



2016

English Research Paper – 08

# A Study on the Improvements of the Legal System for Protection of Children of Multicultural Families

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# A Study on the Improvements of the Legal System for Protection of Children of Multicultural Families<sup>1)</sup>

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## I. Purpose and outline of study

Amid the advancement of multicultural features in our society, while international marriages have been declining, the numbers of children of multicultural families, foreign-born children and refugee children are increasing. Nevertheless, the legal system fails to expect the changes occurring in the environment surrounding them and to provide appropriate protection and support. The current legal system reveals problems with regard to adoption and dissolution of adoption as well.

In a corner of this society, unregistered immigrant children, children without guarantee of sojourn, and children who filed the application for refugee status but are not recognized are placed in the blind spots of human rights, not being included in the existing legal system and without their status guaranteed. Before they come

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1) This paper is the summary in English of "A Study on the Improvements of the Legal System for Protection of Children of Multicultural Families", by Hyo Jean Song, Soyoung Kim, So-Young An, Yeon-Jae Kim (2015), Korean Women's Development Institute.

under protective laws, they should first be guaranteed basic rights as prescribed by law.

In seeking measures to solve such problems, this study—unlike the viewpoint of expansion of support for multicultural families in preceding studies—approached the problem by dividing subjects into one group for whom the kinds of support corresponding to changes in their environment failed to be provided and thus require expansion of support, and the other group who are placed outside the current legal system and thus guaranteeing their legal status and rights is urgent.

With regard to the current status of multicultural families, through the review of relevant laws, interviews with children of multicultural families and their parents, and analysis of the results of expert consultation, issues and improvement tasks were identified; and reflecting the results, legal system improvement measures were determined for the two realms of support expansion and guaranteeing of rights. Hereinafter, measures to improve the legal system for the protection of children of multicultural families proposed by this study are introduced.

## II. Plan to improve legal system

### I. Measures for support expansion

#### A. Protection of children going through the changes and breakup of families

- ☐ Protection of children in the case of divorces in multicultural families

For the healthy growth of children of broken multicultural families, the necessity for counseling such families and education of parents at the time of the divorce crisis is growing. After divorce, many parents of those families are troubled about playing the role of parents, finding difficulties in cultural difference, language, rearing and educating children. There even occur such cases where immigrants by marriage are not willing to exercise visitation rights due to their lack of understanding. Therefore, a counseling or education procedure that persuades them into exercising visitation rights is required; and national expansion of ‘support projects in connection with family courts for the families in divorce crisis’ that provide counseling, etc. to those families that filed for divorce as well as the measures to connect them with Multicultural Family Support Centers need to be promoted. A plan to prepare applicable provisions under the Multicultural Families Support Act for support of multicultural families in crisis before and after of divorce needs to be considered. This study also suggested an amendment of the Multicultural Families Support Act.

For designation of the person with the right to foster and the person with parental authority after divorce, understanding of the special conditions of relevant multicultural families and consideration of diverse factors for the welfare of children from divorce to their

rearing are required. In this regard, the understanding and expertise of family fact-finding officers are growing more important, and the measures to increase human resources with expertise should be developed.

In the case where an immigrant by marriage has become the person with visitation rights, not the person with the right to foster, that person can sojourn within 1 year at present, but considering the period is limited, permission for sojourn or permission for extended sojourn for the exercise of visitation rights need to be specified under the Immigration Act. To this end, this paper prepared an amendment to the Immigration Act.

In addition, in the process of divorce in multicultural families, the problem of secretly abducting children and taking them to home country for fear of not being designated as the person with the right to foster occurs. If the countries where the children are sent are member states of the Hague International Child Abduction Convention, support for the return of children is available, but in the case of non-member states of the convention, the agreements under the convention are not available. And the reality is that the home countries of most immigrants by marriage are Vietnam, China, Philippines, which are non-member states. Under the circumstances, applicable provisions that enable the punishment for bringing children outside the country without the agreement of the other party or a decision of family court, and those that enable the issuance and restriction of the use of passport or immigration control need to be prepared.

There exist rare cases where single parents of multicultural families receive child rearing expenses, and the absence of child



rearing expenses might jeopardize the livelihood of such families, which will directly influence the welfare of children. Although the help of the manager of payment of child rearing expenses is available, problems in language and accessibility to information, and lack of information and understanding of the institution make utilization of them difficult. In this regard, provision of foreign language services for single parents of multicultural families in the homepage, and support and consideration of their condition of not being familiar with the legal system concerning child rearing expenses in Korea at the time of filling out relevant forms are required.

☐ Protection of foreign-born children in terms of adoption and dissolution of adoption

At present, no separate provisions are provided concerning the cases where adoptive parents who are nationals of the Republic of Korea adopt children who are foreign nationals. However, due to lack of information of home countries of children, etc., there occurs such cases where adoptions are made without satisfying such requirements as consent or approval of the third party of the home countries of children, and thus leave room for much confusions, including disputes concerning the effect of adoption etc. Therefore, from the perspective of protecting children of multicultural families, legislation of the procedure for international adoption should be made as soon as possible. Legal and institutional improvements that will complement the procedures for general adoption or full adoption under Civil Act that are currently applied in the adoption of foreign-born children, including the requirement of a child rearing period before adoption for the aim of judging the willingness to

establish a parent-child relationship and the bond between would-be adoptive parents and children, or the requirement of a completion of programs designed to educate parents prior to adoption, etc., should be made.

Since the breakup of a multicultural family directly leads to dissolution of adoption, special protection for the child is required. Considering that cases where female immigrants by marriage are rearing foreign-born children during marital life or after divorce with Korean nationals are not currently covered by the Single-parent Family Support Act, there is a need for them to be included among those eligible for the support under the Act as long as there are no reasons attributable to foreign-born children in the dissolution of adoption without regard to whether they have acquired Korean nationality or not. In addition, although it is not easy to judge whether it is appropriate for the welfare of adopted children not to allow the dissolution of the relationship of adoptive parents and adopted children in case they are children of a previous marriage when divorcing a second spouse, with the prospect of the growing number of cases of dissolution of adoption of foreign-born children in the future, in-depth studies with more accumulated cases will be necessary.

#### ☐ Child abuse and domestic violence in multicultural families

When foreign-born children, with a high probability of having complex problems from language to status of sojourn, etc., fall victim to domestic violence or child abuse, it is difficult for them to report the situation or to receive relief. Therefore, their use of shelters or self-supporting facilities where they could safely reside in

separation from abusing parents regardless of their status of sojourn should be guaranteed, and in preparation for such cases, legal measures to support living expenses or education subsidies should be prepared. In addition, facilities where female immigrants by marriage and their children can enter and heal their minds and bodies are insufficient. Therefore, applicable provisions for providing customized support for them, including a separate counseling program for their children (foreign-born children included) in consideration of the characteristics of multicultural families, need to be additionally prescribed by the Multicultural Families Support Act.

#### **B. Expansion of those eligible for the support for multicultural families and single-parent families**

##### ☐ Expansion of subjects of the support for multicultural families

Most children of diverse immigrational backgrounds are revealed to be in urgent and dire need of protection and support, currently being placed in blind spots of the legal system. This paper, after referring to preceding studies on the expansion of subjects of the support for multicultural families in the idealistic manner, suggested a mid- to long-term plan to comprehensively expand the subjects of the support among immigrants. As the second best plan, this paper also proposed the preparation of amendment in the 「Multicultural Families Support Act」 concerning special provisions for refugee children.

##### ☐ Expansion of subjects of the support for single-parent families

In the case of foreign-born children, if their multicultural families break up before they acquire nationality through adoption, they go through difficulties without being included among the subjects of the

support for single-parent families. In case applicants for refugee status or humanitarian residents are single parents who have to rear infants, the current permission for employment activity under the Refugee Act has no meaning. Accordingly, in case applicants for refugee status and humanitarian residents are single parents, measures to provide minimum child rearing support to enable them to engage in employment activities are required. This paper proposed inclusion of foreign-born children and refugee children among those eligible for the support in accordance with special provisions concerning foreigners in the 「Single-parent Family Support Act」.

### C. Improvement in protection and support of refugee children

- ☐ Improvement of the lack of humanitarian consideration for children in the process of application for refugee status

In the process of the application for refugee status, consideration for minors, including infants, and minor refugees who are not accompanied by their parents, is very insufficient. The deportation room is not managed on the government level, thus its overall level and consideration for minor children is in a blind spot. With regard to this situation, we suggested provision of special cases in the 「Refugee Act」 that would minimize the waiting time in the deportation room through fast-track processing from the reception of application for refugee status to submission to the examination of refugee recognition, particularly for pregnant women and those accompanying minor children. Besides, specification of the support of state-appointed defense attorney, etc. for minor refugees who are not accompanied by their parents, operation and management of the affiliated deportation room not with airlines but with the Ministry of Justice, establishment

of grounds for guidelines and monitoring for the refugees accompanying minor children and minor refugees, etc. about food, clothing and shelter were proposed.

- ☐ Additional support for children in supporting living expenses for applicants for refugee status

In accordance with the Refugee Act and Enforcement Decree of the same Act, it is prescribed that living expenses, etc. may be provided within six months from the date the application for refugee status is submitted; however, no such consideration as additional support for pregnant women and women who gave birth to children can be found. This paper quoted and introduced the measure, proposed by a preceding study, of newly inserting a provision prescribing payment without fail where applicants for refugee status are pregnant women or accompanying children 3 years old or younger (full years counted in) in article 17 of the 「Enforcement Decree of Refugee Act」.

- ☐ Improvement of treatment and support of humanitarian residents and their children

International practice concerning the treatment of humanitarian residents is corresponding to the treatment of persons recognized as refugees, but protection of humanitarian residents in Korea in accordance with the current Refugee Act is insufficient. Thus, there have been arguments that specific provisions that prescribe inclusion of humanitarian residents among those eligible for social security and basic living security are necessary. This study also suggested expansion as the second best plan, since it is desirable to include at

least those who are recognized as humanitarian residents into special cases for foreigners, given the purpose and character of the Emergency Aid and Support Act.

## 2. Measures to guarantee rights

### A. Improvement of birth registration

In case both parents are foreigners, their children are not entitled to the coverage under the Act on the Registration, etc. of Family Relationships even if they were born in the Republic of Korea since they are not Korean nationals, and thus there is no way they can report the birth of a child. Those without status of sojourn are to go through the channel of either being deported to their home countries if they have no status of sojourn within 90 days after birth through a broker or their children also become illegal immigrants. The same applies to refugees as well since even recognized refugees as well as applicants for refugee status and humanitarian residents find approaching the consulate of their home country dangerous; accordingly, a birth report is practically impossible for them.

When birth registration is not possible, there exists no way of proving the status, age and family relationships of a child, and the child cannot be secured of the rights to education and medical treatment and cannot be kept from such crimes as child abuse, exploitation, etc., either. Thus they are driven out to the blind spots of social protection. For improvement of the problems in birth registration of immigrant children, two measures were suggested.

One is the measure to prescribe special cases of birth reports for foreign children in the current Act on the Registration, etc. of Family Relationships. Through the review of a preceding study (Kim Chul-hyo, et al. 2013: 100) and the 3rd conference of experts, the method of utilizing the system of ‘filing reports of special cases’ was suggested. A more fundamental method requires an improvement in the direction where a universal birth registration system that will enable all births of children that took place domestically to be registered. To this end, an improvement should be made by introducing a birth notification system where medical institutions notify administrative institutions of births of children, and thus the registration of their births is made. A birth register in accordance with the notifications of births of persons who are not Korean nationals and certificate issuance are also required. In addition, public officials who are notified of the births of children and register them should be exempted from the obligations to notify (Article 84 of the Immigration Act) illegal sojourns, and all the individual information concerning birth registration should be thoroughly protected.

#### **B. Improvements of problems in sojourn of immigrant children**

The possibility of deportation of the children whose parents do not have the status of sojourn leads to an insecure life, infringement on even the minimal right to education, and, more fundamentally, obstruction of human rights and healthy growth of children. For parents who are rearing minor children, permission for their sojourn needs to be considered on a humanitarian level of protecting children and guaranteeing children’s right to family unification under the Convention on the Rights of the Child. To this end, a fundamental solution is

to exclude minor foreign children from subjects of deportation either through setting exceptions to the rules concerning the subjects of deportation under the current Immigration Act (Article 46), or examination of approaching the matter through the provision concerning special cases on sojourn permission (Article 61 of the Immigration Act). In accordance with article 76 (Special Cases on Permission to Sojourn) of the Enforcement Decree of the Immigration Act, it is prescribed that sojourn is permitted in view of humanitarianism, but no provision is prepared concerning specific conditions. In the case of Japan, conditions considered in view of humanitarianism are specified in the guidelines. For the special cases concerning permission to sojourn in Korea to be effective, specific exemplification should be stated, so that they can be served as the basis for policies. In this context, this paper has prepared an improvement proposal for the 「Enforcement Decree of the Immigration Act」.

### C. Improvement of detention of children

At present, minors who are subjects of deportation can be interned in the foreigner internment room. Thus, such cases where infants are interned together with their parents are happening. Article 36 of the UN convention on the rights of the child prescribes that “the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”. However, under the current legal system, internment of children is a premise in internment of foreigners with provisions concerning steps to be taken for children, etc. With regard to minors, the principles should be cancellation of



internment or protective supervision, and only in exceptional cases should they be protected in a family room as a last resort. To make improvement in such direction, an alternative system to internment that regards cancellation of internment and protective supervision as principles should be introduced as soon as possible. In regard to the environment of the family room, there should also be consideration in terms of heating, meals, and medical treatment in preparation for exceptional cases of accommodating children or pregnant women, etc.

#### **D. Securing the rights to medical treatment and education**

The matters of birth registration and sojourn examined earlier are a starting point and premises in guaranteeing such basic rights of children as the right to medical treatment and right to education. For growing children, losing time and chance itself is a serious impediment, and measures to secure their rights should necessarily be found. With a view to guarantee the right to education, admission into school—which is currently at the discretion of principals—should be altered to be mandatory, and in this regard this study suggested the amendment of the 「Enforcement Decree of the Elementary and Secondary Education Act」.

### III. Conclusion

As described thus far, this paper specifically proposed legal and institutional improvement measures for the protection of the children of multicultural families, dividing them into two categories of support expansion measures and measures to guarantee their rights. The summary of improvement measures are as follows: <Table 1> and <Table 2>.

<Table 1> Support expansion measures

Support Expansion Measures	
Problems	Improvement measures
Protection of children in the case of divorces in multi-national families	<ul style="list-style-type: none"> <li>- Development of cooperation between family courts and the Ministry of Gender Equality and Family (Multicultural Family Support Centers) for strengthening support for families in crisis before and after divorce, and preparation of applicable provisions under the Multicultural Families Support Act (New insertion of article 7-2 in the Multicultural Families Support Act)</li> <li>- Expansion of human resources, including family fact-finding officers, who have understanding of and expertise on multicultural families in divorce procedures</li> <li>- Guarantee of stable sojourn for the exercise of visitation rights: stipulation of the extension of period of sojourn under the Immigration Act (New insertion of article 25-4 in the Immigration Act)</li> <li>- Preparation of measures to prevent and solve the problem of child abduction</li> </ul>
<ul style="list-style-type: none"> <li>- Support of multicultural families in crisis before and after divorce required</li> <li>- Problem in designation of the person with parental authority and the person with the right to foster</li> <li>- Problem in exercising visitation rights</li> <li>- Problem of abduction of children</li> </ul>	
Protection of foreign-born children in relation to adoption and dissolution of adoption	<ul style="list-style-type: none"> <li>- Legislation of international adoption procedure in domestic legal system for the implementation of the Hague International Child Adoption Convention</li> <li>- Strengthening measures to protect foreign-born children through the completion of parent education program before adoption, etc.</li> <li>- Inclusion of foreign-born children dissolved from adoption without reasons attributable to them among those eligible for the support under the Single-Parent Family Act</li> <li>- Granting simple naturalization status to foreign-born children dissolved from adoption without reasons attributable to them (New insertion of paragraph 3 of article 6 in the Nationality Act)</li> </ul>
<ul style="list-style-type: none"> <li>- Problem of protecting minor foreign-born children in adoption procedure</li> <li>- Problem of protecting minor foreign-born children in dissolution of adoption</li> </ul>	

Support Expansion Measures	
Problems	Improvement measures
Child abuse and domestic violence in multicultural families	<ul style="list-style-type: none"> <li>- Grounds for counseling, support, etc. for children of multi-cultural families and foreign-born children should be specified.</li> </ul>
Expansion of subjects of the support provided for multi-cultural families and single-parent families	<ul style="list-style-type: none"> <li>- New establishment of a provision concerning applicable special cases for refugee children under the Multicultural Families Support Act (New insertion of article 14-3 in the Multicultural Families Support Act)</li> <li>- Inclusion of foreign-born children who have been reared in multicultural families and children of refugee families in the range of those eligible for the support provided for single-parent families (Amendment of paragraph 3 of article 5-2 of the Single-parent Family Support Act)</li> </ul>
Improvement of protection and support for refugee children	<ul style="list-style-type: none"> <li>- Specification of special cases for fast-track processing of pregnant women and infants in application for refugee status and humanitarian consideration in the provision of food, clothing, and shelter (New insertion in paragraph 6 of article 6 of the Refugee Act)</li> <li>- New establishment of a provision concerning additional payment of living expenses for those accompanying pregnant women or children aged 3 or younger (full years counted in) in providing living expenses for applicants for refugee status (New insertion in the paragraph 2 of article 17 of the Refugee Act).</li> <li>- Inclusion of humanitarian residents and their children in the range of foreigners eligible for emergency aid and support (Amendment of subparagraph of 3 article 1-1 of the Emergency Aid and Support Act)</li> </ul>
<ul style="list-style-type: none"> <li>- Lack of consideration for children in the process of application for refugee status</li> <li>- Lack of consideration of pregnant women and children in the support of living expenses</li> <li>- Necessity to improve treatment and support of humanitarian residents and their children</li> </ul>	

Source: Prepared by research staff

〈Table 2〉 Measures to guarantee rights

Measures to guarantee rights	
Problem	Improvement Measures
Problems in birth registration	<ul style="list-style-type: none"> <li>- Encouragement of a system that files special cases and preparation of birth register of foreigners so as to prove their births in Korea through new establishment of special provisions in the Act on the Registration, etc. of Family Relationships (Amendment of paragraph 1 of article 15 of the Act on the Registration, etc. of Family Relationships, and new insertion of article 69-2 in the Enforcement Rule of the same Act)</li> <li>- New establishment of special provision on the registration of domestically born foreign children and their certification so as to prepare grounds for registration of births in Korea of foreigners under the Act on the Registration, etc. of Family Relationships (New insertion of article 4-3 in the Act on the Registration, etc. of Family Relationships)</li> <li>- Introduction of a system of birth notification by medical institutions. (New insertions of article 44-2, and paragraph 2 of article 122 in the Act on the Registration, etc.)</li> </ul>
Problems in the sojourn of immigrant children	<ul style="list-style-type: none"> <li>- Specification of a provision excluding minor foreign children from the subjects of deportation in the Immigration Act (New insertion of article 46 in the Immigration Act)</li> <li>- Amendment of special provision concerning the permission of sojourn in order to guarantee children's right to family unification (New insertion of article 76, paragraph 1, subparagraph 4)</li> </ul>
<ul style="list-style-type: none"> <li>- Deportation of minor children</li> <li>- Guarantee of right of children to family unification</li> </ul>	
Problems in child internment	<ul style="list-style-type: none"> <li>- In principle, minors should not be interned in foreigner internment rooms, and they are subjects of cancellation of internment or protective supervision. Pregnant women and foreigners who have to rear and protect minors are, in principle, the subjects of cancellation of internment or protective supervision as well, and they may be interned in family rooms only as an exceptional means. (Amendments of paragraph 1 of article 51 and paragraph 6 of article 63)</li> </ul>
Guarantee of rights to medical care and education of immigrant children	<ul style="list-style-type: none"> <li>- Development of such measures as admission into regional health insurance, etc.</li> <li>- Alteration from the discretion of principals concerning admission into and transfer of schools to obligations under the Enforcement Decree of the Elementary and Secondary Education Act. (Amendment of paragraph 2 of article 19 of the Enforcement Decree of the Elementary and Secondary Education Act)</li> </ul>

Source: Prepared by research staff