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## The Current Situation of Korean-Chinese Children and the Challenges to Their Right to Education\*

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### Abstract

Many Korean-Chinese are staying in Korea for economic reasons, and unlike other foreign unskilled workers, their children are allowed to accompany them. The right to education is a premise of human dignity and other fundamental rights; it is desirable to recognize at least the right to the necessary conditions for receiving compulsory education for the Korean-Chinese children living in Korea. In addition, pursuant to the UN Convention on the Rights of the Child, the Korean government has an obligation to guarantee all children free elementary education and public education. The current legislation lacks a basis for the obligations of the state or parents with foreign nationality to provide compulsory education to their children. Also, as the current legislation lacks specificity in the contents of the law, implementation of the policy is left to the discretion of the state. Efforts should be made to ensure that as many Korean-Chinese children as possible enjoy practical educational rights. Although it is important for the judiciary to actively consider the right to education in the Constitution and in international treaties, legislative efforts are also important. As cases in foreign countries suggest, cooperation between the private sector and the government should be considered.

■ **Keywords** : Korean-Chinese, the right to education, immigrant children, the UN Convention on the Rights of the Child, education and Korean nationality

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\* This work was supported by the National Research Foundation of Korea grant funded by the Korean Government (NRF-2015-S1A3A2-046431).

## Introduction

Every child is a child of all of us. Responsibility for the healthy growth of children and adolescents is shared by the child, the parent, the community and the nation, with emphasis on the role of the local community and the state—and it is this last responsibility which has been overlooked so far. However, in the realm of migration, the judgment of public power over who can cross the border of the state and the determination of the adult parent always supersedes the fundamental rights of the child. Despite the UN Convention on the Rights of the Child (UNCRC) stipulating “the [child’s] right to express his or her own views freely in matters affecting the child,” children and adolescents are not recognized as being able to make their own judgments about their future when parents decide to cross the border; they are either to move or to stay involuntarily.

The Korean government does not allow foreign workers to bring their families; however, reverse migration of overseas Koreans due to economic globalization is one of the migration phenomena in the 2000s and has brought a large number of migrant children to Korea. The entry of overseas Koreans is allowed relatively easily because it can be used as a temporary measure for solving the problems of Korean society with less social cost compared to the entry of foreigners without social networks. The Ministry of Employment and Labor encourages the influx of overseas Koreans in the manufacturing, housekeeping, and caregiving occupations. These occupations are seemingly harmless to the domestic labor market, as domestic workers prefer not to do unskilled labor (Lee, 2010). Furthermore, the Ministry of Justice and the Ministry of Employment and Labor have been considering ways to reduce the entry age limit of the Visiting Work Visa (H-2) to maintain or expand the number of immigrant workers since 2017. Migrants with a Visiting Work Visa (H-2) are allowed to stay with their spouse and minor children (Lee, 2016), which is a privilege that does not apply to other migrant workers under the Employment Permit System.

However, the underage children of overseas Koreans are suffering a lot of neglect without any attempt being made to solve this problem. It is generally assumed that Korean-Chinese children have learned Korean through their Korean parents. However, the reality is that most of these children are unable to communicate in the Korean language, just like married immigrant's children (Kim, 2015). The language barriers common to these immigrant children, the difficulty they have in following the school curriculum, and the lack of parental support make it difficult for Korean-Chinese children to adapt to life in Korea (Lee & Kim, 2017; Nam & Kim, 2017), which may be depriving them of their right to education and the opportunity to grow up to be upstanding citizens.

For the last decade, Korean society has endeavored to provide official and informal support for multicultural families. However, multicultural families as perceived by Korea do not include overseas Koreans and their minor children. Since Korean multicultural discourses and policies rest on top-down central government measures, “multicultural family” is defined differently depending on policy departments, sometimes causing conflicts between concepts. Such confusions are transferred to the private sector and the local community. For instance, while children of married immigrant families born in Korea are subject to multiculturalism programs according to the Ministry of Gender Equality and Family, overseas Koreans with high language barriers due to their migrant background are not recognized as migrants because of their overseas Korean status (Kim, 2012).

Therefore, this study aims to examine how the crucially important right to education is guaranteed as the most important foundation to enable minor children of Korean-Chinese—the unique group with the largest representation among overseas residents in Korea—to grow up as members of Korean society. The first part will explore in detail how the Constitution and international treaties guarantee the right to education; this is necessary in order to indicate the direction the education system should follow with regard to Korean-Chinese children. The next

part will examine the current state of education and current legal system for Korean-Chinese children in comparison with the specific guarantees to the right to education as stipulated by the Constitution and international treaties. This will analyze the practical problems that overseas Korean children experience and the limitations of the legal system to address them. Lastly, it will look into how other countries cope with the problems regarding education for children of migrant backgrounds, which will provide references to approaches to address this problem in Korean society.

## **The Right to Education in the Korean Constitution and International Treaties**

### **Constitutional Right to Education**

#### **Characteristics and contents of constitutional right to education.**

The guarantee of fundamental rights in the Constitution can be said to be the goal of all national functions, including legislation. One of the most important fundamental rights recognized in modern society is the right to education. Furthermore, education is an imperative premise for the values that the Constitution seeks to achieve. To properly exercise fundamental rights such as freedom of occupation and full expression of personality, one must be supported by appropriate education, so ensuring adequate educational opportunities is an essential element in achieving a healthy democracy. The principle of the cultural state pursued by the Constitution cannot be achieved without facilitation of the right to education (Han, 2015). The Constitutional Court also recognized the right to education as a methodical basis for realizing the ideology of the cultural and democratic welfare state. They referred to the right to education “as the basis of other fundamental rights,” and saw it as the prerequisite for the enjoyment of equal opportunity by the people, for their human worth and dignity, and for the right to pursue happiness (the Korean Constitutional Court Decision, 90 Hun-Ga 27, February 11, 1991).

Article 31 of the Constitution regulates the constitutional right to education. Paragraph 1 of the above provision stipulates that “all citizens shall have an equal right to receive an education corresponding to their abilities.” This may be seen as belonging to the typical classification of social rights requiring active facilitation and support of the state, in contrast to civil liberties that mean freedom from the state (Cheon, 2014).

On the other hand, others insist that the right to education is not limited to the sphere of social rights considering the historical background of education-related fundamental rights. The process of formation of fundamental rights in the West and the enactment of the first Constitution in Korea showed a combination of the liberty right of private education and the social right involving state intervention in the public education area (Hong, 2014). Even if the conception of education as a social right prevails, there is no need to deny the view education as a liberty right either. In particular, there is a benefit to recognize the right to freedom of education in terms of the right to choose a school or the right to choose other methods of education (e.g., home schooling) instead of a school (H. Kim, 2016). The right to education as a liberty right is the freedom to receive or not to receive education freely without the intervention of the state.

The important issue regarding the right to education for overseas Korean children is the social right issue. As a social right, the right to education starts from the equal right of children to be educated “corresponding to their abilities” in Article 31 (1) of the Constitution. The Constitutional Court interprets “ability” in this provision as mental and physical ability, and “equality” as non-discrimination. In other words, the right to education without discrimination based on factors other than mental or physical ability such as gender, religion, or wealth is the content of the right to education deriving from Article 31 (1) of the Constitution. The state is obliged to “actively implement policy for practically equal education” corresponding this right. However, Article 31 does not guarantee the right to receive education that includes

special contents corresponding to superior mental and physical ability (the Korean Constitutional Court Decision, 93 Hun-Ma 192, February 24, 1994).

On the other hand, if students find it impossible to follow the school education due to factors such as communication problems in Korean language, there is a question of whether the students or their parents can demand a policy to address the problem. Although this declaration does not directly address language education of immigrant children, the Constitutional Court of Korea declared with regard to the right to education in accordance with Article 31 (1) that this right means equal opportunity of education, but it does not include the right to require specific courses (the Korean Constitutional Court Decision, 2003 Hun-Ma 173, November 24, 2005). If the right to education is understood only in terms of opportunities to attend school, it may be difficult to include the right to education policy for students in special situations such as overseas Korean children.

Article 31 (2) and (3) of the Korean Constitution are provisions on compulsory education. Paragraph 2 of the same Article states that “all citizens who have children to support shall be responsible at least for their elementary education and other education as provided by Act” and sets out parental obligation, stating that elementary education and the education prescribed by law shall be mandatory. Paragraph 3 imposes an obligation on the state to ensure the free compulsory education (the Korean Constitutional Court Decision, 90 Hun-Ga 27, February 11, 1991). Currently, compulsory education is composed of 6 years of elementary education and 3 years of secondary education in accordance with Article 8 (1) of the Framework Act on Education. The Constitutional provision on compulsory education defines a social right that requires active intervention by the state.

The Korean Constitutional Court said that the essence of compulsory education is to go one step further from simple transfer of knowledge and to carry out whole person education to foster a member of society (the Korean Constitutional Court Decision, 93 Hun-Ma 192,

February 24, 1994). If the meaning of compulsory education lies in cultivating the diverse qualities necessary for living in society, it would be appropriate to say that at least on the compulsory education level, one should be able to demand education that enabled one to lead a healthy life as a member of Korean society.

This is a question of whether equal education according to ability in the Constitution is about the opportunity, conditions, or the result of education. Some insist, despite the Constitutional Court's emphasis on equality of opportunities for education and the perspective of the majority, that educational conditions and outcomes should also be included in the content of the right to education in the future considering the nature of educational right as a social right (Kwak, 2010). The aspect of equal opportunity of education also needs to be understood in its practical meaning. Even if Korean-Chinese adolescents nominally have opportunities to attend school, it is difficult to say that educational opportunities are equally guaranteed if they are lacking in the basic conditions necessary to adapt to education and life in school, especially Korean language proficiency. In the same context, it is noted that Article 31 (1) of the Constitution stipulating the equal right to receive an education should be interpreted as stipulating the promotion of actual education opportunities for the socially disadvantaged (Jeong, 2014). In light of the intent to guarantee compulsory education, these requests should be more actively considered in the compulsory curriculum.

#### **Subjectivity of the right to education for Korean-Chinese children.**

While the extent to which the educational contents guaranteed by the fundamental rights reach is important, however, the specific identity of those who can enjoy these fundamental rights is also an important issue. Article 10 and the following of the Constitution, which stipulates fundamental rights, identify "the national" as the subject of fundamental rights. In the case of a non-Korean person, the question of whether he or she can become a subject of fundamental rights is raised. Most Korean-Chinese children in Korea are not "nationals." This leads to a debate on whether or not to recognize the fundamental rights of

foreigners.

Major opinions tend to agree that, according to the nature of the fundamental rights concerned, foreigners can be the subjects of human rights or natural rights such as liberty rights but cannot be the subjects of political fundamental rights and social rights (Choi, 2008). The Constitutional Court expresses the same view. It differentiates the “rights of the national” from “human rights” and admits the subjectivity of foreigners only to the latter. The political and social fundamental rights are interpreted as rights of the national (Jeon, 2014).

The right to education as a liberty right means the right to be educated or to educate (one’s children) freely. In accordance with the Constitutional Court and the majority of the doctrines, this can be recognized irrespective of nationality, as the Constitutional Court decision above explicitly recognizes the right of parents to educate their children. It is difficult to deny the subjectivity of the fundamental rights of foreigners as it corresponds to the human rights of the Constitutional Court in that the right to education is the basis of the manifestation and growth of the personality (H. Kim, 2016).

What is important with respect to the right to education of Korean-Chinese children is the aspect of social right. The major opinion is that since a social right that is guaranteed by the Constitution is generally recognized for a member of the national community, foreigners cannot enjoy it (Jeon, 2014). Such a social right would include the right to compulsory education, so for Chinese-Korean children, only the status granted by the legislative policy can be recognized (H. Kim, 2016). However, even if social rights are within the boundaries of the state, it is not necessarily desirable to deny the subjectivity of social rights to a foreigner if it is considered to be an essential condition for maintaining human life (Choi, 2008).

Above all, it is necessary to think about the characteristics and nature of educational rights. The right to education is premised on the assumption that every human being has dignity and worth, and this universal value leads to the conclusion that the right to education must



be recognized for all regardless of nationality. If so, the right to education will also pursue universality (Hong, 2014). It is important to remember that educational opportunities for children with migratory backgrounds are crucial to their enjoyment of human worth and dignity, and the right to pursue happiness. In addition, the right to education as a liberty right can be effectively guaranteed only when it is linked to the possibility of claiming that when these children enjoy social growth through education, this benefits the state or their parents, which can be a reason to recognize the subjectivity of the right to education as a social right regardless of nationality (Choi, 2012). It is desirable to make a judgment based on the practical significance of the right to education rather than the formal logic of whether the right to education is a right of human beings in general or merely a right of the national. At least in terms of elementary, secondary, and vocational education, foreigners should enjoy the right to education.

### **Educational Rights Guaranteed by International Treaties**

Article 6 (1) of the Constitution states that 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, and Paragraph 2 of the same Article stipulates that the status of aliens shall be guaranteed as prescribed by international law and treaties. There can be disputes over what constitute “the generally recognized rules of international law” or “international law,” or over its extent and specific contents. It is obvious, however, that the UNCRC, ratified by Korea in 1991, falls under the category of the treaties referred to in this Article. Therefore, the content of the UNCRC is an important guideline for the determination of the rights of children regardless of their nationality.

Children who are guaranteed rights under the UNCRC are, in principle, persons under 18 years of age (Article 1). These children shall be entitled to the UNCRC rights without any kind of discrimination,

regardless of race, gender, language, religion, political or other opinion, national, ethnic or social origin of the child, parent or legal guardian (Article 2 [1]). Among these rights is the right to education of article 28 of the UNCRC. Article 28 requires the signatory states to recognize the child's right to education. Paragraph 1 of this Article states that this right shall be based on equal opportunity and emphasizes five measures that Member States should take in order to achieve the right to education as follows: 1) Everyone should be eligible for free elementary (primary) education. 2) States parties should encourage the development of various forms of secondary education, including general education as well as vocational education. All children should be able to access this secondary education and states parties shall take appropriate measures, such as free education and financial support if necessary. 3) Everyone should have access to higher education depending on their abilities. 4) All children should be able to have access to educational or occupational information. 5) Measures should be taken to encourage school attendance and reduce dropout rates.

According to Article 29 (1) of the UNCRC, the aims of children's education includes development of the child's character and talent, development of the child's mental and physical abilities, respect for human rights, basic freedoms and principles of the UN Charter, respect for children's cultural identity and language, and respect for the values of the country of origin as well as the country of residence. Article 27 recognizes the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development, while parents and other persons responsible for the child shall be responsible for maintaining the living conditions necessary for the development of the child within the scope of their capability, and the member states of the UNCRC shall provide the necessary assistance.

In sum, Korea, as a member state of the UNCRC, should provide primary school education for children regardless of their nationality and take measures to provide support for access to secondary, higher, and vocational education. In particular, if the children, like Korean-Chinese

children, have migrated to Korea, the contents of education they receive should be directed toward respecting the children's own cultural identity and language. Article 18 (2) of the UNCRC also states that "for the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children."

However, according to the UN Committee on the Rights of the Child, only a small number of immigrant children in Korea are attending school, and the fact that parents' obligation to provide compulsory education for their children only applies to nationals is an obstacle for these children to receive public education. Overall, regardless of the legitimacy of their status of residence, the Korean government needs to make efforts to ensure that migrant children receive actual education (Committee on Rights of the Child, 2012).

The extent of the actual implementation of the UNCRC is inevitably determined by the discretion of the country that has ratified the treaty. However, the ratification of the treaty implies that at least the state has an obligation in accordance with the treaty. Unfortunately, law and policy of Korea are not sufficient to meet this obligation as of now. We will come back to this matter soon. It is also pointed out that although the Korean Constitution prescribes that international treaties can be applied directly to the country, it is very rare that international treaties are directly applied in judicial judgments (Committee on Rights of the Child, 2012; Oh, 2011).

### **Educational State of Korean-Chinese Children and Limitations of Legal System**

The rights stipulated in the Constitution, especially in the case of social rights, do not generally mandate a specific mode of implementation. Rather, the issue of how to realize the right to education

is left to the legislator to the extent that it does not violate the constitutional limit, and the legislator is also subject to realistic conditions such as the financial situation of the state (Cheon, 2014). This also applies to the rights guaranteed under the UNCRC. Although there is no question as to whether Korea is bound by the UNCRC, the extent of realization of the right to education of the child prescribed by the UNCRC differs depending on various factors such as the educational system, financial situation, and national sentiment of the country. In particular, the situation of Korean-Chinese children in Korea is as follows.

### **Educational State of the Underage Korean-Chinese**

The Korean government's interest in Korean-Chinese increased since Korean-Chinese were allowed to visit the country under working visas in accordance with the revision of the Overseas Koreans Act. The rise of Korea's political and economic status due to the Seoul Olympic Games in 1988 was also an important factor. While overcoming the foreign exchange crisis, Government of the People by President Dae Jung Kim contributed greatly to the improvement of the legal status of overseas Koreans by enacting a special law to facilitate the immigration and stay of overseas Koreans and to facilitate their participation in economic activities in their home countries (Jo, 2001).

Since the Lee Myung Bak administration, only regarding specific industries, including manufacturing, housekeeping, and caregiving, where the inflow of foreign workers would not create confusion in the domestic labor market, the Korean government granted overseas Koreans with H-2 (working visit) visas the status of overseas Koreans. For those who had worked for more than four years with a working visit visa in the manufacturing, agriculture, or fishery industries, permanent resident status (F-5) was granted, while a technical training visa (D-4) was issued to overseas Korean who repeatedly failed the computer lottery (Lee, 2010). Most recently, regulations have been alleviated slightly by reducing restrictions on the employment of overseas Koreans

with F-4 visas in simple labor in 2015 and by allowing spouses of H-2 visa holders to enter the country (Lee, 2016).

Adult overseas Koreans are given a role in society as subjects of economic activity in Korean society after voluntary migration, but the children who have accompanied are different. Children should be guaranteed the right to achieve their fullest potential, the right to education, the right to enjoy leisure, the right to cultural life, and the right to information. However, previous studies on the lives of overseas Korean children show the deprivation of these rights.

Firstly, according to the Overseas Koreans Foundation, it seems that adolescents' proficiency in Korean language is now considerably lower than that of their parents due to the collapse of overseas Korean society in China as a great number of overseas Koreans enter South Korea (The Institute for Peace Affairs, 2013). The difficulty of Korean communication leads to incompetence in the curriculum, difficulties in forming peer groups, and the avoidance of social life (Lee & Kim, 2017). Moreover, some children are left alone at home all day (Min, 2018). In addition, it has been reported that because of visa problems, some children are having difficulty in entering public education in the first place and hide in their houses. Y. M. Choi (2017) has also mentioned reducing the entry requirements for public education and improving the qualifications for stay. In addition, even if Korean communication is possible to a certain level, it seems that teenagers prefer to attend separate classes according to their level, which is not realistic unless there are special classes for multiculturalism or schools with a multicultural emphasis. In Daelim-dong, Seoul, more than half of the elementary and junior high school students in the area are Korean-Chinese, but there is no support such as multicultural schools (Kim, 2017). Kim, Shin, and Myung (2017) also pointed out that learning disabilities were the biggest difficulties in the survey on the youth of migrant background in Gyeonggi province.

Secondly, a range of social issues is common to migrant children as well as overseas Korean children. In an environment where parents'

economic and emotional support cannot be expected, the school dropout rate is high after the compulsory education period is over (Lee & Kim, 2014). The difficulty of Korean communication experienced by migrant children leads to lack of self-confidence and low self-esteem (Kim, Park, & Pham, 2012), and continuous frustration makes them feel helpless no matter how hard they try (Cho & Nam, 2013). It is also pointed out that, although children with long experience of staying away from their parents in their early childhood have a weak emotional bond with their parents, their information path is highly dependent on their parents, and they may be tempted to commit a crime outside of school (Jwa, 2014).

To address these issues, various social services have been developed for immigrant children and adolescents. Nevertheless, blind spots in policy hinder Korean-Chinese children from full utilization of the welfare rights guaranteed by the central government for immigrant children. The cause of the problem is as follows. The terms indicating migrant children are adolescents with a migrant background, immigrant children, and children of multicultural families. Considering the inclusiveness of the term itself, the objects defined by the same terms in the policy differ in each department and also are relatively narrow in their meaning (Lee, 2015). The Multicultural Family Support Act presupposes international marriages in which at least one parent of a child has a Korean nationality. Therefore, children of overseas Koreans or foreign workers cannot be categorized as children of multicultural families. Furthermore, the immigrant children defined by the National Human Rights Commission of Korea (NHRCK) (2010) include all foreign-born children, but children of international marriage families who enter during the adolescence period are the only ones who count according to the Ministry of Education and the Ministry of Justice. As the immigrant children defined by the Ministry of Justice and the Ministry of Education do not include minors accompanying overseas Koreans, these children are not eligible for the program for immigrant children planned and operated by the Ministry of Education and the Ministry

of Justice.

There is clearly a need to distinguish among children with migrant backgrounds because the welfare rights are different according to the legal status and definition of object in the present law. However, even in the realm of academic research, the children of multicultural families with no migrant experience, immigrant children as defined by the Multicultural Family Support Act, and those who are categorized as overseas Korean children are not clearly distinguished from each other, even though the overseas Korean children might also suffer major problems in communicating in Korean.

### **Limitations of Related Legislation**

Currently, it is the Framework Act on Education that sets the scope of compulsory education in Korea. Article 3 of the Act prescribes the right of learning and equal opportunity of “citizens” and Article 8 sets up 6 years of elementary and 3 years of secondary education as compulsory education. While Article 29 (2) sets forth the obligation to prepare educational measures for “Koreans residing overseas,” there is no provision for overseas Korean children resident in Korea.

The law governing elementary and secondary education is the Elementary and Secondary Education Act. Article 13 entitles obligations to all “citizens” to ensure elementary and middle school attendance for their children. Those who are obligated under this Act are Korean nationals, not foreigners, a group that includes Korean-Chinese. The UNCRC guarantees primary education for all children, but the relevant provisions for foreign nationals do not exist in the Elementary and Secondary Education Act. However, Article 19 and 75 of the Enforcement Decree of the Elementary and Secondary Education Act (Presidential Decree No. 28521) require that foreign nationals or students be allowed to attend school with documents that can prove their residence status (not their legal status of residence). This also has a limitation in that it grants the possibility to “apply” for enrollment or transfer rather than

being in the form that prescribes parental schooling obligations.

The fact that the provision guaranteeing compulsory education for immigrant children, including overseas Korean children, is not found in the law, is considered a factor preventing these children's entry into public education, along with the school authorities' psychology of avoiding the migrant children in schools (Lee & Koo, 2016). According to the 2010 Survey on the Status of Immigrant Children's Education Rights conducted by the NHRCK, 61.4% of immigrant children said that they had difficulties in admission due to their lack of Korean language proficiency, and 15.2% answered that they had been denied admittance to the school (NHRCK, 2011). This indicates that the lack of Korean language proficiency and the passive attitude towards them in the public education field both bar Korean-Chinese children from receiving public education. While the Ministry of Education runs Korean language courses for students with weak Korean language proficiency, the program is based solely on the Ministry's notification, so the legal basis is relatively weak.

The Framework Act on Treatment of Foreigners Residing in Korea for foreigners who are legally resident in Korea is also applicable to overseas Korean children. Article 12 (1) and (2) of the Act stipulates that the national and local governments shall provide childcare and education for children from (common-law) marriages of a Korean to a foreigner, so that they can adapt quickly to Korean society. This provision applies only to the children born to (common-law) marriage with a national, with narrow application. In addition, it is pointed out that the law is also limited because it only stipulates education for assimilation into Korean society (Y. J. Choi, 2017; S. Kim, 2016).

Article 18 of the Juvenile Welfare Support Act, which applies to people aged 9 to 24, defines "juveniles with an immigrant background" as juveniles from multicultural families and "other immigrant juveniles who experience difficulties in social adaptation and academic performance." The provision imposes the obligations of the national and local governments to develop and implement policies for improving



their social adaptation and learning abilities. In addition, Article 30 of the Act establishes a Support Center for Juveniles with Immigrant Background and provides a basis for providing a material foundation to support these youths. This is encouraging in that it establishes “juveniles with an immigrant background” as a category for adolescents who have immigrated to Korea, covering multicultural families and others. However, since this law has the broad goal of improving the welfare of the youth, it does not focus on the support of public education that is most needed to actually guarantee educational rights to the children of Korean-Chinese immigrants.

Lastly, we will examine the Multicultural Families Support Act. According to Paragraph 1 of Article 10, the State and local governments should not discriminate against children and adolescents who are members of multicultural families in the implementation of education. According to Paragraph 4 of the same Article, principals of kindergartens and primary schools should take necessary measures to ensure that children and adolescents of multicultural families are not discriminated against. In addition to the passive prohibition against discrimination, Article 6 (1) stipulates that the national and local governments can support marriage immigrants to receive information and Korean language education for guidance of children and adolescents. In accordance with Article 10 (3), “the State and local governments shall endeavor to support preschool care and education services for members of multicultural families under 18 years of age, and to help such members develop language skills, may provide assistance necessary for improving their linguistic proficiency, such as teaching materials and learning support in teaching Korean language and the mother tongue of their father or mother who is an immigrant by family.”

There also exist shortcomings in the content of this Act. The “multicultural family” referred to in the Multicultural Families Support Act means a family composed of a married immigrant and a Korean citizen by birth, acknowledgement, and naturalization, or a family composed of a Korean by acknowledgement and naturalization and a Korean by birth,

acknowledgement, and naturalization. Children born to Korean-Chinese parents who do not have Korean nationality cannot be covered by this law. Even if a child is born between a Korean-Chinese and a Korean national and falls into the category of members of multicultural families, the contents of the Multicultural Families Support Act stipulate the authority of national and local governments that can “support” Korean language education, and their passive role in prohibiting discrimination. Overall, there is a lack of active and concrete contents, and what is prescribed in the law only applies to a narrow range of multicultural families.

The problems we have examined can be broadly categorized into those related to public school education itself and those related to support measures necessary to adapt to school life. Korean nationals are directly obliged by the Constitution to have their children receive compulsory education. The UNCRC also imposes an obligation on all States Parties to take measures to ensure that all children receive at least compulsory primary education. However, there are no legal grounds for enrollment in elementary and junior high schools for foreign children. In other words, elementary school and middle school compulsory education is not “compulsory” for Korean-Chinese children in Korea.

Even if overseas Korean children are attending school in Korea, there are factors that make their school life difficult, such as lack of Korean language proficiency or cultural differences. What is as important as attending school is the matter of whether they are capable of practically comprehending the education provided in schools. Korean law provides support for the social adaptation of children and adolescents of multicultural families and migrant background. However, much of this support consists of voluntary regulations, and these regulations only provide support at the discretion of state or local governments. In the case of the Multicultural Families Support Act, which contains the most content, a large number of overseas Korean children are excluded from the scope of this law because the law is limited to children of multicultural families. The scope of the student who is the object of the

actual multicultural education, starting from the Ministry of Education, is being expanded from the multicultural family children in the Multicultural Families Support Act (Y. J. Choi, 2017). However, there is still a limitation in that it is not based on the law.

We can also refer to the Basic Act on the Protection of Migrant Children's Rights, which was initiated in the 19th National Assembly and discarded when the term expired (Bill No. 1913120, introduced by Jasmine Lee and other members of the National Assembly). This bill defines immigrant children as "persons under the age of 18 who are not nationals of the Republic of Korea residing in Korea." Article 14 stipulates the rights of immigrant children to receive compulsory education, and stipulates that in the course of admission, transference, and advancement, the State has the obligation to ensure that no unfair measures are taken without just cause. It tried to expand the legal and procedural conditions for immigrant children to receive compulsory education. Although it was abolished, it is worthy of note in that it had searched for a way to solve the problem of the current legal system. However, it seems necessary to take measures to support the learning of the Korean language, Korean culture, the mother tongue of the parent, and the cultural heritage of the native country based on actual demand rather than nationality.

### **Introduction of Overseas Cases to Guarantee and Support Educational Rights for Children of Migrant Background**

Lastly, in this section, we explored the cases of other countries that have encountered problems related to children with migrant background before Korea. Among them, the United States and Germany, which are known as representative receiving countries, and Japan, which emphasizes national homogeneity like Korea, will be introduced regarding what basic principles and models have been developed to guarantee the educational rights of children with migration backgrounds.

## **Educational Rights for Migrant Children in the United States**

The United States has been an immigrant country from the start and the number of immigrants arriving from Latin America, particularly in these days, is exploding. Immigrants are often blamed for economic depression (International Organization for Migration [IOM], 2011). In the same context, immigrants to the United States are accused of depriving Americans of their jobs and destroying the welfare system rather than working hard to achieve the American dream (Fry, 2001). The United States is particularly troubled by undocumented residents, so-called illegal immigrants, and the systematic violation of the fundamental rights of immigrant children due to their status of residence is widespread. In Gurrola, Ayón, and Moya Salas's (2016) Youth Interview Study from South America, children expressed their anxiety and fears about the discriminatory and anti-racist attitudes of the state authority due to the instability of their social status. Moreover, while immigrant children desire to achieve the "American dream" through attending college, but teachers within the public education system convey less information about higher education to them. Although illegal immigrants are permitted to enter universities, tuition fees are as high as those charged to foreign students, making it impossible for immigrant families to go on to college because most of them are low-income families.

In consideration of this situation, the Obama administration imposed an executive order on deferment program for the young illegal residents (Deferred Action for Childhood Arrival [DACA]); The Trump administration is trying to phase out the DACA. The Democratic Party initiated a bill to grant citizenship to eligible DACA beneficiaries (the Development, Relief, and Education for Alien Minors: DREAM Act), which did not pass. While the United States has undergone major social changes and has been much more anti-migratory since the 9/11 attacks, there are still efforts to embrace immigrants in terms of respect for others, justice, humanism, and respect for diversity that Americans have externally manifested.

Basically, the welfare system of the United States first developed as private- and community-based welfare. Federal, state, municipal, and county (local) governments provide public assistance in the public systems. Human services are provided directly by the private sector through financial subsidies between the government and the private sector. This private sector approach also allows immigrants to benefit from the general welfare system for vulnerable groups rather than government-led special programs for immigrants. For example, New York City has the Administration for Children's Services make contracts with the private sector to provide care services, Head Start, abuse and protection measures, protection/consignment services, and other preventive services for children and their families. The city provides financial and additional support, and the actual service is provided by the private institutions in the community. The beneficiaries include low-income families, children who are suspected of having suffered abuse and neglect, high-risk cases, children and families placed in foster homes, and walk-in cases. These private institutions assist in the process of getting the necessary public assistance, share concerns about family counseling, provide child support for school life, cooperate with related institutions, and provide support for parents' economic activities. In particular, working closely with educational systems to protect children from abuse and neglect and help their families to raise them in healthy environments is prioritized. Service recipients in Brooklyn, which has a large population of low-income families, are mostly immigrant families, dominated by South American and Chinese immigrant families. In addition, regardless of the conditions of legal residence and income, there are basic services provided to all children of that age: Universal Pre-K, Out-of-School Time, School Breakfast (lunch is based on income), and morning and lunch meals during the summer semester.

Regarding children's right to education, the right to primary and secondary education shall be enforced for all children of school age, even if this right is not guaranteed by the Constitution of the United States. Specifically, the federal government subsidizes educational in-

stitutions for low-income students to provide additional learning opportunities through the Every Student Succeeds Act, signed by President Obama in 2015. Additional learning includes the intent to enable students with poor English to become proficient in English. Typical educational programs include English as a Second Language (ESL)/English for Speakers of Other Languages (ESOL). The target audience of this program is limited-English-proficient students who are enrolled in elementary and junior high schools between the ages of 3 and 21, and the program has three educational goals: English acquisition, school culture adaptation, and advancement (Choi & Kim, 2012). It runs on federal and state budgets, and the program varies from state to state. It may be included in the regular curriculum or operated externally, with bilingual instruction or only in English (Jo, 2001).

Private institutions can also plan various programs based on the needs of the community and submit proposals to city/state governments for funding. The program for children with immigrant backgrounds is the same. For example, the Korean American Family Service Center in New York (KAFSC), run by Korean-Americans, operates a *Hodori* (baby tiger) program at elementary schools in a Korean-student cluster with the support of New York City. These schools help elementary and junior high school students, including Korean immigrant children, to finish their homework through an after school program during the semester, work together with special activities, and provide summer programs and counseling. Although they receive tuition fees, scholarships are paid according to the students' families' financial situations.

### **Guarantee of Right to Education for Immigrant Children in Germany**

The characteristics of support for adolescents with immigrant backgrounds in Germany are summarized as follows based on a study of the support policy regarding German career paths (Jung & Choi, 2015). Firstly, a migrant background is vague and difficult to distinguish, so rather than separating children into specific groups, an integrated

support policy for all vulnerable youth is being carried out. Secondly, the support policy basically operates in addition to the welfare system already built, and individual support considering the special needs associated with existing social services operates on two tracks. Thirdly, since the objective of social integration policy is to train “self-independent workers” who can participate in society, German communication and basic education focused on practicality is emphasized in connection with the labor market. Fourth, the above supports are based on the legal system. For example, the Employment Agency should support career education in schools, and career education should be specific and realistic to facilitate entry into the actual labor market. The social legislation for existing vulnerable groups is applied to immigrants at this point as well. Lastly, based on the legal system, public funds have been allocated to enable voluntary and effective interventions by various private entities in civil society, and support for immigrant adolescents and social integration of Germany are regarded as the collective responsibility of the whole society.

Based on the above principles, the measures to support immigrant children in Germany are as follows. Firstly, the compulsory support that is commonly applied to all adolescents includes vocational counseling, vocational education, and education intervention. In addition to this, it provides special support measures for adolescents in vulnerable groups, including those with migrant backgrounds. In a 2014 German education report, 43% of migrant background recipients of the *Hauptschule* diploma and 74% of non-diploma recipients were reported to have received special support (Mazz, Baethge, & Fussel, 2016). The first of the special support measures is vocational education preparation. The preparation process includes counseling, career recommendation, and practical training. For the students who have not received vocational education, a group that might include immigrant adolescents, those who have difficulties in entering the labor market due to disability, and adolescents without a diploma, the professional career counselor of the Employment Agency recommends a job based on an aptitude test and

interview. Private institutions provide education and vocational training including language education, personality education, social education training, and basic IT education. These institutions are social enterprises operated by the Employment Agency and financed by the local government budget.

Secondly, since compulsory education ends when the child is 15, more than 40,000 companies provide direct educational positions to adolescents who are under 25 years of age and who have not obtained job training. Participants in this program are provided with a monthly salary and social insurance benefits, the costs of which are shared by the Employment Agency and the company. Thirdly, support for additional classes required for vocational education, such as language education and extracurricular activities, are provided. Fourthly, for those who are married, over 18 years old, or not living with parents, living expenses, transportation expenses, and child support/education expenses during the education period are provided. Fifthly, a training chain initiative was launched in 2010 to help vulnerable students enter vocational education without special support. This includes analyzing students' early potential, securing companies that provide vocational education, providing mentoring services using retirement experts, securing vocational education through employers with immigrant backgrounds, and training teachers with migration backgrounds.

### **Guarantee of Right to Education for Children with Migrant Background in Japan**

It is often assumed Japan is similar to Korea in its attitudes to cultural diversity and multicultural policy, but in fact policies related to these issues were conducted in totally different contexts, which will be pointed out according to three dimensions. Firstly, while the Korean multicultural family refers to a family composed of marriage immigrants, a Japanese multicultural family is associated with reverse immigration of Japanese who had moved to South America and other areas.



The emergence of Japanese immigrants was made possible by an amendment to the Immigration Act of 1990. The revision of the law provided the third and fourth generation of Japanese emigrants with the opportunity to return to Japan, and policies related to this amendment were the origin of Japanese multicultural policy. Secondly, the Japanese government's multicultural policy is not associated with measures to deal with low birth rates. Korea's multicultural policies encourage immigration as a means of solving social problems due to low fertility rate and aging population, and therefore, multicultural policies often target marriage immigrants. However, since Japan's multicultural policy aims to help immigrants live well in Japanese society, the target is foreigners who are not familiar with Japanese language and life. Lastly, it is necessary to understand the term "multicultural coexistence," which often appears as a term representing Japan's multicultural policy. This appeared for the first time after the Kobe earthquake in 1995. The earthquake was particularly damaging to foreigners who were not proficient in Japanese and were not prepared for an earthquake, and residents alleged that they should all coexist in a multicultural society. After that, the Japanese government adopted "multicultural coexistence" as the basis of multicultural policy, and the term was established.

In particular, in relation to education policy at the central government level for children of migrant background, there have been five stages of promotion (Park, Seoungok, & Lee, 2014). In the first phase, from the 1970s to 1990 when the Immigration Act was revised (the time of recognition of and entry into a multicultural society), the Japanese government started to develop Japanese curriculum for foreign children. The second phase is the period of preparation of specific education measures, from 1990 until 2000. Japan started to provide free support for the public compulsory education of foreign students, and examined the state of schooling and Japanese language education and conducted various base research projects for securing the system, such as curriculum and training of teachers. In the next stage, by 2005, the

government tried to provide accurate information by creating and distributing a guidebook for foreign language speakers attending Japanese schools, covering the educational rights of children within the comprehensive foreign policy. From 2006 to 2010, work has been done to develop an education support system, and the system has been strengthened after 2010. In particular, notable changes were made in the revision of the enforcement regulation of the School Education Act in 2014, so that special education courses for foreign students were allocated to regular classes and such programs were carried out in the school where the students were registered. Those programs had not been included in the curriculum before.

Another characteristic of Japan is that, in addition to the efforts of the central government, the efforts of local governments and the private sector are developed individually in accordance with local characteristics. Nagoya City, where the rate of foreign residents is high, has a relatively well-known multicultural coexistence promotion plan. Nagoya City aimed to provide language education and disaster prevention education to multicultural families through the five-year plan of the first and second multicultural coexistence promotion plans and to improve multicultural families' living environment. The Multicultural Coexistence Center, operated by the municipal government and the city, are connected with private non-profit organizations so that immigrant families can receive the necessary services through the identification of their initial needs. In particular, the training center under this jurisdiction helps the children receive the appropriate level of Japanese classes at the educational institutes and schools through in-depth counseling with immigrant parents. When the child wishes, one-on-one interpreters in the classroom assist the classes.

## **Conclusion**

Education is very important for these Korean-Chinese children in terms of their physical and personal development. Considering the es-

sence of compulsory education, which is indispensable for living as a member of a society, it is desirable to recognize that the right to education includes the establishment of a basis for adapting to school life, such as lowering language barriers. Considering the contribution of education to the universal right of human dignity, the beneficiaries of the right to education should not be limited to Korean nationals. Furthermore, the Korean government is a party to the UNCRC and has an obligation under this Convention. This includes the obligation to encourage all children, regardless of nationality, to receive free primary school education and not to leave school. Korean law, however, does not prescribe the obligation of the nation or parents (or guardians) of foreign nationality regarding the compulsory education of their children.

Moreover, many of the Korean-Chinese children in Korea have difficulty in adjusting to the Korean language and Korean school life. Korean law contains support measures for children of migrant backgrounds and multicultural families, but there is a limitation to the support measures, and the support target is not uniform according to laws and regulations, which may cause blind spots in legal support. In particular, the Multicultural Families Support Act, which provides educational support for the development of Korean language proficiency, is limited to members of the so-called multicultural family, a group that is defined based on marriage between a foreigner and a Korean citizen.

On the other hand, the way in which foreign countries deal with the education of foreign children provides a clue as to how to approach this issue in order to establish a system to guarantee the educational rights of foreign children, including Korean-Chinese children. In the United States and Germany, the focus is on whether or not a group is vulnerable rather than whether the group has a migration background, and the necessary support measures are developed inside the existing system. The entire society seeks to take responsibility for children and adolescents by utilizing civilian resources. The support programs in these countries also ultimately aim to help children grow up and become

self-reliant as members of society. Japan approaches the problem of children with migrant backgrounds within the large frame of foreign policy. Japanese language programs are assigned to regular classes within the boundaries of public education. In addition, the private sector is working with the government to develop and provide services and respond to more detailed requests. Japan is striving to achieve the goal of multicultural coexistence and to create a situation where migrant children can become members of the community.

In order to overcome the limitations of the present legal system and realize the right to education of Korean-Chinese children in Korea, legislators should seek ways to effectively guarantee the rights recognized in the Constitution or the UNCRC. As the foreign legislation shows, it is necessary to identify the Korean-Chinese children as social members. It is desirable to establish a basis for the private sector to actively intervene and to focus on actual demand such as Korean language ability rather than migration background. Specifically, it is necessary to reorganize the legislation that regulates the rights and obligations of the “citizens” on compulsory education in order to provide a legal basis for compulsory education for Korean-Chinese children. In relation to the adaptation of Korean language and other aspects of culture, individual laws differ in the scope of support and the contents. It is reasonable to promote one uniform law to support the applicants based on the criteria of the support necessary, such as the lack of proficiency in Korean. It is also possible to consider ways to regulate this problem within the framework of the public education system in general, rather than being bound by the categories of migrant children or multicultural families and overseas Koreans.

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Date of submission of the article: November 12, 2018

Date of the peer-review: May 9, 2019

Date of the confirmation of the publication: June 17, 2019