1), p.122

Convention and the 1967 Protocol Relating to the Status of Refugees. Based on these two conventions, South Korea established its own refugee law in 2012 that came into effect in 2013, which made South Korea the first country with such a law in East Asia. Since 1994, according to the Ministry of Justice, 40,470 people have sought asylum by the end of May 2018<sup>43</sup>. However, recognition rate of South Korea is remarkably low compared to that of other states like European states. So far, South Korea government have recognized only 4.1% of the application as refugees and 7.6% were given a humanitarian status.<sup>44</sup> Due to the low recognition rate, many unrecognized refugees must live on with unstable status as asylum seekers or even worse undocumented status. When asylum seeker parent gives birth to a child while they are not recognized as refugees, the child eventually becomes undocumented. Further case study regarding the process of becoming undocumented will be addressed in later section. The most important point is that the number of asylum seekers is constantly increasing along with the outbreak of wars in different regions in Middle East and Africa.

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<sup>43</sup> English.hani.co.kr. (2018). South Korea first Asian country to enact refugee legislation. [online] Available at: [http://english.hani.co.kr/arti/english\\_edition/e\\_international/849911.html](http://english.hani.co.kr/arti/english_edition/e_international/849911.html) [Accessed 10 Nov. 2018].

<sup>44</sup> Ibid.

### 3.2 The Rights of Undocumented Children

As South Korea follows the principle of *Jus Sanguinis*— nationality granted by bloodline— even if a child is born in South Korea, unless at least one of the parents is of Korean national, they are not able to register the child’s birth. The parents must register the child to the embassy of their home country and obtain a citizenship for the child<sup>45</sup>. However, children who are born to either migrant worker parents or an asylum seeker parents, the children are not able to approach the embassy of their parents’ home country as they may end up revealing their unstable status and get caught up in trouble.<sup>46</sup> Even though a child’s status is not certain and stateless, according to the CRC, the child should be granted basic rights just like other children with nationality. Article2 of the CRC states that:

*“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”*<sup>47</sup>

As South Korea has signed the Convention, even if South Korea only

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<sup>45</sup> 이중희, & 구은미. (2016). 이주 아동의 인권에 대한 연구. 공공사회연구, 6(4), 297-323.

<sup>46</sup> 장진숙. (2011). 이주아동의 법적 지위와 인권보장에 관한 소고. 유럽헌법연구, p.346

<sup>47</sup> The Convention on the Rights of Child, Article2

follows the principle of *jus sanguinis*, they have an obligation to protect the rights of undocumented children as if they are South Korean nationals. Based on the CRC, South Korean government has an obligation to reserve rights to birth registration, healthcare, social security and education<sup>48</sup> for undocumented children as well.

As all children should be treated the same without any discrimination (Article 2 of CRC), the Child Welfare Act and Infant Care Act both regulate discrimination against children.<sup>49</sup> However, the Framework Act on Social Security does not offer the same rights for undocumented children since social security right is protected for “citizens” only.<sup>50</sup> Therefore, the obligation by joining the CRC is not implemented appropriately in South Korea which allows room for children right violation. In fact, it is difficult to estimate the number of undocumented children, which makes it hard to investigate the possible deprivation of rights of these children appropriately.<sup>51</sup> In this section, the paper examines the legal basis and political approach to the status

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<sup>48</sup> 정상우, & 박지인. (2018). 이주아동 권리보장을 위한 입법 필요성과 과제. *다문  
화/사회연구*, 11(1), 261-293.

<sup>49</sup> Ibid. p.268

<sup>50</sup> Chapter 1 Article 1 of the Framework Act on Social Security states that “the purpose of this Act is to contribute to the enhancement of national welfare by defining the rights of citizens and the responsibilities of the State and local governments on social security and by prescribing basic matters on the establishment and implementation of social security policies and their related systems.”

<sup>51</sup> 장진숙. (2011). p.346

and the rights of undocumented children in South Korea. Firstly, it explores existing legal basis and policies on children's rights to healthcare. Secondly, the education right is addressed to investigate how education system in Korea includes undocumented children. Lastly, the right of birth registration and the legal basis for stateless persons are studied.

### 3.2.1 Healthcare

Healthcare service is commonly considered as social security, yet in emergency situations where the situation seems directly linked to the right to life, it should be interpreted as a basic human right. Ok-Ju Shin argues that access to healthcare is highly related to social basic rights which is often considered as the right that is protected by the state for their own citizens.<sup>52</sup> She argues that when healthcare service is considered as a social basic right, the problem of approving the subjectivity of healthcare for undocumented children occurs. However, she argues that the subjectivity should not be limited but to be more universal that would be able to protect more people. The Constitution of the Republic of Korea, Article 36(3) states that "*the health of all citizens shall be protected by the State.*"<sup>53</sup> It clearly states that it is the responsibility of the state to ensure the health of all citizens. Since undocumented children are not "citizens", the Constitution is

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<sup>52</sup> 신옥주. (2016). 미등록 이주아동의 인권제고를 위한 비교법적 연구. *유럽헌법연구*, p.286.

<sup>53</sup> The Constitution of Republic of Korea, Article36(3)

inapplicable to undocumented children. However, there are certain legal basis that are able and protects their healthcare rights. Firstly, the Emergency Medical Service Act, Article3 stipulates that “*All citizens shall have the right to receive emergency medical services without being discriminated against on the basis of sex, age, ethnicity, religion, social status, economic conditions, etc. The same shall apply to foreigners who stay in the Republic of Korea*”<sup>54</sup> and it clearly regulate to ensure the healthcare right for non-Korean nationals too. The term “foreigners” does not limit the eligibility based on its status, therefore, undocumented children are eligible for the legal protection. The South Korean government encourages undocumented children to have access to healthcare based on this law.

There are government supported policies and programs that undocumented children are able to access. The Ministry of Health and Welfare has started to implement a healthcare service for migrant workers and marginalized people in 2005.<sup>55</sup> The service is available at national and public hospital for migrant workers and their children, refugees and migrant wives, and their children who do not yet have Korean nationality.<sup>56</sup> The program offers financial aid for hospitalization, surgery, and emergency service. Moreover, the Korea Centers for Disease Control and Prevention, for humanitarian protection purpose, started to distribute and publicize healthcare guidelines for

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<sup>54</sup> Emergency Medical Service Act, Article3

<sup>55</sup> 최영미. (2018). *미등록 이주아동의 건강권과 향후과제*, (재) 경기도가족여성연구원, p.11

<sup>56</sup> Ibid.

migrant workers (including undocumented workers) all over the country's public healthcare centers.<sup>57</sup> Accordingly, the public healthcare centers began to implement free health checkups and other medical services. They have recently extended its medical service, the prenatal and postpartum examinations and infant and child immunization.

Undocumented children who are born to refugee parents have more access to healthcare service compared to the children who are born to undocumented parents. Based on the Refugee Act, child asylum seekers have access to healthcare. Article42 of the Refugee Act of the Republic of Korea states that "*The Minister of Justice may provide a refugee status applicant with medical services support as determined by the Presidential Decree.*"<sup>58</sup> Further, the Enforcement Decree of Refugee Act Article20(1) ensures to "*provide support for medical examination expenses the applicant received within the budget allotted.*"<sup>59</sup> Moreover, Article20(2) further confirms to "*provide refugee status applicants with information on emergency medical services as prescribed by the Emergency Medical Services Act, and on other medical services which can be utilized by such applicants.*"<sup>60</sup> This provision is only applicable to recognized refugees mostly and some of them are applicable to asylum seekers. However, the Refugee Act does not include asylum seekers that have failed to be recognized and who are already at the risk of deportation.

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<sup>57</sup> 신옥주. (2016), p.291

<sup>58</sup> Refugee Act, Article42

<sup>59</sup> The Enforcement Decree of Refugee Act, Article20(1)

<sup>60</sup> Ibid. Article20(2)

### 3.2.2 Education

Education for undocumented children is better than their access to healthcare. There are different legal bases such as Immigration Act and Enforcement Decree of the Elementary and Secondary Education Act which guarantee education for undocumented children. Right to education is derived from Article 10 of the Constitution as well that all children are the subject of education right based on respect for human dignity. However, the Constitution limits the subjectivity to its own citizens and it excludes undocumented children. The UN Committee for Children's Rights suggested to revise the current law in 2003 to allow undocumented children to be part of the education system and enjoy their rights.<sup>61</sup> Yet the South Korea government did not revise the law but introduced several guidance and special provision for schools to allow schooling to undocumented children<sup>62</sup>. Article 19 and 75 of the Enforcement Decree of the Elementary and Secondary Education Act guarantees special provision of schooling guidance for undocumented children. Undocumented children have no right to compulsory education, but they still have rights to education that their rights are protected under such provisions. In 2008, the Enforcement Decree of the Elementary and Secondary Education Act was revised according to Article 28 of the CRC to ensure children's education right.<sup>63</sup> The revised Act guarantees the

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<sup>61</sup> Kang, S. W. (2010). Multicultural education and the rights to education of migrant children in South Korea. *Educational Review*, 62(3), p.295

<sup>62</sup> Ibid. p.295

<sup>63</sup> 윤인진. (2010). *한국인의 이주노동자와 다문화사회에 대한 인식 (어울누리 학술연구 1)* (Vol. 1). 한국학술정보/이담북스.

education right of undocumented children and also made available for them to go to school as long as they can prove their house lease contract or letter of guarantee from their neighbor, even without an alien card. It enabled the children to be more approachable to education system. Another possible legal protection for undocumented children's education rights is the Child Welfare Act Article4(4) states that "*the State and local governments shall devise policies necessary to protect children from experiencing any kind of discrimination on the grounds of their or their parent's gender, age, religion, social status, property, disability, birthplace, race, etc.*"<sup>64</sup> According to the article, no children should experience discrimination based on the status of their parents and social status. Such article is derived from Article2 of the CRC, which ensures to protect children from any forms of discrimination. It shows that the government has an obligation to reserve children's rights to approach education opportunity and even in individual schools and classes.

### **3.2.3 Birth Registration**

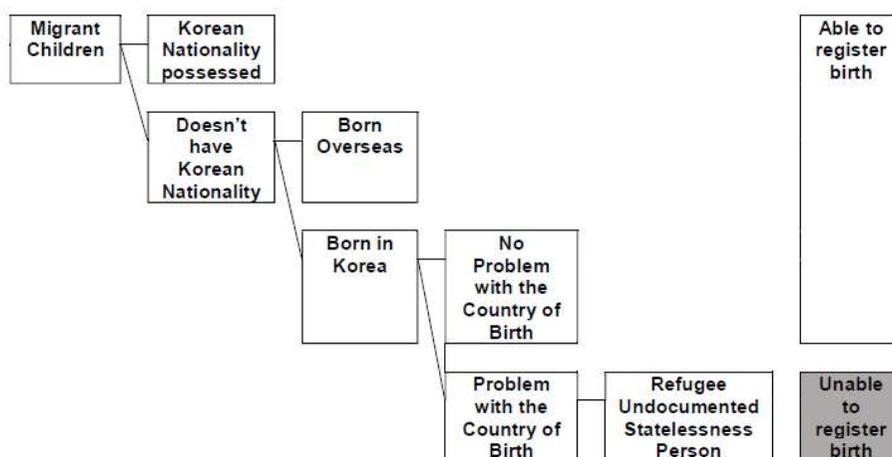
As aforementioned, when a child is undocumented, the child tends to become more vulnerable in terms of protecting rights, even if it's a basic right. One of the most serious right deprivations, and also that becomes root cause to other deprivations, is their inaccessibility to birth registration. Annual report of the United Nations High Commissioner states that "*birth registration is fundamental to the prevention of statelessness. Not all children born without birth registration are*

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<sup>64</sup> Child Welfare Act, Article4(4)

stateless; but for those born in certain situations (for example, to parents from different countries, in a migratory setting, to refugee or asylum seeker parents or in border areas), lack of birth registration can cause statelessness.”<sup>65</sup> Most of undocumented children are born without a state or status. They do not have a nationality or an alien card. It is the case because they are not able to register themselves in South Korea. The diagram below shows the procedure of a child becoming stateless. It clearly shows that the children of refugees and undocumented migrant workers do not have access to birth registration.

**Table4. Birth Registration Process**



Source from Save the Children Korea<sup>66</sup>

The current birth registration system of South Korea depends on the registration of family relationships, which is limited to “citizens” only.

<sup>65</sup> UNHCR and Plan International, *Under the Radar and Under Protected*, 2012. p.5.

<sup>66</sup> Save the Children Korea, *Republic of Korea's Birth Registration of Migrant Children: Current Status and Problems*, p.2

Therefore, when a child is born to foreign parents, the child is only able to register in the embassy of the parents. However, many parents of these children do not have access to their own country's embassy due to fear of deportation and possible persecution. Therefore, these children eventually become *de facto* stateless. So far, the Korean government do not have any legal basis for birth registration of undocumented children. Article7(1) of the CRC clearly advocates the birth registration of children that, "*the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.*"<sup>67</sup> The child's birth registration is closely linked to survival, cognitive development, and other social rights that a child can have, which necessitates South Korea to be more responsible and responsive on the birth registration issue. Birth registration is vital to children since it acknowledges the child's existence, and birth certificate represents the child's membership and identity in a society. There were several propositions of revised bills and legal basis, yet they failed and so far, there is no significant change.

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<sup>67</sup> Convention on the Rights of the Child, Article7(1)

## **4. Undocumented Children Access to Their Rights**

This section analyses case study on undocumented children of refugees and undocumented children of migrant workers to understand the legal and political implementation of laws and policies that were addressed in the previous section. Also, it aims to find out the obstacles and human rights deprivation that undocumented children encounter in South Korea. It is important to address both cases since the two different people groups are both stateless but are from different backgrounds and context. The section aims to address the accessibility of undocumented children to healthcare service, education system, and birth registration in Korea. It aims to assess accessibility as to find out whether or not beneficiaries' basic rights are protected under the current legal system in Korea. The sources on this section are brought from reports written by different NGOs and institutions that conducted various interviews and surveys with undocumented families. These sources are reliable as they were sponsored by the Save the Children and the local government of Seoul. The reports were written by different experts including professors, researchers, and field workers -hence embrace different perspectives and approaches.

### **4.1 Children with Refugee Parents**

Currently, the number of international refugees is rising due to racism, religious conflict, civil war, and climate change. Large-scale refugee camps have been established and operated in many parts of the

world, and the number of refugees seeking to settle in Korea is growing exponentially. Even though South Korea is the first Asian country that enacted its independent Refugee Law in 2013 and resettled Myanmar refugees in 2016,<sup>68</sup> the current government's refugee protection and advocacy is still insufficient compared to that of advanced countries in Europe; and the system is not stable. With the increasing interest in refugees in Korean society, issue of resettlement of refugees, education on adaptation of Korean society as well as education of refugee children have been raised. Since the number of refugee recognition rate in South Korea is relatively low, naturally the number of unrecognized or humanitarian status holders are soaring. The soaring number of unrecognized refugees means, many of these unrecognized refugees will be holding a status of either asylum seeker or humanitarian status, or in worse case, undocumented status. According to the Ministry of Justice, there were 20,974 asylum seekers since 1994 until June 2018. However, among them, only 849 which is only 4.05% of the applicants were recognized as refugees and 1,550, equivalent to 7.40% of applicants were granted humanitarian status.<sup>69</sup> Therefore, the rest of them have to either leave the country or decide to live with undocumented status. The major problem that these number of people face is that the unstable status is transmitted over to the next generation. Especially, the children of

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<sup>68</sup> IOM. (2017). South Korea Welcomes 30 Myanmar Refugees from Thailand. Retrieved from <https://www.iom.int/news/south-korea-welcomes-30-myanmar-refugees-thailand>

<sup>69</sup> Rich, T., & Bison, K. (2018). Answering the question: should South Korea accept refugees?. Retrieved from <https://www.lowyinstitute.org/the-interpreter/answering-question-should-south-korea-accept-refugees>

humanitarian status holders and other unrecognized refugees fall into the trap of statelessness. As many of them are unable to go back to their country of origin due to persecution, and since they do not have a stable immigration status, their children eventually become stateless. With South Korea's lack of implementation of universal birth registration, children born to refugee parents in South Korea are like a trapped rat. Without an appropriate birth registration and immigration status, children become more vulnerable to and inaccessible to their basic human rights. Therefore, this section will focus on undocumented children with refugee parents and more thoroughly their legal accessibility to healthcare, education and birth registration will be studied.

## **4.1.1 Healthcare**

### **1) Limited Access**

There are several problems that refugee children encounter even though their rights are protected by the law in Korea. Legal provisions are available for stateless refugee children, however many children fail to access the social protections. Firstly, children are unable to access healthcare service because of limited systemic operation. Clearly, the Constitution of the Republic of Korea protects and provides healthcare service to undocumented refugee children, however children are often unable to reach the service. It is mostly because of lack of enforcement in practice. Unlike recognized refugees, asylum-seekers or humanitarian

status holders do not have any access to national health service.<sup>70</sup> They can only join the occupational insurance of four major insurances but not many of these families have joined such insurances. It is mainly because the employers sometimes do not prefer to provide the insurance benefits and also employers are reluctant to write a labor contract and occupational insurance which are obligatory for work permits.<sup>71</sup> In 2016, the National Healthcare Service Act was amended drastically which allowed foreigners to have access to the national healthcare service, yet it only included immigrants who are staying with a valid visa<sup>72</sup>. It impacts undocumented refugee children since without these insurance services, undocumented children are not able to access the health service. As children are dependent on the status of their parents, when a parent is excluded from national health insurance service, even the children are excluded from the coverage of national health insurance. Also, in some cases, even though the household of a family has joined the occupational healthcare insurance with a guarantee of four major insurances, the family members are not eligible for such benefits. According to the current National Healthcare Service Act of South Korea, the insurance covers the use of dependent care system for spouses, immediate family members including children. However, the family registration certificate recognized by the National Health Insurance Corporation must have

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<sup>70</sup> 변진경. (2018). 국내 난민 아동은 어떤 모습으로 살아가고 있을까. Retrieved from <https://www.sisain.co.kr/?mod=news&act=articleView&idxno=33116>

<sup>71</sup> 이중희, & 구은미. (2016). 이주 아동의 인권에 대한 연구. *공공사회연구*, 6(4), 297-323.

<sup>72</sup> 신옥주. (2016). p.289.

been issued within six months.<sup>73</sup> Since many asylum-seekers and humanitarian status holders have left their home country more than 6 months ago, and they left during the war or urgent situations, their possession of family registration certificate is impossible.<sup>74</sup> Furthermore, asylum-seekers and humanitarian status holders are not able to approach the embassy of their country of origin, they often fail to prove such certificate.<sup>75</sup> Without a proper joining of local insurances, children have no access to healthcare service because the cost is unbearable for refugee parents. The current Refugee Act of the Republic of Korea is seriously limited to recognized refugees only. Currently, there are nine types of treatment for recognized refugees under the refugee law of South Korea. Social security, basic life security, education security, social adaptation program, academic background recognition, qualification, and admission of spouses are among other things.<sup>76</sup> However, for humanitarian status holders and asylum seekers, employment is the only accessible rights for them. Therefore, many unrecognized refugees are suffering from having no access to healthcare service. The existence of independent Refugee Act does allow the government to protect every refugee. Genuine protection by the refugee law is required in order to promote the rights of unrecognized refugees too.

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<sup>73</sup> Hani.co.kr. (2018). 한국에서 태어난 셋째는 '무국적'!...기본권에도 국적이 있나요.

<sup>74</sup> 박정형. (2018). [세상읽기] 인도적 체류자들의 건강보험 피보험자 자격. Retrieved from <http://www.isisa.net/news/articleView.html?idxno=110682>

<sup>75</sup> Ibid.

<sup>76</sup> Chapter four of the Refugee Act of South Korea, Article30- Article38

## 2) Financial Difficulties

Undocumented refugee children are eligible to enjoy healthcare service under Article 42 of the Refugee Act. However, this legal basis is very limited by its budget. In areas where a large number of refugees or asylum-seekers do not reside, the budget tends to be insufficient that often children are refused to be observed or checked-up. When a child is ineligible to national insurance service and government subsidized medical service, the cost of medical treatment for the child is too high for a refugee family to cover. The burden of medical service is too heavy and unbearable that in many cases children are not able to get a proper treatment in early stage of diseases or sickness.<sup>77</sup> Such problem occurs because of lack of law enforcement. Most of these subsidies are not provided based on legal provision, but more practiced by policy basis. For example, the healthcare guidelines that are publicized by the Korea Centers for Disease Control and Prevention, allow undocumented refugee children to be able to have basic vaccination and other check-ups. However, they are unreachable sometimes due to lack of budget.<sup>78</sup> Since the budget is distributed by the head of the local government, except for the areas where many immigrants and refugees are concentrated, asylum-seekers and humanitarian status holders are not able to have access to such benefits. Therefore, when there is a budget shortage, children cannot benefit from free vaccination. The financial problem is raised even more seriously when a child needs go through a longer treatment. Even though undocumented refugee children are

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<sup>77</sup> 신옥주. (2016). p.291.

<sup>78</sup> 이주노동희망센터. (2015), 심층면접을 통해 본 미등록이주아동실태 자료집, p.24

eligible to have emergency treatments according to the Emergency Medical Service Act Article3, in reality, many asylum-seeker and humanitarian status holder parents still face obstacles of cost when attempting to obtain a proper medical service for their child. It is because hospitals are often reluctant to provide genuine service for people who do not have health insurance. As many of the hospitals that provide free of charge medical services are located in big cities, the children sometimes must travel far from different cities which is a big financial and physical burden for the children.<sup>79</sup>

Also, fundamentally, the current healthcare system in Korea for refugee children is not providing a sustainable service. One-time based medical care service is nothing more than a short-term service. Medical service should be durable and sustainable for longer-term in order for children with disease or sickness to be cured permanently. Current healthcare system provided by the South Korean government is insufficient to reach the minimum level of humanitarian service due to lack of enforcement in practice. There are many administrative barriers which weakens the rights of undocumented refugee children. However, healthcare service is important for refugee children as they are more vulnerable to be exposed to physical and mental illness. Undocumented refugee children have access to emergency treatment, yet they have to cover their own outpatient consultations which is not included in government's subsidies. For example, diseases like asthma or diabetes

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<sup>79</sup> Kim, M. S., Song, I. G., An, A. R., Kim, K. H., Sohn, J. H., & Yang, S. W. (2017). Healthcare access challenges facing six African refugee mothers in South Korea: a qualitative multiple-case study. *Korean journal of pediatrics*, 60(5), 138-144.

require constant consultation with doctors and medication, yet they are not covered, and children are not able to benefit any services related to such diseases.<sup>80</sup> Therefore, when a child has any disease like these, the child has to fight with the pain without any medical service. Also, many of refugee parents have went through severe physical and mental suffering due to experiencing war, violence, and persecution. These experiences cause psychological traumas.<sup>81</sup> In many cases, “parents of refugee children who are forcibly displaced often pass their own psychological distress onto their children.”<sup>82</sup> When such traumas are not overcome and poorly handled, the difficulties can develop as a cause of family dysfunction. Then the child’s mental stability may be affected, and it may also later cause another severe mental illness for the child. Psychological anxiety stemming from a special background of refugees should be acknowledged and included in healthcare service as a sustainable protection of refugee rights.

#### **4.1.2. Education**

The Refugee Convention ensures that “*the Contracting States shall accord to refugees the same treatment as is accorded to nationals*”

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<sup>80</sup> 세이브더칠드런 연구보고서 연구과제명: 한국 거주 난민아동 생활 실태 조사 및 지원 방안 연구, p.41

<sup>81</sup> Nho, C. R., Yoon, S., & Ko, J. (2018). Voices of refugee children in Korea. *Children and Youth Services Review*, 94, 606-616.

<sup>82</sup> Ibid. pg.609

*with respect to elementary education.*”<sup>83</sup> and the Enforcement Decree of the Refugee Act reassures that “*a recognized refugee and/or such person’s child may enter or transfer to a school under Article 2 of the Elementary and Secondary Education Act in accordance with criteria and procedures regulated by laws and regulations concerning education.*”<sup>84</sup> Yet, the Refugee Act is only eligible for refugees who are recognized which does not include undocumented refugee children. The refugee parents have passion for education and aware that education has indefinite power. Therefore, the refugee parents mostly want their children to be properly educated in Korea so that their children could live a life just like other Korean children. As undocumented refugee children do not have a legitimate status in Korea, they are not subject to compulsory education. However, education and going to school for a child is important as it is the child’s first step to a social life, and it is crucial for the child’s early stage of cognitive development.

## **1) Procedural Inconvenience**

Undocumented refugee children’s schooling is not compulsory because they are not South Korean nationals. Yet, they still have access to education in general. Since their access to education is not compulsory, they would not receive any notice from school for entering primary school like other Korean children. Instead, the parents have to go to schools that are close to their house and request for their child’s

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<sup>83</sup> 1951 Refugee Convention, Article22

<sup>84</sup> Refugee Act, Article13

attendance of the school. Even though their rights to education is indicated in the Enforcement Decree of the Elementary and Secondary Education Act as a special provision with a guideline, in practice it is still not very easy. Children's acceptance to school for non-Korean nationals, especially for undocumented refugee children, is highly dependent on principal's decision.<sup>85</sup> Since there is no specific legal provision regarding undocumented children's entrance to a school, the process is quite different in every school. For example, undocumented children face difficulties in admission process because education institutions require to have alien card or foreign registration number which undocumented children do not have.<sup>86</sup> According to the Enforcement Decree of the Elementary and Secondary Education Act Article19(2)(2), regardless of children's status, as long as the residential certificate is provided, children's admission should be allowed. Since many undocumented parents do not have thorough understanding on the children's education right, they tend to give up appealing schools about it. Due to their unstable immigration status, parents rather give up and neglect their children at home than risk getting arrested and deported back home.<sup>87</sup> Their vulnerable status fails them from enjoying their basic right as well as takes away their voice to speak about it. Also, since admission decision is dependent on the decision of school principals, it is often manipulated by the public opinion at school too. Due to lack of

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<sup>85</sup> 아름다운재단. (2016). 아동권리 관점에서 본 미등록이주아동의 현황 및 정책 연구. P81

<sup>86</sup> 신옥주. (2016). p.293.

<sup>87</sup> 아름다운재단. (2016). p.30

awareness about refugees, primary school admissions for refugee children are denied due to opposition from parents of other students, which is denying the right to be taught.<sup>88</sup> It shows the discrimination that undocumented children face in accessing minimum level of education. Education should be available to every child regardless of their immigration status. Schools excluding undocumented children from public education for their own convenience should not be continued and the schools have to acknowledge their primary role in education system. The cost of bearing the inconvenience would be less than the cost of integrating these children later in the future of South Korea where they call it a “home”.

## **2) Communication Difficulties**

Establishing a legal system does not guarantee one’s full enjoyment of their rights; indeed, legal system should always be followed by proper guidelines and introduction of laws and policies for beneficiaries. Undocumented children’s rights to education is often violated due to lack of awareness and delivery of information. Even though undocumented refugee children have access to education, yet, the parents are not aware of such rights. In many cases, refugee parents were never informed about the education rights according to the Refugee Act and the Enforcement Decree of the Elementary and Secondary Education Act. Even if the parents were recognized as refugee, the case is not very

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<sup>88</sup> 서정애. (2017). 한국 거주 난민 아동의 권리-아동 교육권을 중심으로. *재외한인연구*, 47, p.81.

different. When a refugee is recognized, the government institution including the Ministry of Justice and the Immigration office do not explain or deliver information on the rights of refugees.<sup>89</sup> Thus, refugee parents have to seek for help to NGOs or Christian community and churches to find out more information on their children's school admission.<sup>90</sup> This exemplifies how legal basis are unknown to actual beneficiaries. When actual beneficiaries do not know how to access their rights which are indicated legally, the point of having such law itself is weakened. Thus, it is important to implement the law that is established and make sure that the law is reachable to everyone who can benefit from it. Moreover, difficulties of communication occur in the process of admission too. Refugee parents' lack of Korean skills and the school staffs' lack of understanding on refugees make the process of admission even tougher.<sup>91</sup> Neither the educational institution officials nor the school staffs have sufficient understanding on refugee status and the Refugee Act. Due to such reasons, refugee parents experience ignorant attitude and rejection of admissions of their children.<sup>92</sup> As the number of foreigners is increasing every year, the number of migrant children is also increasing accordingly.<sup>93</sup> This means that the government and also

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<sup>89</sup> 이슬.(2018). 사회보장서비스에의 접근성 및 정보제공의 필요성, *난민인정자처우 현황보고대회*, p.9

<sup>90</sup> 세이브더칠드런 연구보고서 연구과제명: 한국 거주 난민아동 생활 실태 조사 및 지원 방안 연구, p.30

<sup>91</sup> Ibid. p.14

<sup>92</sup> Ibid. p.30

<sup>93</sup> 오수진. (2018). "국내 이주아동 권리 국제기준 미달...'구분·배제' 정책 탓."

the service providers have to be prepared to welcome them and assimilate them into the society. There should be an appropriate trainings and education for teachers, schools and related department officials to be more aware of children with different backgrounds. Language barrier is one of the obstacles that refugee parents face, yet the mentality of exclusion is even bigger, perhaps the biggest obstacle that they face, which should not be accepted in the country that has compromised with various international human rights conventions. There should be greater awareness and movement towards inclusiveness.

### **4.1.3 Birth Registration**

While the number of asylum-seekers and humanitarian status holders is increasing, the government has no legal device for the children who are born in Korea. Even though South Korea has ratified the CRC in 1991, it still does not have a birth registration system for foreign children (including refugees). Birth registration guarantees not just the existence of children but also it ensures children's rights to education, healthcare and other basic rights to be protected. Fundamentally, when a child is not registered immediately after birth, the full rights of education and healthcare become inaccessible and infeasible. Even if there are laws and policies that are available for undocumented children, when a child is stateless or undocumented, enjoyment of such protection seems insufficient. The UN Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination constantly urged the Korean government to introduce a 'universal birth registration' system for all children who were born in Korea including immigrants,

refugee and stateless children.<sup>94</sup> The Korean government argues that children of foreign nationality born in Korea can register themselves through the embassies of their respective countries. However, the government's such argument does not consider the specialty of refugees. Refugees have fled their countries from persecution because government could not protect them. Also, when the government of their home country is the subject and the active player of their persecution, refugee parents are afraid to approach the embassy.<sup>95</sup> This situation shows South Korean government's lacking understanding on refugees and lacking human rights sensitivity. Many refugees are in South Korea to avoid persecution which sometimes means death, yet the government urges the parents to register their children with the government that could almost take away their life.<sup>96</sup> If the government had a genuine understanding on refugee status, there should be a special mechanism for these children to be registered. Moreover, even if they have access to embassies, sometime embassies reject their registration due to the asylum status or ask for excessive compensation in exchange of birth registration. Birth registration is a basic human right for children and it should not be exchanged for money or other forms of compensation. Once the refugee application is filed, South Korea has the primary responsibility to protect asylum seekers and refugees to be safe. However, such request by embassies in Korea is violating the international conventions, and it is

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<sup>94</sup> 서정애. (2017). 한국 거주 난민 아동의 권리-아동 교육권을 중심으로. *재외한인연구*, 41, p.85

<sup>95</sup> 세이브더칠드런. (2013), 이주배경 아동의 출생등록, p.3

<sup>96</sup> Ibid.

threatening the fundamental rights of refugees and the children. The Korean government should be more responsible to protect refugees and their family from exploitation by the embassies, for the best interest of the child.

## **4.2 Children with Low-Skilled Migrant Worker Parents**

The life of undocumented children in Korea is still a human rights blind spot. The Korean government estimated that the number of undocumented children in the country to be around 20,000.<sup>97</sup> However, the number is not accurate since they are not registered in any of the registration systems in Korea. They became undocumented children because of the undocumented status of their parents in Korea. Since the parents are living in Korea without paper, the children must live without paper as well. Most of the parents of these undocumented children came to Korea as migrant workers from South East Asia.<sup>98</sup> Even though their visa had expired, they decided to stay and settle down in Korea. These migrants formed a family and had children like any other families. However, their undocumented status had to be transferred to their children unless the children return to the country of origin of their parents. Children who were born in Korea inevitably face statelessness and

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<sup>97</sup> The Kyunghyang Shinmun. (2018). The Reality of Unregistered Immigrant Children: We Cannot Ignore Them Any Longer

<sup>98</sup> 오성배. (2009). 외국인 이주노동자 가정 자녀의 교육 실태와 문제 탐색. 한국청소년연구, 20(3), p.307

undocumented status.<sup>99</sup> Since birth, these children are invisible, in other words, they do not exist in this world. South Korea does not provide ‘universal birth registration’ and this discourages undocumented children’s enjoyment of basic rights. Even though South Korea has joined various international conventions, the legal provision of protecting the rights of these children is still insufficient. Index1 below shows the number of undocumented residents in Korea; it is growing every year, and the number may even be larger than this. Since many of them are unwilling to expose their undocumented status, exact number of undocumented migrants is not countable. According to this index, the number of undocumented persons in Korea is inevitably getting larger and it may later cause more severe social problems. Therefore, further study on the situation of undocumented children and their families have to be addressed for the betterment of their rights in South Korea.

**Table5. Statistics of Foreign residents in Korea**

	2013	2014	2015	2016	2017
<b>Foreigners</b>	1,576,034	1,797,618	1,899,519	2,049,441	2,180,498
<b>Long-term residents</b>	1,219,192	1,377,945	1,467,873	1,530,539	1,583,099
<b>Short-term residents</b>	356,842	419,673	431,646	518,902	597,399
<b>Undocumented Residents</b>	183,106	208,778	214,168	208,971	251,041

Statistics of foreign residents in Korea, Index1, <sup>100</sup>

<sup>99</sup> Ibid.

<sup>100</sup> E-나라지표, Index Korea, Retrieved from

### 4.2.1 Healthcare

Undocumented children have rights to healthcare service. However, they do not have access to insurance service. For undocumented refugee children, when one of the parents have a job and is able to join the occupational insurance, they have access to insurance. However, for undocumented children, their parents are undocumented as well that they have no access to health insurance at all. Undocumented persons, who has received a deportation order from the government or who is staying without a visa extension, are not eligible to benefit from health insurance.<sup>101</sup> As a result, not only undocumented migrant workers themselves but also undocumented migrant children whose parents have not been registered due to their parents' overdue stay are excluded from the coverage of national health insurance. Lack of access to health insurance could be both cause and consequence of violating healthcare rights of children. Firstly, it can be a cause because with current healthcare service, undocumented children are sometimes not able to approach medical service if they do not possess local insurances. It can also be a consequence, as current legal provision of South Korea for undocumented children is a minimum provision that is not sustainable and did not consider the best interest of the child according to the Article3 of the CRC. Without an insurance, undocumented children have to pay extra for their medical service. In worse cases, because undocumented mothers are afraid of exposing their status and of the

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[http://www.index.go.kr/potal/main/EachDtlPageDetail.do?idx\\_cd=2756](http://www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=2756)

<sup>101</sup> 정석호. (2017). "의료보험도 안돼" 복지 사각지대 놓인 '미등록 이주아동'.

Retrieved from <http://www.nocutnews.co.kr/news/4890814>

expensive medical service, they often choose to give birth at home. In this situation, new born baby has higher chance to be born with a congenital disease and become premature infant<sup>102</sup>. From this example, we can assume the difficulties that undocumented family encounter accessing healthcare service.

### 1) Fear for Status Exposure

The biggest fear for undocumented children with migrant parents is to have their identity exposed. Undocumented children of low-skilled migrant workers' experience are similar to undocumented refugee children. However, the children of low-skilled migrant workers' status seem to be more fragile and unstable because of the possibility that they could be deported back to the home country of their parents.<sup>103</sup> Under the current legal system of South Korea, healthcare and education are available for undocumented children in theory, but in practice they are not accessible. According to various healthcare service laws, undocumented children could benefit from emergency treatment; however, in practice the service is not always accessible. In many cases, even though undocumented children have rights to access emergency treatment without presenting their alien card or registration card, due to lack of awareness of service providers, they are asked and required to present valid registration card.<sup>104</sup> It is because many healthcare services

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<sup>102</sup> 신옥주. (2016). p.287.

<sup>103</sup> 장진숙. (2011). 이주아동의 법적 지위와 인권보장에 관한 소고. *유럽헌법연구*, p.372

<sup>104</sup> 박현정. (2013). [사회일반]세상 어디에도 존재하지 않는 아이들. Retrieved from

are policy based and they are not legally enforced therefore, they are not well known and practiced by service providers.<sup>105</sup> In some cases, when a child is severely ill and the parents are not willing to go to hospital due to fear for exposing their status, the child is sent back to the home country of the parents.<sup>106</sup> However, this child has never been to the country of their parents and do not speak the language which violates the best interest of the child. Although there are laws and policies that were established and designed to protect these children, yet, in practice they are insufficient and unreachable. This demonstrates the human rights situation in South Korea, where, immigration status is more valued than a person's medical condition. The situation of undocumented children feeling afraid to go to hospital even though they are severely not well, it sends message of fear to the rest of the undocumented community. It aggravates the human rights deprivation of undocumented children. It drives these children to be more vulnerable because the children are often caught by the immigration at sensitive places like schools or hospitals. Targeting people at essential service facilities is against humanity because it hinders children from accessing their basic human rights. The current immigration system of South Korea is intended for immigrants to be in the country, but in reality it seems the system is more favor of removing them. Furthermore, detaining and separating children from their parents are another violation of international conventions. In order for these children to be free from being afraid of arrest, there should be

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[http://h21.hani.co.kr/arti/society/society\\_general/35689.html](http://h21.hani.co.kr/arti/society/society_general/35689.html)

<sup>105</sup> 이주노동희망센터. (2015), p.26

<sup>106</sup> 신옥주. (2016), p.288

a further systemic mechanism to protect the children. For example, in Belgium, state ensures that school administrators or teachers do not notify immigration office of the status of children and parents and also ensure that the undocumented children are not arrested near the school.<sup>107</sup> Such measures show the country's commitment towards upholding the rights of children and also presents Belgium's consideration of the best interest of the children. It has to be achieved in South Korea as well that the undocumented children could go to school without a fear for arrest and deportation.

## **2) Financial Difficulties**

Many of undocumented children live with financial difficulties and it hesitates them to access medical service. Undocumented children's medical service expense tends to be expensive because they do not have local insurance to cover their medical access. Since undocumented families have financial limitation, sometimes parents have to choose to neglect the child's illness. Also, as aforementioned, undocumented mothers choose to deliver their babies at home due to high cost at hospital.<sup>108</sup> Due to such choices, children are born unhygienically and unsafely. It causes children to be exposed to unhygienic environment and later it may cause severe health problems.<sup>109</sup> Based on the government subsidized program, undocumented mothers could benefit from medical

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<sup>107</sup> 이주노동희망센터. (2015), p.34

<sup>108</sup> 윤재준, 최재훈, & 공지영. (2014). [국적없는 아이들·1]불법체류자 2세 인생살이. Retrieved from <http://m.kyeongin.com/view.php?key=897572#rs>

<sup>109</sup> 신옥주. (2016). p.288

services that are provided by local clinics which was introduced for humanitarian protection. It includes prenatal and post-partum examination.<sup>110</sup> However, these programs are not very sustainable and durable because local clinics are not legally enforced to provide such services.<sup>111</sup> Therefore, it is always hard to find the clinics that provide the service. Furthermore, insufficient financial support by the government, often makes the programs ineffective and infeasible. For undocumented children, in order to enjoy the service, children had to travel to wherever it is accessible. The children who live outside of Seoul or in rural areas had to travel long hours to get services and it is definitely inefficient costly and timely.<sup>112</sup> Access to healthcare should be able to everyone regardless of race, religion, and ethnicity. Especially it should be able to everyone to enjoy regardless of one's social status or financial status. Healthcare must be acknowledged as fundamental human rights that would not let anyone to suffer from disease and pain because of their statuses. Government of countries like Spain ensures all children regardless of their immigration status can enjoy equal medical treatment as Spanish nationals. Such approach allows all children to be medically secure and socially equal. Just because children do not have a regular immigration like other children, it does not mean that these children do not have equal rights like others. Everyone has rights to be healthy,

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<sup>110</sup> Ibid. p.291

<sup>111</sup> Ibid.

<sup>112</sup> Kim, M. S., Song, I. G., An, A. R., Kim, K. H., Sohn, J. H., & Yang, S. W. (2017). Healthcare access challenges facing six African refugee mothers in South Korea: a qualitative multiple-case study. *Korean journal of pediatrics*, 60(5), 138-144.

especially children who are physically underdeveloped.

## **4.2.2 Education**

Undocumented children's admission to education system is addressed in laws and policies. Also, many of undocumented low-skilled migrant workers wish their children to be educated in South Korea that has globally well-known education standard. However, in practice, there are still many children who are not able to achieve their dream to study. An in-depth interview study done by Sung-Bae Oh shows that children are unable to access to current education system despite the law and policy provisions. The National Human Rights Commission of Korea argued that the current system is in practice inefficient hence urged the Ministry of Education, Science and Technology and the Ministry of Justice to establish a system that guarantees educational rights for undocumented children.<sup>113</sup>

### **1) Inconsistency of system**

The biggest problem that undocumented children encounter in admission is the inconsistency of current educational systems provided the Korean government. Undocumented children have access to education and school based on the Enforcement Decree of the Elementary and Secondary Education Act. The Act allows children to be able to access the school system without presenting their undocumented status, yet children still have to feel frightened for possible reveal of their

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<sup>113</sup> 중앙대학교 교지편집위원회 중앙문화. (2018). 숨어사는 아이들 - 미등록 이주아동 인권 이야기 - 중앙대학교 교지편집위원회 중앙문화.

undocumented status. Inconsistent system resulted from different legal provision and policies of different government departments<sup>114</sup>. Based on the CRC and Enforcement Decree of the Elementary and Secondary Education Act, the government is obliged to guarantee children's educational rights regardless of their status; however, each department shows different stance on this. For example, the Ministry of Education, Science and Technology, and the Ministry of Justice have different policies towards undocumented children's rights. The ministry of Education, Science and Technology allows undocumented children's admission to local schools, yeti this still does not guarantee safe environment for children's education. According to the internal guidelines of the Ministry of Justice stipulate that undocumented children who attend elementary, middle and high schools are allowed to stay in Korea until completion of the curriculum.<sup>115</sup> However, there are criticism that this policy is not implemented and that there are still children who are detained and deported back to the home country of their parents.<sup>116</sup> The problem lies in that since this is an internal guideline of the Ministry of Justice, police and immigration officers are not aware of it. The operation of such guideline is not for public, therefore whether children are protected by the guideline is unknown.<sup>117</sup> When children are reported or caught by the immigration office, they are sent to

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<sup>114</sup> 오성배. (2009). 외국인 이주노동자 가정 자녀의 교육 실태와 문제 탐색. *한국청소년연구*, 20(3), 305-334.

<sup>115</sup> 신옥주. (2016). p.291.

<sup>116</sup> 석원정. (2014). 이주아동들의 교육권 실태. 월간 복지동향, (190), 23.

<sup>117</sup> 세이브더칠드런. (2015). 이주아동 인권보장을 위한 정책브리프.

detention center and have to be detained until they decide to return to the country of origin of their parents. Child's detention is violating the CRC which articulates the best of interest of the child. As it is the case, undocumented children is afraid of being detained and deported which sometimes generates rumors around undocumented families. Inconsistent and uncompromised laws and policies between different departments, result in inefficiency of current education legal system. The government should concern such problems and has to introduce consistent and parallel legal and policy provisions that would not drive undocumented children to hesitate to benefit from education system in Korea.

## **2) Discretion of School Principals**

South Korea's education system gives relatively much power to school principals. In many cases, decisions are wholly made by principals.<sup>118</sup> The admission of undocumented children to school is decided by principals too. According to the amendment of the Enforcement Decree of the Elementary and Secondary Education Act, undocumented children became possible to go to school just with presenting their house rental contract and other documents. However, in practice, when undocumented children ask for admission, principals sometimes reject the admission.<sup>119</sup> Principals reject the admission of undocumented children because of a few concerns. Firstly, they are

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<sup>118</sup> 정은아.(2017). 이주아동 교육권에 관한 국내법 현실과 입법적 제언. 외법논집, 41(2): p.162

<sup>119</sup> Ibid.

worried about the children's unstable status. The principals just could not accept the fact that these children are undocumented which they easily consider them as "illegal".<sup>120</sup> Until today, there are prejudice and negative sentiment towards undocumented persons in Korea and it plays as the most important role in assimilating undocumented children into the society.<sup>121</sup> Secondly, they think accepting undocumented children may result in troubles with other Korean students which may be crucial for their school management.<sup>122</sup> It could be seen as a form of discrimination because such opinion comes from the mentality that foreigners tend to have problems with Korean students. Children have to be perceived as children, not based on their nationality, race, religion or immigration status because every child has possibility to have problems with other children. Thirdly, the principals concern about learning ability of undocumented children due to their language and cultural barriers.<sup>123</sup> As current educational rights-based laws are highly dependent on the decision of principals, even though undocumented children have rights to access education, in practice it is not easy. In order to have permission from principals, undocumented children require help of NGOs or Korean friends who can persuade them. Therefore, some children have to commute far from house or live in boarding schools if the school close

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<sup>120</sup> 오성배.(2009). p.321

<sup>121</sup> 문병기, 장임숙, 정동재, 송형주, &박미정. (2018). 국내체류아동에 대한 실태조사. *한국행정학회* p.46

<sup>122</sup> Ibid.

<sup>123</sup> 오성배. (2009). 외국인 이주노동자 가정 자녀의 교육 실태와 문제 탐색. *한국청소년연구*, 20(3), p.321.

to their house would not permit their admission. It is a severe problem for undocumented children. It gives children a feeling of rejection and exclusion from the society. There should be stronger guidelines or legal basis which could enforce the admission of undocumented children.

### **4.2.3 Birth Registration**

Birth registration for children who were born to undocumented parents is the biggest challenge. The South Korean government argue that in case of foreigners, children of foreigners born in Korea can be registered according to the law of the home country even if their parents are undocumented<sup>124</sup>. However, many of undocumented low-skilled migrant worker parents decide not to register their children for possible deportation. Even if the parents attempt to register the child, firstly the embassy of their home country often rejects the registration due to their undocumented status. Every child has rights to be registered upon their birth. However, until today, the status of children is dependent on the parents that once the parents are undocumented, there is higher possibility that the children end up as undocumented as well. Such practice of transferring the status which becomes an intergenerational problem, should be abolished. Secondly, the embassies often urge undocumented parents to return to country on the condition of registration of their children's birth. It appears that the embassies are under pressure to reduce the number of undocumented residents from the Korean

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<sup>124</sup> 정상우, & 박지인. (2018). 이주아동 권리보장을 위한 입법 필요성과 과제. *다문 화사회연구*, 11(1), p.269.

government.<sup>125</sup> Moreover, often embassies ask for an excessive fee for birth registration which undocumented parents are not able to pay. As children do not have a nationality and unable to register their birth, sometimes parents have to decide whether they are going to leave them stateless or send the child back to their home country alone. However, in the later case, it also violates the basic rights of the child's family unity as "*children have the right to live with their parent(s)*"<sup>126</sup> according to Article 9 of the CRC. The South Korean government is blaming the parents for children's statelessness, saying that "they are leaving their children *de facto* stateless for their own benefit, even though they can register their children at their own embassies."<sup>127</sup> Such argument by the government is reckless as they benefited enormously by having low-skilled migrant workers, yet the government would not give any opportunity to stay in Korea after their visa is expired. There should be a minimum level of opportunity for these migrant worker parents to stay in Korea and their children to have rights to be registered. There are concerns that introducing an 'universal birth registration' in a country like Korea where it follows the principle of *just sanguis* would attract more undocumented migrants.<sup>128</sup> Traditional citizenship was strictly dependent on and decided by the individual state regulating territorial and political borders. However, in global era, where the notion of 'rights across borders' arises that citizenship

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<sup>125</sup> 서정애. (2017). p.85

<sup>126</sup> The Convention on the Rights of the Child, Article 9

<sup>127</sup> 정상우, & 박지인. (2018). 이주아동 권리보장을 위한 입법 필요성과 과제. *다문화사회연구*, 11(1), p.271.

<sup>128</sup> Ibid.

is interpreted as ‘rights and status’. Scholar like Seol DongHoon defines citizenship of migrant workers in two perspective of 1) status and 2) rights.<sup>129</sup> Status includes formal nationality, and membership in a political community including permanent residency, while rights defined as “individual rights and obligations that form the foundation of membership such as civil rights, individual rights and political rights, and the institutions and practices that protect them”.<sup>130</sup> Such elements have to be accepted in global era to include and protect migrant workers from being neglected. In this sense, the rights of birth registration for undocumented children should be guaranteed. Universal birth registration does not argue for a nationality. It argues for minimum responsibility of the state for a child’s birth registration immediate after their birth and their rights. Birth registration would not provide their formal status, yet at least they would have minimum access to their ‘rights’ as a member of the society. Undocumented children should be given the same right to register their birth, and the Korean government is obliged to establish a birth registration system not only in terms of human rights but also in accordance with the Convention on the Rights of Children

### **4.3 What are the similarities?**

In the previous section, the paper addressed two different groups of undocumented children. These two groups have different migration background, yet they have similarities in what obstacles they encounter

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<sup>129</sup> Seol, D. H. (2012). The citizenship of foreign workers in South Korea. *Citizenship studies*, 16(1), p.120

<sup>130</sup> Ibid. p.120

in Korea as undocumented children. Firstly, both groups have no access to birth registration. As inaccessibility to birth registration is the major reason that these children live as undocumented. Embassies of both groups often reject the birth registration of these children or some people do not even think about approaching the embassies because of their civil status in Korea. Allowing a child to register their birth is related to the basic human rights. The Korean government is constantly arguing that birth registration for non-Korean children is not possible because the country follows that *jus sanguis* principle of citizenship acquisition. However, it should not be a reason to avoid accepting “universal birth registration” because it has no link to acquiring a nationality. A “universal birth registration” only ensures the country to register a child’s birth and acknowledging its existence rather than granting a citizenship. Secondly, many of undocumented children encounter financial difficulties in accessing education and healthcare service. Current healthcare service and education system that are open to undocumented children are quite limited and unsustainable. For healthcare service, many of them are one-time based treatment and emergence response. Even though a child is able to approach medical service for an emergence, if there is no continuity, it is hard to say that the child is medically protected. Due to the situation, undocumented children have to spend extra to have continuous treatment. For education, undocumented children have admission rights to elementary to high school, however, they have to pay for many different activities. Many of undocumented children have low-level of Korean since their parents are not Koreans, that the children necessitate extra Korean class and tutors. Also, sometimes children have to pay for extra curriculums which is quite a burden for undocumented parents who are financially unstable.

Lastly, access to any local services regardless of healthcare service or education system, is difficult. Such difficulties mostly come from communication and lack of awareness. Even though when undocumented children or parents wanted to approach social services that are guaranteed for them, often they are rejected from enjoying from local service providers. Many of government officers at community centers, doctors or nurses at hospital and teacher at schools do not have thorough understanding their status and also on the rights that they have in Korea. They are the ones that provide such services and enables undocumented children to enjoy their rights, since they are not aware of such rights, they just reject their enquiries or request. It is mainly due to lack of communication between different government sectors and departments. Different departments pursue different policy directions and purposes that frequently they fail to compromise or be constant with their policies. Also, even though the government pursue certain policies, in practice, the practitioners are not aware of it because there is lack of communication between officers or lack of delivering guidelines to the practitioners. These inefficient communication and implementation of laws have to be improved first, so that at least the undocumented children could enjoy their rights under the current legal and political system. Similar situation of two different groups made me wonder about such discrepancies. Obviously, there are legal and political system that allows undocumented children to be able to enjoy their rights according to various international conventions, but they are still marginalized as if the current legal system is an empty shell.

Based on these findings in the previous sections, in the next section, the paper will examine the causes of such discrepancies between international conventions and domestic legal and political system.

## **4.4 What are the differences?**

### **a) Refugees *non-refoulement* and deportation of migrant workers**

The children of refugees and migrant workers face similar situation of statelessness, yet there are still differences. Both groups are vulnerable and marginalized in South Korea but still minimal difference between their status lead them to another form of discrimination. It seems absurd how discrimination exist even between the marginalized group. As aforementioned, migrant worker families are living under the fear of deportation. It influences not just the parents, but also the children. Some people may say their fear of deportation is something that they have to bear in order to live in a foreign country without a paper. However, it is clearly inhumane but also it causes another form of violation of human rights. Especially when it influences the life of children, it becomes even more severe. After the inauguration of the Trump administration in the United States, many undocumented people had to live with the fear of deportation. It was the “self-deportation” theory immigration hawks have been utilized to put pressure on irregular immigrants in different aspects. However, the Trump administration have used direct fear of deportation which is the politics of fear to undocumented migrants.<sup>131</sup> This kind of political tactic is used by the Korean government as well. Undocumented migrant workers and their families’ stability or fear of

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<sup>131</sup> Lind, D. (2017). Fear itself: Donald Trump's real immigration policy. *Vox*.

deportation is highly dependent on the government policy on immigration. Compare to refugee families who are protected under the *non-refoulement* principle, there is no certain ways that could protect the children from deportation. Deporting these children to the country of their parents is unjust as most of them do not speak the language and do not understand the culture as well. Also, deportation causes another severe issue of child detainment. The United Nations Committee on the Rights of the Child clearly stated that children should not be detained based on the migration status of their parents which is violating the rights of the child.<sup>132</sup> Obviously, the internal guideline of the Ministry of Justice states that the government would not detain any children, yet it still happens.<sup>133</sup> As refugee children's status is dependent on their parents which guarantees *non-refoulement* that the children are not likely to be detained. However, children with undocumented migrant worker parents, their status tend to be more vulnerable and easily removed from their life in South Korea.

## **b) Lack of international conventions for migrant workers**

Refugees in Korea are protected under the Refugee Act and the 1951 Refugee Convention, yet low-skilled migrant workers are not protected by neither the domestic laws nor the international conventions.

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<sup>132</sup> Defence for Children. (2016) Call to end child immigration detention. Retrieved from <https://defenceforchildren.org/ending-practice-child-immigration-detention/>

<sup>133</sup> 오성배. (2009). 외국인 이주노동자 가정 자녀의 교육 실태와 문제 탐색. *한국청소년연구*,20(3), 305-334

This thesis has addressed various international conventions that are signed by the South Korean government. However, such conventions were related to basic human rights rather than has a specific target group. Until today, South Korea has not joined any international conventions that protects the rights of low-skilled migrant workers. *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)* is the major international convention that advocates the rights of migrant workers and their families. Based on the convention, migrant workers together with undocumented workers are protected and able uphold their rights. The convention not necessarily agrees or tolerate irregular stay of migrant workers, yet Article28<sup>134</sup> and Article30<sup>135</sup> clearly state to defend the fundamental rights of the children that their rights should not be discriminated by their irregular status. M. Mutuma Ruteere, the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance visited South

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<sup>134</sup> Article28 "Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment."

<sup>135</sup> Article30 "Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment."

Korea in 2014 and he observed difference rights issues with foreigners in different industries. At his conclusion report, he suggested to uphold the rights to migrant workers and recommended government to ratify the ICMW<sup>136</sup>. Even though being a signatory to a certain international convention does not always fully protect the rights of beneficiaries, yet it at least helps the beneficiaries to acknowledge their rights and raise their voices. Refugee Act in Korea is a good example for this case. As South Korea joined the 1951 Refugee Convention in 1992 and as a result the country succeeded in enacting its own refugee law in 2013. The United Nations explains a country's decision to join into certain international conventions indicates "*their intention to take steps to be bound by the treaty at a later date.*"<sup>137</sup> It is the major reason why the international society values the act of joining international conventions of sovereign states. International conventions are necessary especially in the matter of protecting foreigners and minors. Since immigration issue is simply decided by the sovereign state with their determination and it

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<sup>136</sup> Statement of preliminary observations delivered by the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, M. Mutuma Ruteere on 6 October 2014 on conclusion of official visit to the Republic of Korea (2014), Retrieved from <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15140&LangID=E>)

<sup>137</sup> UN. Chapter Four: Becoming a party to the Convention and the Optional Protocol - Joining the Convention | United Nations Enable. Retrieved from <https://www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilities/chapter-four-becoming-a-party-to-the-convention-and-the-optional-protocol.html>

is the area where citizens and the government have capability to exert and practice their power over non-citizen whom are considered powerless in this case. A sociologist Sassen Saskia argues that “*in most of the world, human right are enforced through national law or not at all*”<sup>138</sup> yet the there are changes in human rights norms internationally. Nowadays “*human rights norms get incorporated into national law through an at times slow but effective process*”<sup>139</sup> which is called “transnational legal process”. It shows the importance of international conventions and international human rights regime. Nowadays, national courts utilize international conventions and norms to interpret and adjudicate as human rights instruments. It allows state to scrutiny in issues coping with treatment of individual person within its sovereign state territory. However, for instance, low-skilled migrant workers in Korea do not have such conventions to refer to protect their right, especially for their children, it minimizes their voices.

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<sup>138</sup> Sassen, S. (2008). *Territory, authority, rights: From medieval to global assemblages*. Princeton university press. p.309

<sup>139</sup> Ibid. p.309

## 4.3 Reflection on South Korea's approach

In the previous section, the paper studied the accessibility of rights for undocumented children. In this section, the paper will address the unintroduced elements of international conventions on South Korean domestic laws. There are various legal provisions that the South Korean government fails to adopt into domestic system.

### 1) Healthcare

Firstly, according to the Convention on the Rights of the Child (CRC), Article 25 stipulates to ensure protection or treatment of mental health of children. However, so far, South Korean healthcare system only allows undocumented children to access physical and emergency treatment. The mental stability of undocumented children is highly influenced by their parents but also by their experience too. As many of them live under an unstable environment due to the unstable status of their parents, it impacts their mental stability too. Some of children witness the arrest of their parents by immigration officers or local police.<sup>140</sup> According to a study conducted by experts in the United States argue that “undocumented youth and children of undocumented parents experience a considerable number of mental health problems that if not caused by, are likely to be aggravated by present inhumane immigration enforcement policies and activities.”<sup>141</sup>

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<sup>140</sup> 이주노동희망센터. (2015), p.10

<sup>141</sup> Delva, J., Horner, P., Martinez, R., Sanders, L., Lopez, W. D., & Doering-White, J. (2013). Mental health problems of children of undocumented parents in the United States: A hidden crisis. *Journal of Community Positive Practices*, 13(3), p.30

Furthermore, as many of refugee parents go through post-traumatic stress disorder, PTSD, from their war, or violence experience, it is easily delivered to their children. Many scholars clearly acknowledge the fact that refugee families go through different types of psychological distress which often affects and transmitted to their children in the host country too. The biggest problem is that unlike their children, refugee parents are often isolated from the mainstream society and sudden changed of societal role, they expect their children to be their channel to affiliate themselves with the local community. However, this enforced role for children and furthermore punitive controlling may affect intergenerational conflict and another reason for mental instability like depression and anxiety.<sup>142</sup> Based on these reasons, the enforcement of providing mental health service according to the CRC mandate is necessary and vital for children. Mental healthcare is less emphasized in migrant children studies, yet it should be considered more carefully as it can later influence the intellectual disability of these children.

Secondly, the CRC Article 26 recommends of full realization of social insurance including health insurance for every child yet, not all children in South Korea has access to social insurance nor health insurance. Social insurance for children is important as it protects every child regardless of their social status or economic status of their family. Without a proper social protection for undocumented children, it allows children to experience greater inequality and become more vulnerable in the society.<sup>143</sup> In South Korea, health insurance of children is highly

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<sup>142</sup> Henley, J., & Robinson, J. (2011). Mental health issues among refugee children and adolescents. *Clinical Psychologist, 15*(2), p.53.

<sup>143</sup> Family and child benefits - Social Protection and Human Rights. Retrieved from

dependent on the insurance of their parents. The situation is similar for undocumented children as well. As it is mentioned in the previous section, undocumented refugee children and undocumented children of low-skilled migrant worker parents almost do not have access to local health insurance. Even though the international convention insists to grant health insurance for all children, the South Korean government still has not introduced any measures related to this. As many of undocumented parents fear for high cost of medical service without an access to insurance, children tend to be neglected to get treatment appropriately and it reduces the well-being of children in general. Due to the high cost of health treatment of children, even a simple sickness is not cure at a proper timing in the early stage. It later worsens the health status of the child but also increase the cost of treatment. Child organization like Child Trends argue that early stage treatment is important that “children will receive appropriate and timely care”.<sup>144</sup> There should be a treatment that is preventive rather than an emergency and one-time based approach for children.

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<http://socialprotection-humanrights.org/key-issues/social-protection-systems/family-and-child-benefits/>

<sup>144</sup> Murphey, D. (2017). Health insurance coverage improves child well-being.

## 2) Education

Technically, undocumented children in South Korea do enjoy their rights, however, practically there are still obstacles. Current legal system available for undocumented children still fails to meet the level of international conventions which requires more embracive and indiscriminative approach. So far, Korean education system has been progressing to include non-Korean children like undocumented children. However, it does not treat undocumented children equivalent to Korean national children. According to the 1954 Stateless Convention and 1951 Refugee Convention Article 22 clearly argues the education treatment of stateless persons to be equal to nationals with respect to elementary education. In Korea, when a child turns the age of 6, they receive a letter from the government for the school enrolment of the child to primary school. However, unlike Korean national children, even though undocumented children were born in Korea, since they do not have South Korean nationality, they do not receive any letter or notification from the government. It is clearly a discrimination and such practice must be prohibited by the law according to the international conventions. Furthermore, the CRC Article 28 recommends to make educational and vocational information available to all children, and to take measures to reduce drop-out and encourage regular attendance. Unfortunately, the drop-out rate of undocumented children is higher than the general number of Korean nationals. The National Human Rights Committee recommended the South Korean government for the improvement of educational rights for migrant children which urging the government to find a preventing solution for regular attendance.<sup>145</sup> The committee

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<sup>145</sup> 국가인권위원회 상임위원회 결정 (2011), *이주아동의 교육권 보장을 위한 개선*

argued that many of migrant children drop out of school and the rate is much higher than the average Korean national students. There are many reasons that the students drop-out, and one of them is due to fear for being caught by immigration and financial difficulties. These two major reasons were proven in the previous section that many of them face practical barriers accessing current education system. On this particular issue of high drop-out rates of students, the committee has recommended to strengthen the public education for migrant children to prevent students from leaving the school. The issue is a wake-up call for the education system and also for the schools and teachers. The Article 28 of CRC and the 1954 Stateless Convention and 1951 Refugee Convention Article 22 are very important elements for migrant children, specifically undocumented children as they are often neglected and excluded from South Korea society. However, in terms of education, it should not leave any student behind and exclude them from the system. Education should be available to everyone not just as a system, but to be available for the students to access and enjoy it as much as they can. In this sense, the education system but also the providers of the service have to treat them according to the rights of national of the countries, yet further they should pay more attention in order to minimize the feeling of discrimination and exclusion for these students.

### **3) Birth Registration**

Birth registration and the rights of all children to be registered upon their birth is confirmed and emphasized by UDHR, CRC and Stateless

Conventions. All these conventions assure that every child has right to be registered and right to have a nationality. In highly developed countries, the government and the judiciary are the active players to uphold the rights to immigrants to reach the level of international human rights instruments.<sup>146</sup> However, in Korea, there is no measure that allows children who are not born to a Korean national parent to be registered nor any movement made by the government and judiciary. There were several attempts for legislation proposal by various lawmakers, yet it has failed and still unable to register undocumented children in any legal provisions. One of the biggest reasons of South Korea's hesitance is because the politicians believe that birth registration is highly related to birth rights. As countries like the United States, regardless of the status of the parents, children do have access to nationality which follows *jus soli* or birth rights. However, universal birth registration does not mean that the children who register themselves upon their birth would directly link to their birth rights. Universal birth registration has no link to actual nationality, yet it is a fundamental right that all children must enjoy. It is a system which allows children to access minimum level of rights. There are countries that follows *jus sanguinis* but still allow children to be registered. For example, the United Kingdom automatically grants children medical service number as well as register the children immediately. Even Thailand had amended its law in 2008 and it enabled children including undocumented children to be legally registered upon their birth. Most of the countries that allow

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<sup>146</sup> Fudge, J. (2014). Making claims for migrant workers: human rights and citizenship. *Citizenship Studies*, 18(1), 29-45.

universal birth registration are compulsory at the hospital, yet in South Korea, it is voluntary based, and it is mostly done by parents. It leads to illegal adoption and produces more stateless or invisible children in the country.<sup>147</sup>

There were several recommendations made by the United Nations and different bodies of UN. The Committee on the Rights of the Child and Committee on the Elimination of Racial Discrimination urged South Korea to establish a systemic protection for birth registration of children regardless of the status of their parents. It clearly demonstrates that the current birth registration in South Korea is not at the level of international community. It is the member of both conventions, yet it fails to perform according to them.

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<sup>147</sup> 보편적출생신고네트워크, Retrieved from <http://www.ubrkorea.org/#none>

## **5. Discrepancies between Int'l Conventions and Domestic Implementation**

### **5.1 Causes of Discrepancies**

The previous sections have addressed different rights for undocumented children according to the international conventions and the elements that are available for undocumented children. However, it was evident in the sections that even though there are rights that undocumented children should be able to enjoy, in reality they are inaccessible to such rights. Therefore, in this section, the paper aims to identify the reasons behind such discrepancies. The section answers the research question of “*why does South Korea encounter discrepancies in protecting the rights of undocumented children even though it has the most progressive immigration law in East Asia?*” by analyzing the root causes of discrepancies between international conventions and domestic legal system. Various international conventions that South Korea has joined ensure to uphold human rights of people regardless of their immigrant status. In compliance with international law and basic human rights protection, the provision of access to social services for immigrants can help protect the human rights of undocumented migrant children, who are marginalized in the society. Although access to different social services is considered as basic human rights according to the international conventions, implementation in domestic context may be limited since these international conventions are not legally binding.

### **5.1.1 Scattered Government Approach and Political Will**

Implementing international conventions into domestic context is highly dependent on the government's decision and action. South Korean government's approach to the rights of undocumented children seems insufficient and inefficient. Even though there are international conventions that the government is a State party, there was little movement and commitment made by South Korean government and officers. South Korea's so-called "immigration law" is more of a "foreigner law" than an immigration law.<sup>148</sup> There is no specific department in South Korea that works with immigration agenda yet. There are departments related to foreigners, for example Ministry of Justice, Ministry of Health and Welfare and Ministry of Gender Equality and Family that deals with different policies and issues of migrants including undocumented children. For example, even though the Refugee Act protects the rights of refugee children, yet other than the refugee department of Ministry of Justice which only concentrates on recognition process of refugees, there is no actual department that is in charge of the resettlement or the rights of refugees in general. Also, even though there are departments that are partially in charge of undocumented children, compromise between different departments is difficult. The disagreement is caused because each department only pursues own interest rather than intending to work for the national interest as a whole. Dong-Hoon Seol suggests that South Korea has to remove its 'cubbyhole' which blocks the cooperation between different departments on an issue. His argument of removing the 'cubbyhole' is

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<sup>148</sup> 설동훈, 한국의 이민자 수용과 이민행정조직의 정비, p.103

necessary for undocumented children. As aforementioned, undocumented children have rights to healthcare service and education in Korea according to international conventions and its domestic laws; however due to lack of awareness of such laws, children often experience difficulties. Since there is no single independent department that solely focus on immigration related issues, guideline communication to service providers is not easy and takes longer time for them to be prepared for the service. Among undocumented children, children born to low-skilled migrant workers tend to be more vulnerable since South Korea is not a state party to any of international conventions that guarantees the rights of migrant workers and their families. Furthermore, they are usually excluded from state political agenda; and often their voice is buried by different interest groups. In other words, there is so far no legal device nor mechanism that protect and guarantee their lives and rights to exist in South Korea. Migration and refugee issues are treated as major issues in Europe and other developed countries and are considered as one of the most important political agenda, yet the same issues are less emphasized and neglected by both the government and the public of South Korea. Until today, South Korea paid little attention to immigration issue because it has been one of the strongest homogeneous society. However, as the industrial structure and the movement of people under globalization constantly requires appropriate policies by governments, the country's lack of specialized department is a weakness and needs to be improved. One single department on immigration agenda is necessary in order to avoid provisional solutions. When a designated department gives full attention to immigration issues, it can solely focus on the agenda and take a holistic view on various issues in different perspectives.

## 5.1.2 Clash in Transition

Government's lack of commitment to international conventions reflects the public sentiment and opinions of South Koreans. South Korea had lived as a homogenous society for a long time and such characteristic of the society is evident even in the Constitution of the Republic of Korea. The full text of the Constitution and Article 9 emphasizes the "*unity of the nation*" and that it "*shall strive to sustain and develop the cultural heritage and to enhance national culture.*"<sup>149</sup> The national value is emphasized on the Constitution and gives an impression that nationalism is a cherished value to be upheld. Furthermore, national sovereignty is interpreted narrowly in South Korea, like many other countries in Asia. Even if they benefit from globalization, the transition of mentality from protective nationality and nationalism to universalism and global responsibility is nascent.<sup>150</sup> Such values and emphasis can be drawn back to the period of colonialism<sup>151</sup>. Korea peninsula was liberated from the Japanese colonialism in 1945 and the Constitution was created after the liberation. As a new nation which has just liberated from colonialism, the country's own cultural heritage needed to be protected and upheld that these were reflected on the Constitution. South Korea has a strong tendency of ethnonationalism.

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<sup>149</sup> 서원상. (2011). 다문화사회의 법적 기반에 관한 소고-국제인권법을 중심으로. *법학연구*, 27(1), p.169.

<sup>150</sup> Moon, K. (2016). Why is Asia MIA on refugees?. Retrieved from <https://www.brookings.edu/blog/order-from-chaos/2016/09/22/why-is-asia-mia-on-refugees/>

<sup>151</sup> 서원상. (2011). p.164.

Jerry Z. Muller describes the fundamental idea of the ethnonationalism is that “*nations are defined by a shared heritage, which usually includes a common language, a common faith, and a common ethnic ancestry*”<sup>152</sup>. Such idea upholds and emphasizes the importance of society’s ethnicity which becomes core value of the society. The ethnonationalist view creates boundaries between ethnicities and cultures. This long-rooted behavior of ethnonationalism in Korea has driven the public to be selective to certain immigrants that people feel more familiar, maybe the feeling of homogeneity. From a homogeneous society, the transition to a multicultural society that embraces foreigners is not easy. In this transition, South Korea traps in two liberal paradoxes. Firstly, South Korean government traps in the dilemma between economic benefits of opening its society to foreigners and political benefits by focusing on public opinion which often oppose immigrants. As in the beginning of 1990s, South Korea opened its labour market to foreigners especially to immigrants from developing countries in Asia. The Industrial Trainee Program started in 1990s, and the South Korean government profited by paying migrant workers less than average salary of Koreans based on migrant workers’ “trainee” status. However, the government did not expect their departure to illegal jobs in search of higher salary, consequently becoming “undocumented” settlers.<sup>153</sup> On one hand the

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<sup>152</sup> Muller, J. Z. (2008, Mar). Us and them. *Foreign Affairs*, 87, 18-n/a. Retrieved from <http://lps3.search.proquest.com.libproxy.snu.ac.kr/docview/214298683?accountid=6802>

<sup>153</sup> Foreign workers’ policies and issues in South Korea: Focus on the workers from the South East Asian Region, Tan Soo Kee, pg. 552

migrant workers have made contribution to South Korea's economic growth; but on the other hand, the public opinion on migrant workers has been negative and created stereotype and prejudice towards low-skilled migrant workers. Secondly, South Korean government's lack of commitment lies on "the co-ethnic dilemma", or tension between "de-ethnicization" and "re-ethnicization." Liberal democracies do not tolerate discrimination based on races or nationalities, still, it is practiced when preference for co-ethnic migration increases. Many scholars argue that South Korea has coped with the first dilemma, but the second dilemma is still a concern today.<sup>154</sup> In global era, states tend to concern about membership in a state.<sup>155</sup> Not only in South Korea, but Christian Joppke argues that "*international migration in the contemporary context of human rights and transnationalism is impinging on citizenship as state membership in two opposite directions*".<sup>156</sup> On one hand, where immigration enforces states to de-ethnicize citizenship, the citizenship is no longer dependent on filiation, and residency and birth place become more important. On the other hand, where emigration happens, which goes towards opposite direction of re-ethnicized citizenship, links between generations and an intergenerational community are emphasized. As South Korea has been one of the strongest homogeneous society, it had been tolerant to Korean ethnic migrants such as North

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<sup>154</sup> Lee, H. K. (2010). Preference for co-ethnic groups in Korean immigration policy: a case of ethnic nationalism?. *Korea observer*, 41(4), p.2.

<sup>155</sup> Joppke, C. (2003). Citizenship between de-and re-ethnicization. *European Journal of Sociology/Archives Européennes de Sociologie*, 44(3), 430

<sup>156</sup> *Ibid.* p.430

Korean defectors or *Chosonjok*. Acceptive attitude towards Korean ethnic migrants shows South Korea's "re-ethnicizing" citizenship, which is evident in approving overseas Koreans visa<sup>157</sup> for Choseonjok which allows them to acquire permanent residency easily and in granting automatic citizenship to North Korean defectors. However, unlike ethnic Koreans, migrant workers or refugees have little possibility to achieve visa or permanent residency. South Koreans' anti-sentiment towards foreigners, was shown clearly when 500 Yemeni refugees came to South Korea's resort island Jeju. According to the Lowy Institute, "*public opposition to accepting the Yemenis included 700,000 signatories to an e-petition to President Moon Jae-in's office, with earlier surveys suggesting about half of the Korean public opposed granting the Yemenis refugee status*".<sup>158</sup> Furthermore, around 1,000 people gathered in the heart of Seoul to protest against refugees.<sup>159</sup> Scholars and media have shown concerns over such outrage and argue that the negative response by the public is because of the country's obsession with 'pure blood'. Furthermore, it become more painful to accept immigrants due to prejudice on certain race and religions.<sup>160</sup> Such opposition movement

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<sup>157</sup> EasyLaw. (2018) Retrieved from

<http://www.easylaw.go.kr/CSM/CsmOvPopup.laf?csmSeq=1256&ccfNo=1&cciNo=1&cnpClsNo=1>

<sup>158</sup> Rich, T., & Bison, K. (2018). Answering the question: should South Korea accept refugees?. Retrieved from <https://www.lowyinstitute.org/the-interpreter/answering-question-should-south-korea-accept-refugees>

<sup>159</sup> Ibid.

<sup>160</sup> 한국일보.(2018) 예멘 난민 보는 시선... 40대이상 "전쟁 난민" 2030 "불법 취업자". Retrieved from <http://www.hankookilbo.com/News/Read/201806291395351626>

shows how South Korea is going through a tough transition from homogeneous society to a multicultural society. Hardcore protective mentality also limits the Korean society and the government to accept universal human rights which has to be beyond national sovereignty. Acknowledging universal human rights raises the question of citizenship and nationality of whom to become a member of the society. Also, citizenship interprets the agenda in which the negotiation of self-interest and public concern are met and compromised, mutually by the government and by the citizens as the interest of citizens are core to the evaluation of what is good for everyone. South Korea's defensiveness towards immigrants, especially to undocumented children, shows the power of being a Korean national. Citizenship gives people a privilege to raise a voice on different agendas which is not accessible for noncitizens. Usually "citizens exemplify the norm, the standard, the instantiation of national interest where noncitizens do not"<sup>161</sup> in that citizens sometimes easily exclude noncitizens and arbitrarily take away the rights of noncitizens. In global era, the rights for everyone should be guaranteed regardless of one's citizenship or nationality. However, it always clashes with national sovereignty and public opinion of the citizens. For South Korean government, the implementation of human right international conventions became a litmus test to show its capacity as a global actor by solving clashes between its international norms and national prioritized values. Benhabib sees Kant and Arendt as skeptical about the establishment of human rights in international relations

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<sup>161</sup> Bhabha, J. (2014). Child migration and human rights in a global age (Vol. 22). Princeton University Press.p,66.

because they have failed to think beyond the possibility of a sovereign nation (natural) as a political foundation. Further, she argues that therefore, establishing a local and international legal system is the most important task to solve the contrary of human rights and to provide a practical solution to ensuring rights to have rights<sup>162</sup>. Based on her idea, international conventions are important and necessary for nation states to overcome the contrary of human rights and to offer genuine rights for everyone. Korea is no longer living an era of homogenous society, but it has to move on to multicultural and global society. In order to overcome this dilemma, the country must constantly push itself to the level of international standard that its ethnonationalism should not be a weapon to violate the rights of others. South Koreans' ethnonationalism has changed into defensiveness to immigrants, and it has again transformed into delay in implementing international conventions. This process of transition is painful, yet in order for South Korea to be more active in international community as an important actor, the government has to be prepared and equipped.

### **5.1.3 Political Direction of Multiculturalism**

The multicultural policy of Korea has become a major agenda for polity since the beginning of 21<sup>st</sup> century. The multiculturalism has become important and is emphasized more than ever before within the South Korean society. The country is constantly and quickly becoming multicultural. However, the country's approach to multiculturalism is

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<sup>162</sup> Benhabib, S. (2004). *The rights of others: Aliens, residents, and citizens* (Vol. 5). Cambridge University Press.

slightly different from other countries like the US, Australia, and Canada. Jack Jin Garry Lee and John D. Skrentny argue that the multiculturalism that South Koreans are talking about is different from the view of the West.<sup>163</sup> They argue that the West interprets multiculturalism as the “*equal recognition and inclusion of persons of different groups in public life*” which is considered different in Korea.<sup>164</sup> The emergence of multicultural policies have increased with the rise of international marriages. It was usually the case of ‘foreign wives’ marrying Korean men. As a result, the word “multicultural family”<sup>165</sup> became popular with the government’s active promotion of ‘foreign wives’. It is absolutely hypocritical because family unification is not guaranteed for migrant workers who are considered low-skilled workers. They are not allowed to have their family to live with them with such status. The “multicultural family” started to increase with the promotion of the Korean government. The local government groups introduced Korean farmers to *Chosonjok*<sup>166</sup> women. Since then, the government made several changes to its national policies and the biggest change was regarding residency. By granting F-2 visas to foreign wives, government allowed foreign wives to work and be naturalized, which means they could apply for permanent residency. This change stipulated their permanent stay in Korea, even to the point that even if they get divorced,

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<sup>163</sup> Lee, J. J. G. L., & Skrentny, J. D. (2015). Korean multiculturalism in comparative perspective. *Multiethnic Korea*, 301-329.

<sup>164</sup> *Ibid.* p,302

<sup>165</sup> *Ibid.*

<sup>166</sup> Chinese, who are ethnically Korean

they no longer have to return to their country. 2003 was the year this change – foreign wives’ rights to stay in Korea having been guaranteed constitutionally – was made, and ever since, the country has slowly started to move towards multiculturalism. More recently, the governments’ focus has been concentrated on the children of “multicultural families.” Few decades have passed since the first generation of international marriage generation, and their children have become members of South Korean society. The government had to introduce different laws and policies to integrate them into Korean society without any discrimination. It brought diversity in Korean society and introduced different cultural richness. However, government’s narrowed focus on “multicultural family” gave a wrong perspective on “multiculturalism” in Korea. The Korean word of “*damunhwa*” became a word that explains “multicultural family”. This multicultural family only includes families of which one of the parents is Korean and of Korean blood. With such social atmosphere, when undocumented children whose parents are non-Korean desire to have access to any of social security programs, they are often rejected because they are not from “multicultural family.” Such perspective is highly influenced by and linked with the problem of ethnonationalism and liberal paradox that are already addressed in the previous section. Due to such problems, South Korean government opted for “*damunhwa*” which does not perfectly neglect the idea of ‘pure blood’ but also embrace the notion of ‘multiculturalism’. There should be additional progress on legal and policy foundation for general foreigners regardless of their ethnicity, religion, and social status. Government’s focus on only a certain group of migrants is a discrimination. As the government’s multicultural focus is heavily on ‘foreign wives’, they are the biggest

beneficiaries of the services that target ‘multiculturalism’ in Korea.<sup>167</sup> There have been attempts to break down such focus, with several lawmakers proposing bills on the rights of undocumented children. In 2014, a bill was proposed by Chung-Rae Jung and ten other lawmakers to guarantee the basic rights of undocumented children. The bill stipulates the status of immigrant children and allows them to receive medical benefits and compulsory education.<sup>168</sup> However, the bill was scrapped eventually.

Current laws and policies that are selective should be amended so that more diverse and various group of people can be included in the society. Government’s current stance on undocumented children and refugees appears irresponsible because they can barely be included in the boundary of the government’s limited multicultural policies.

We have to question the current multicultural policies of South Korea. The government’s constant boundary-making between “our” children and “their” children deprived the rights of children in general. Even though South Korean government had fought to achieve multiculturalism in the society, there was no genuine change in the society but it instead framed entire society with a biased multiculturalism. The government’s distorted political direction has created inequality among immigrants and drove marginalized people to become even more marginalized. In order for the government to implement the international

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<sup>167</sup> 박성혁, & 성상환. (2008). 우리나라 다문화교육정책 추진현황, 과제 및 성과 분석 연구.

<sup>168</sup> 임미나.(2014) *"이주아동 권리 보장" 아동복지법 개정안 발의*. Retrieved from <https://www.yna.co.kr/view/AKR20141124067000372>

human rights convention properly, the government should embrace more generous and equal laws and policies. The multicultural era is, in other words, an era of globalization. In the era of globalization there is an international commitment to comply with international conventions. Therefore, South Korea carries an international duty to keep the contents of the U.N. immigration treaty, which Korea has already joined.<sup>169</sup>

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<sup>169</sup> 최경옥. (2012). 한국에서의 다문화가정 아동의 교육권. *공법학연구*, 13(1), p. 332.

## **6. Conclusion**

South Korea was the first Asian country to establish its own refugee law. Its unconventional decision had surprised the world and raised the expectation on improvement of human rights in Asia. However, few years has passed since Refugee Act was introduced, and there are still concerns over South Korea's approach to protect human rights of immigrants, especially that of the undocumented children. South Korea is a party to different international human rights conventions, such as Universal Declaration of Human Rights, the Convention on the Rights of the Child, 1951 Refugee Convention, 1951 Convention Relation to the Status of Refugees, and the 1954 Convention Relating to the Status of Stateless Persons. With such international commitment declared, it is a national obligation to implement the conventions in domestic legal system and policies. Unfortunately, there are still doubts about the country's local implementation. In this thesis, the paper sheds a light on three major human rights issues that undocumented children face: their inability to access healthcare service, education system, and birth registration. In first section, the paper introduced various international conventions as a framework to assess South Korea's human rights protection. It introduced different articles that stipulate the rights of healthcare service, education, and birth registration. In the second part, the paper looked at the legal and policy provisions that are available for undocumented children residing in Korea. It found out that there are several accessible provisions for undocumented children in healthcare and education system, but none in birth registration rights. In the third section, the paper introduced actual case study to investigate how these domestic laws are accessible for undocumented children in practice. The

study showed that even though in theory there are several protection mechanisms and guarantees of rights for children, in practice, these were not easy to access due to lack of awareness, financial difficulties, and fear of exposing their undocumented status. The thesis also discovered that until today, several elements that are listed on international conventions are not fully implemented in South Korean laws and policies thus the protection for undocumented children is still incomplete. This clearly demonstrates the discrepancies between international conventions and domestic implementation that exist in South Korea. Lastly, the paper attempted to answer the research question of “why does South Korea encounter discrepancies in protecting the rights of undocumented children even though it has the most progressive immigration law/ migration law in East Asia?”. The thesis argued that such discrepancies are caused by several reasons. Firstly, the paper suggested that the discrepancy is deepened by lack of single department that is in charge of immigration policy including refugees and undocumented migrant workers. Since there is no single and united department that is working for immigration issue, the political and legal approach towards undocumented children becomes scattered and inefficient. Secondly, since the country is in a transition process from a homogenous society to a multicultural society, the government is trapped in liberal paradoxes. The anti-sentiment on foreigners, especially on refugees and undocumented migrant workers slow down the process of implementing and fulfilling the international responsibility of South Korea. Lastly, current multicultural policy of South Korea hinders the society from going towards multiculturalism that embraces undocumented children. South Korea’s multicultural policy is biased in that it excludes the children of refugees and migrant workers instead of

embracing “every” foreigner. Based on the thesis, it is evident that the current legal and political system of South Korea is not at the level of international conventions. This shows the need for country’s further efforts to acknowledge and respect the international human rights norms. It is also evident that further research is necessary and there are still questions that need to be answered. Firstly, there should be more thorough and research-based studies on undocumented children in South Korea that include other categories of stateless children. Secondly, there are many documents that are released by NGOs and international organizations, yet there needs to be more papers that are researched and put together by the South Korean government. Upholding the rights of undocumented children is going to be a litmus test for South Korean society that the country must be more active and concerned about the issue.

## Bibliography

- Arendt, H. (2017). The origins of totalitarianism. London: PenguinBooks, p.279.
- Benhabib, S. (2004). The rights of others: Aliens, residents, and citizens (Vol. 5). Cambridge University Press.
- Benhabib, S. (2005). Borders, boundaries, and citizenship. *PS: Political Science & Politics*, 38(4), 673-677.
- Bhabha, J. (2009). Arendt's Children: Do Today's Migrant Children Have a Right to Have Rights?. *Human Rights Quarterly*, 31(2), 410-451. doi: 10.1353/hrq.0.0072
- Bhabha, J. (2014). Child migration and human rights in a global age (Vol.22). Princeton University Press.p,66.
- Bloom, T. (2013). Problematizing the Conventions on Statelessness (pp. 719). UNU-GCM.
- Bueno de Mesquita, B. and Smith, A. (2012). Domestic Explanations of International Relations. *Annual Review of Political Science*, 15(1), p.2.
- Call to end child immigration detention - Defence for Children. (2016). Retrieved from <https://defenceforchildren.org/ending-practice/child-immigration-detention/>
- De Chickera, A. (2010). Unravelling anomaly (pp. 63-69). *London: Equal Rights Trust*.
- Delva, J., Horner, P., Martinez, R., Sanders, L., Lopez, W. D., & Doering-White, J. (2013). Mental health problems of children of undocumented parents in the United States: A hidden crisis. *Journal of Community Positive Practices*, 13(3), p.30
- English.hani.co.kr. (2018). South Korea first Asian country to enact refugee legislation. [online] Available at: [http://english.hani.co.kr/arti/english\\_edition/e\\_international/849911.html](http://english.hani.co.kr/arti/english_edition/e_international/849911.html) [Accessed 10 Nov. 2018].
- Evans, P., Jacobson, H. and Putnam, R. (2010). Double-edged diplomacy:international bargaining and domestic politics. Berkeley, Calif:*University of California Press*, p.15.
- Family and child benefits - Social Protection and Human Rights. Retrieved from <http://socialprotection-humanrights.org/key-issues/social-protection-systems/family-and-child-benefits/>
- Fudge, J. (2014). Making claims for migrant workers: human rights and citizenship. *Citizenship Studies*, 18(1), 29-45.

- Hahn, C. H., & Choi, Y. S. (2006, July). The Effects of Temporary Foreign Worker Program in Korea: Overview and Empirical Assessment. In Korea and the World Economy Conference, Seoul, Korea.
- Hani.co.kr. (2018). 한국에서 태어난 셋째는 ‘무국적’... 기본권에도 국적이 있나요. [online] Available at [http://www.hani.co.kr/arti/society/society\\_general/860606.html](http://www.hani.co.kr/arti/society/society_general/860606.html) [Accessed 10 Nov. 2018].
- Henley, J., & Robinson, J. (2011). Mental health issues among refugee children and adolescents. *Clinical Psychologist*, 15(2), p.53.
- Humanrights.gov.au. (2018). What is the Universal Declaration of Human Rights? | Australian Human Rights Commission. [online] Available at: <https://www.humanrights.gov.au/publications/what-universal-declaration-human-rights> [Accessed 10 Nov. 2018].
- IOM. (2017). South Korea Welcomes 30 Myanmar Refugees from Thailand. Retrieved from <https://www.iom.int/news/south-korea-welcomes-30-myanmar-refugees-thailand>
- Joppke, C. (2003). Citizenship between de- and re-ethnicization. *European Journal of Sociology/Archives Européennes de Sociologie*, 44(3), 429-458.
- Kang, S. W. (2010). Multicultural education and the rights to education of migrant children in South Korea. *Educational Review*, 62(3), 287-300.
- Kim, M. S., Song, I. G., An, A. R., Kim, K. H., Sohn, J. H., & Yang, S. W. (2017). Healthcare access challenges facing six African refugee mothers in South Korea: a qualitative multiple-case study. *Korean journal of pediatrics*, 60(5), 138-144.
- Kim, M. S., Song, I. G., An, A. R., Kim, K. H., Sohn, J. H., & Yang, S. W. (2017). Healthcare access challenges facing six African refugee mothers in South Korea: a qualitative multiple-case study. *Korean journal of pediatrics*, 60(5), 138-144.
- Lee, H. K. (2010). Preference for co-ethnic groups in Korean immigration policy: a case of ethnic nationalism?. *Korea observer*, 41(4), p.2.
- Lee, J. J. G. L., & Skrentny, J. D. (2015). Korean multiculturalism in comparative perspective. *Multiethnic Korea*, 301-329.
- Lind, D. (2017). Fear itself: Donald Trump's real immigration policy. *Vox*. Retrieved from <https://www.vox.com/policy-and-politics/2017/9/14/16293906/trump-immigration-deportation>

- Moon, K. (2016). Why is Asia MIA on refugees?. Retrieved from <https://www.brookings.edu/blog/order-from-chaos/2016/09/22/why-is-asia-mia-on-refugees/>
- Moon, K. H. (2015). South Korea's demographic changes and their political impact. *East Asia Policy Paper*, 6(10).
- Muller, J. Z. (2008, Mar). Us and them. *Foreign Affairs*, 87, 18-n/a. Retrieved from <http://ps3.search.proquest.com.libproxy.snu.ac.kr/docview/21298683?accountid=6802>
- Murphey, D. (2017). Health insurance coverage improves child well being.
- Nho, C. R., Yoon, S., & Ko, J. (2018). Voices of refugee children in Korea. *Children and Youth Services Review*, 94, 606-616.
- Picum. (2008). Undocumented children in Europe: *Invisible victims of immigration restrictions*.
- Picum. (2008). Undocumented children in Europe: Invisible victims of immigration restrictions.
- Refugee Council of Australia. (2018). The Refugee Convention – Refugee Council of Australia. [online] Available at: <https://www.refugeecouncil.org.au/getfacts/international/international/system/the-refugee-convention/> [Accessed 10 Nov. 2018].
- Refugees and international law. Retrieved from <https://legalanswers.sl.nsw.gov.au/hot-topics-77-refugees/refugees-and-international-law>
- Rich, T., & Bison, K. (2018). Answering the question: should South Korea accept refugees?. Retrieved from <https://www.lowyinstitute.org/the-interpreter/answering-question-should-south-korea-accept-refugees>
- Rich, T., & Bison, K. (2018). Answering the question: should South Korea accept refugees?. Retrieved from <https://www.lowyinstitute.org/the-interpreter/answering-question-should-south-korea-accept-refugees>
- Sardelić, J. (2015). Romani Minorities and Uneven Citizenship Access in the Post-Yugoslav Space. *Ethnopolitics*, 14(2), 168- 169. doi:10.1080/17449057.2014.991154
- Sardelić, J. (2017). The vulnerability of Roma minorities to statelessness in Europe ~ Denial and denigration: how racism feeds statelessness ~ Minority Stories. Retrieved from

<http://stories.minorityrights.org/statelessness/chapter/the-vulnerability-of-roma-minorities-to-statelessness-in-europe/>

- Seol, D. H. (2012). The citizenship of foreign workers in South Korea. *Citizenship studies*, 16(1), p.122
- Seol, D. H. (2012). The citizenship of foreign workers in South Korea. *Citizenship studies*, 16(1), 119-133.
- Seol, D. H., & Skrentny, J. D. (2009). Why Is There So Little Migrant Settlement in East Asia? 1. *International Migration Review*, 43(3),578-620.
- Smith, A., & LeVoy, M. (2017). *Cities of Rights: ensuring Health Care for Undocumented Residents* (p. 8). Brussels: PICUM. Retrieved from [http://picum.org/wp-content/uploads/2017/11/CityOfRights\\_Health\\_EN.pdf](http://picum.org/wp-content/uploads/2017/11/CityOfRights_Health_EN.pdf)
- The Kyunghyang Shinmun. (2018). The Reality of Unregistered Immigrant Children: We Cannot Ignore Them Any Longer Retrieved from [http://english.khan.co.kr/khan\\_art\\_view.html?artid=20180507015137&code=790101](http://english.khan.co.kr/khan_art_view.html?artid=20180507015137&code=790101)
- Tucker, J. (2013). Questioning De Facto Statelessness by Looking at De Facto Citizenship. SSRN Electronic Journal, 3. doi: 10.2139/ssrn.2317141
- UN. (1948). Universal Declaration of Human Rights, Retrieved from [http://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/ng.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/ng.pdf)
- UN. Chapter Four: Becoming a party to the Convention and the Optional Protocol - Joining the Convention | United Nations Enable. Retrieved from <https://www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilities/chapter-four-becoming-a-party-to-the-convention-and-the-optional-protocol.html>
- UNHCR. (1954) UN Convention Relating to the Status of Stateless Persons, p.6.
- UNHCR. Ending Statelessness. Retrieved from <http://www.unhcr.org/stateless-people.html>
- 권태훈. (2018). 불법체류자 30 만 명 넘어...취업 알선 브로커 등 집중단속. Retrieved from [https://news.sbs.co.kr/news/endPage.do?news\\_id=N1004804047](https://news.sbs.co.kr/news/endPage.do?news_id=N1004804047)

- 권용진, & 임영덕. (2011). 일반 논문: 미등록 이주아동 의료접근권에 관한 고찰. *고려법학*, 63, 243-285.
- 문병기, 장임숙, 정동재, 송형주, & 박미정. (2018). 국내체류아동에 대한 실태조사. *한국행정학회* p.46
- 박성혁, & 성상환. (2008). 우리나라 다문화교육정책 추진현황, 과제 및 성과 분석 연구.
- 박현정. (2013). [사회일반] 세상 어디에도 존재하지 않는 아이들. Retrieved from [http://h21.hani.co.kr/arti/society/society\\_general/35689.html](http://h21.hani.co.kr/arti/society/society_general/35689.html)
- 변진경. (2018). 국내 난민 아동은 어떤 모습으로 살아가고 있을까. Retrieved from <https://www.sisain.co.kr/?mod=news&act=articleView&idxn=33116>
- 서원상. (2011). 다문화사회의 법적 기반에 관한 소고 국제인권법을 중심으로. *법학연구*, 21(1), p.169.
- 서정애. (2017). 한국 거주 난민 아동의 권리-아동 교육권을 중심으로. *재외한인연구*, 41, p.81-85
- 세이브더칠드런. (2015). 이주아동 인권보장을 위한 정책브리프. [online] Available at: [https://www.sc.or.kr/archives/report\\_detail.do?pageDetail=67797](https://www.sc.or.kr/archives/report_detail.do?pageDetail=67797) [Accessed 11 Nov. 2018].
- 신옥주. (2016). 미등록 이주아동의 인권제고를 위한 비교법적 연구. *유럽헌법연구*, p.289-291
- 오성배. (2009). 외국인 이주노동자 가정 자녀의 교육 실태와 문제 탐색. *한국청소년연구*, 20(3), 305-334.
- 오수진. (2018). "국내 이주아동 권리 국제기준 미달... '구분·배제' 정책 탓." Retrieved from <https://www.msn.com/ko-kr/news/national/%EA%B5%AD%EB%82%B4-%EC%9D%B4%EC%A3%BC%EC%95%84%EB%8F%99-%EA%B6%8C%EB%A6%AC-%EA%B5%AD%EC%A0%9C%EA%B8%B0%EC%A4%80-%EB%AF%B8%EB%8B%AC%E2%80%A6%EA%B5%AC%EB%B6%84%C2%>

- 윤인진. (2010). *한국인의 이주노동자와 다문화사회에 대한 인식 (어울누리 학술연구 1)* (Vol. 1). 한국학술정보/이담복스.
- 이슬. (2018). 사회보장서비스에의 접근성 및 정보제공의 필요성, 난민인정자처우현황보고대회, p.9
- 이중희, & 구은미. (2016). 이주 아동의 인권에 대한 연구. *공공사회연구*, 6(4), 297-323.
- 장진숙. (2011). *이주아동의 법적 지위와 인권보장에 관한 소고*. *유럽헌법연구*, 341-384.
- 정상우, & 박지인. (2018). 이주아동 권리보장을 위한 입법 필요성과 과제. *다문화사회연구*, 11(1), 261-293.
- 정석호. (2017). "의료보험도 안돼" 복지 사각지대 놓인 '미등록 이주아동'. Retrieved from <http://www.nocutnews.co.kr/news/4890814>
- 정은아. (2017). 이주아동 교육권에 관한 국내법 현실과 입법적 제언. *외법논집*, 41(2): 143-167
- 조윤영 (2018). 한국에서 태어난 셋째는 '무국적'...기본권에도 국적이 있나요. Retrieved from [http://www.hani.co.kr/arti/society/society\\_general/860606.html](http://www.hani.co.kr/arti/society/society_general/860606.html)
- 최경옥. (2012). 한국에서의 다문화가정 아동의 교육권. *공법학연구*, 13(1), p. 332.
- 최영미. (2018). *미등록 이주아동의 건강권과 향후과제*. (재) 경기도가족여성연구원, p.11

## 국문초록

한국은 단일민족 사회에서 다문화 사회로 전환하는 과정에 있다. 그러한 변화는 국가가 미등록 아동들을 포함하는 "모든 사람"의 권리를 보장할 것을 필요로 한다. 한국에서 난민과 미등록체류자의 수가 증가함에 따라, 미등록 또는 무국적 아동의 수는 계속해서 증가하고 있다. 그러나 한국 정부가 다양한 국제 인권 협약의 협약국임에도 불구하고 외국인, 특히 미등록이주 아동에 대한 처우는 여전히 차별적인 것으로 보인다. 따라서, 이 논문은 정치적, 법적 측면을 바탕으로 미등록이주 아동의 권리를 다루는 것을 목표로 한다. 이 논문은 두 그룹의 미등록이주 아동들을 소개하고 비교하는데, 첫째는 난민 부모에게서 태어난 아동들과 둘째는 미등록이주 노동자들의 부모에게서 태어난 아동들이다. 이 논문은 1951년 난민 협약, 유엔 무국적자에 관한 협약, 아동권리협약과 같은 다양한 국제협약을 연구하여, 이 협약에 가입함으로써 더욱 무거워진 대한민국의 국제적 책임을 다루고 있다. 이 논문은 미등록이주 아동에 대한 건강권, 교육권 그리고 출생 등록의 기본 권리를 연구하고 이러한 권리에 대한 국제 협약의 핵심 요소들을 조사한다. 한국의 관련 정책과 법률을 조사함으로써, 이 논문은 국제 협약이 한국의 국내 법과 정책에 완전히 구현되지 않았다는 것을 발견했다. 또한, 이 논문은 이민의 배경을 가진 두개의 다른 아동 집단이 유사점을 공유하고

결국 유사한 인권 유린을 경험한다는 것을 발견했다. 이러한 연구결과에 대해 이 논문은 국제 협약과 국내 이행 사이의 불일치에 대한 뿌리 깊은 원인을 추가로 확인하고 추적하며 그에 대한 해답을 찾으려고 한다.

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주요어: 미등록아동, 이주아동, 난민, 이주노동자, 국제협약

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