

Protection of Human Rights of the Unregistered Children in the Republic of Korea - Focusing on the Universal Birth Registration -

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I. Introduction

The United Nations Convention on the Rights of the Child (UNCRC) guarantees cultural, political, social and civil rights of every child in the world. Article 7 of UNCRC stipulates 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. Furthermore, the same article requires the states parties to implement such rights to their domestic law especially for the case where the child would otherwise be stateless.¹ The International Covenant on Civil and Political Rights (ICCPR) article 24 clause 2 and clause 3 stipulate that every child shall be registered immediately after birth, shall have a name and has the right to acquire a nationality.²

The matter of unregistered children and birth registration is important in terms of protecting the basic rights of every child. Making sure that there is no child who is not registered is the very first step to ensure protection of human rights of every child. Even though one state has excellent human rights protection mechanism and policies, it would be meaningless if children are not registered, thus not receiving protection from such human rights protection mechanism. In the legal society, it is almost impossible for one person to enjoy fine life under appropriate protection, if he or she does not have nationality.

The Republic of Korea, as the member state of the United Nations and as the party to the convention and the covenant, has the responsibility to ensure the protection of the rights of every child born in its territory. In case of the Republic of Korea, it is required for parents to register the newborns within 30 days after birth through the community service center.³ Such policy has a flaw that there is no way for the government to figure out the newborn if the parents do not register them through the community service center. As such policy and possibility shows, it is undeniable that there does exist blind spot where the government has failed to protect the rights of the children. Such unregistered children are not legally registered and thus cannot receive appropriate, basic legal protection by the state. Furthermore, those children who are not registered may not be provided with proper education and medical service. Simply put, unregistered children exist biologically but does not exist legally.

When it comes to the foreigners, immigrants and refugees, this issue becomes much more complicated. As of May 2018, there are 2,246,137 foreigners residing in the Republic of Korea. Among them, 136,914 people are under the age of 19.⁴ According to such statistics, the number of people from foreign states that are living in the Republic of Korea has been gradually increasing. It shows that it is important for the South Korean government to protect such increasing number of children who are born in the Korean territory under the parents who are from outside of the Korean territory.

Despite such responsibility, South Korean government has not fulfilled its duty in providing nationality and registration to every child who were born in the Republic of Korea. As mentioned above, there are 136,914 foreign children living in the Republic of Korea. However, there are numerous children who are not involved in these statistics. Since they are unregistered, they are not under the legal protection and are not ensured basic human rights. As such contradiction to the international convention and covenant has been known to other states as

¹ United Nations Convention on the Rights of the Child, article 7

² International Covenant on Civil and Political Rights, article 24

³ Family Relations Registration Act of the Republic of Korea, article 44

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well, the Republic of Korea has been requested from other states to provide solution for this issue. In latest cycle of Universal Periodic Review (UPR) of the United Nations Human Rights Council (UNHRC), the most representative recommendation that Republic of Korea received from other states regarding the issue of human rights of children was to adopt ‘universal birth registration’, regardless the status of the parents.⁵

II. Universal Birth Registration

In the United States of America, Canada and Australia, the universal birth registration is stipulated in the domestic law. Especially in case of Australia, even though they follow personal principle in the aspect of providing the nationality, which is the same as the policy of the Republic of Korea, the birth registration is immediately conducted right after the birth regardless of granting the nationality.

Universal birth registration refers to the mechanism in which every child is registered and thus given nationality, regardless of its place of birth and parent’s legal status. Since first recommendation and even in November 9th, 2017, the date of consideration for the third cycle of Universal Periodic Review on the Republic of Korea, the South Korean government has technically been rejecting to adopt such mechanism. Instead, the Republic of Korea suggests that it is possible for the children born in the Korean territory under foreign nationals can be registered in the embassy of nationality that either of parents hold. In addition, during the consideration the government of the Republic of Korea indicated that it is possible to register as a foreigner. The South Korean government is technically denying adopting universal birth registration, pointing out two policies.

However, such excuses cannot justify the denial to accept and adopt universal birth registration. First off, there are states that does not have the embassy in the Republic of Korea.⁶ If parents are nationals of such states, it is impossible for the child of theirs to be registered. In addition, in terms of refugees who were the subjects of the persecution in home country, it would be very demanding for them to visit the embassy for the registration. Even though such people visit the embassy, there is a high possibility that embassy could deny the registration. Second, the foreigner registration is not official enough and lacks public confidence to meet the requirements provided by international schemes. Such two excuses made by the South Korean government shall not justify that the Republic of Korea may refuse bringing in the universal birth registration.

In the Republic of Korea, those who oppose the implementation of the universal birth registration indicate that such policy would rather harm not only the single mothers who do not want their delivery to be known to others, but also the newborns themselves as well. When universal birth registration is adopted, the delivery done in the hospital will make the registration of the newborn to be conducted immediately. However, there are people who do not want such unilateral, mandatory registration might try to give birth in places other than the hospital, which can be highly detrimental to both mother and the infant. Such side effect is the most important element why South Korean government is unwilling to adopt the universal birth registration.

Even though it is true that universal birth registration would protect the human rights of numerous infants and children, such concern mentioned above is also understandable. Among such controversy, states should make decisions according to several principles. First, every state has its sovereignty that it may decide which policy they would implement, unless it is

⁵ Iran, Kyrgyzstan and Turkey recommended the Republic of Korea to establish the universal birth registration

⁶ About 60 states including Croatia, Slovenia and Syria does not have embassy in the Republic of Korea. Instead, they have their embassies in the capital cities of the near states such as Tokyo and Beijing so that they can also cover the matters related to Seoul and its nationals living in the Republic of Korea.

detrimental to its nationals. Second, every policy retains the possibility of side effect, and states must adopt it when it is calculated that the aggregate advantage created by the human rights protection is larger than the risk of the side effect.

III. Universal Periodic Review

Summing up such principles, I believe that the Republic of Korea should take two-track approaches in terms of birth registration. For the infants born under Korean nationals, since there is a possibility of side effect as mentioned above, the South Korean government should be very considerate when implementing the universal birth registration to such people. Nevertheless, it does not mean that government should not intervene in the process of birth registration. Current civil law and family relations registration act of the Republic of Korea creates the blind spot where infants are not registered due to domestic matters and thus not being able to receive basic provisions from the government. The international society should respect the decision made by the South Korean government since the Republic of Korea has the sovereignty to decide what kind of policy the government would implement on its nationals. Still, the South Korean government should come up with complementary measures that would minimize the number of cases where birth registration is not conducted.

The approach should be different for the children of refugees or immigrants. If the South Korean Government does not implement universal birth registration for such children, their integrity would be severely damaged. If they are not registered, they would become stateless people. In the 21st century where nation-states and the sense of belonging are emphasized, it is fatal to live without any nationality.⁷ Those unregistered children of immigrants and refugees have to suffer from discrimination, social bias and barrier of culture and language. In such case, the responsibility of the state to protect its people born in its territory justifies the compromisation of the state's sovereignty in order to protect the basic human rights of every human being. However, such compromisation must be minimized.

The Universal Periodic Review (UPR) is one of the useful international human rights mechanisms to verify whether the South Korean government is protecting the human rights of the children of its Korean nationals and implementing universal birth registration for the children of refugees and immigrants. UPR would work as a tool for surveillance and exerting pressure. The international society can periodically figure out how well the Republic of Korea is guaranteeing the human rights of the child.

UPR, as the first universal mechanism that deals with exhaustive human rights of every member country, it brought about active and voluntary participation by member states including the Republic of Korea. UPR mechanism induces member states to voluntarily evaluate its human rights status quo. It has been different from other top-down approaches in that member states themselves can set their own goals in both short and long term. Rather, each member state willingly prepares for the review and. In addition, UPR works as a platform where a state can explain the details of domestic human rights issues to other UN member states. By adopting UPR, the South Korean government may explain to other member states why the government is having difficulties in implementing the universal birth registration and express its willingness to cooperate with the international society in order to abide by the international treaties and conventions as a responsible member state of the United Nations.

Nevertheless, UPR mechanism has several disadvantages in itself. As a review system, it does not have legally binding power on sovereign state. It could be evaluated as positive aspect

⁷ Even though there is a counter argument that the importance of border and nation-state is diminishing in the 21st century where globalization is proceeding, the possession of nationality is vital for human being to live in the world consists of numerous nation-states. Nowadays, protection of human rights and provision of public goods are mostly conducted by the central government of the nation state. Without nationality, no person can receive such benefit given by the state.

that each member state voluntarily participates in such mechanism. However, it is also obvious that there is nothing much this mechanism can do when the sovereign member state refuses and rejects to follow recommendations given during the review process. If the Republic of Korea denies implementing the universal birth registration for the children born under foreign nationals, there is nothing that UPR can do other than just keep recommending the South Korean government to implement the universal birth registration.

Furthermore, as there are so many other member states to evaluate, there is no sufficient time to go through deep, thorough verification on Republic of Korea. Since verification and review are done in very short time with each entity given little time to assess, those cannot be integral and there could be miscommunication between the Republic of Korea and troikas. The review process might become meaningless if the verification is not done thoroughly enough. If so, there would still remain numerous unregistered children living in the Republic of Korea without any provision from the government.

Another disadvantage in applying UPR for the better human rights of children in the Republic Korea is that inevitably, as a review process that is conducted under UNHRC, politics is involved in UPR. Certain state deliberately does not criticize certain state if two states are in very close relationship or if one state is afraid of retaliation in other sectors. As UPR is a human rights assessment mechanism, such politicization is highly detrimental. Other member states would not want to damage the relationship with the Republic of Korea in the process of pointing out defects of the South Korean government in guaranteeing the human rights of the children. It would be very naive to believe that states would prioritize the human rights of unrelated children before their crucial national interests.

IV. Conclusion

The Republic of Korea has the responsibility to protect the human rights of every child born in its territory. It signed for both United Nations Convention on the Rights of the Child (UNCRC) and the International Covenant on Civil and Political Rights (ICCPR). Such two pillars for the rights of the children stipulates 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.

However, it is questionable whether the Republic of Korea has been successfully fulfilling such responsibility. It is undeniable that the South Korean government implemented systemic, delicate domestic policy to minimize the number of unregistered children. Nevertheless, it is true that there does exist a number of children who are unregistered that they cannot be provided with basic human rights.

The civil law of the Republic of Korea requires the parents to register within 30 days from right after the birth of a newborn voluntarily. It makes it possible for even children born under Korean nationals to be excluded from registration. Foreign nationals including refugees and immigrants are suffering from much more devastating conditions. The South Korean government has been incessantly requested from other international neighbor states to implement universal birth registration. However, the South Korean government refused to do so and indicated that the Republic of Korea is allowing its foreigner to go through foreigner registration and that the foreign nationals can register its newborn by visiting the according embassy. However, such excuses cannot justify not implementing the universal birth registration since such supplementary measures is defective in protecting the integrity and human rights of every child born in the Republic of Korea.

In the process of the Republic of Korea adopting universal birth registration for every child born under immigrants and refugees living in the Republic of Korea, cooperation and communication between the South Korean government and the international society is important. Since the Republic of Korea is a sovereign state, the international society cannot and should not unilaterally coerce the South Korean government to implement the universal birth registration. Thus, the decision should be made by the South Korean government to whether implement universal birth registration for children born under the South Korean nationals or

not. However, in the case of children born under the foreign nationals, they would be positioned under severe threat if their registration and human right is not guaranteed. Therefore, it is the responsibility of not only the South Korean government but also the entire international society to provide universal birth registration and nationality for those children born under refugees and immigrants.

I sincerely hope that the Republic of Korea shall accept the recommendation to adopt universal birth registration for children born under the foreign nationals including the refugees and immigrants to protect every child born in the South Korean territory and provide them with every necessity for children's bright future. The South Korean government should recognize that the state has such responsibility assigned by the international treaties.

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