

Signing Hague Convention: implication and challenges for Korea

By Jane Jeong Trenka and David Smolin 27 May 2013

The Korean minister of health and welfare on Friday signed the Hague Convention on Intercountry Adoption, setting the stage for the Convention's subsequent ratification and implementation.

This is a welcome development, and the government should be applauded. If the Hague Convention is ratified and properly implemented in Korea, it can improve the child welfare situation in at least four different ways. First, the convention's principle of subsidiarity dictates that the best choice for a child is to stay within his/her own family; the second choice is domestic adoption; and the last choice should be inter-country adoption. The government should prepare for ratification by expanding support for Korean single mothers through public transfer and also by enforcing child support by fathers. If the government does not do so, proponents of children's rights and human rights will have an additional tool for seeking governmental accountability.

Secondly, the Hague Convention dictates there should be no improper financial gain by adoption agencies and others involved in adoption. In order to ensure this, the Korean government should annually audit the agencies and publicize the results. In addition, it government should require a strict accounting of the financial aspects of each adoption, as well as institute controls on the financial aspects of adoption to ensure that there is no improper financial incentive toward inter-country adoption in the system. The principle of financial limits is designed to safeguard the principle of subsidiarity. If money is spent, it should be spent in support of families keeping children, not in support of inter-country adoption.

Thirdly, if the Hague Convention is properly implemented, some long-standing problems of Korean adoption should be alleviated. The central authority must be satisfied that a child is adoptable and produce documentation about the child, including information on the child's identity. If this is properly implemented, this should help to resolve the problem of the voluntary birth reporting system in Korea, which has no administrative connection to either national health insurance or the hospitals. This voluntary birth report opens the risk of child laundering, as demonstrated by the estimated 3,000 children who have been illegally registered as the biological children of their adoptive parents every year.

Fourth, the Hague Convention stipulates that parents be counseled and informed of the effects of adoption. If this is properly done, this would also solve one of the longest-standing problems of Korean adoption, which is that families of origin have been and are led to believe that international adoption is like a study abroad program, and that their children will return. It is important for the government to ensure that those who provide counseling not be prejudiced against single mothers and have no financial incentive to favor adoption.

Some critics of the Hague Convention may oppose ratification, insisting the Convention on the Rights of the Child (CRC) is sufficient. There may also be general concern that ratification of the Hague Convention binds South Korea to continued involvement in inter-country adoption. However, South Korea has already sent more of its own children abroad than any other country over the past 60 years, and the CRC has been ineffective in preventing this, despite ratification by Korea in 1991. In

addition, many European nations that have ratified the Hague Convention do not send children for inter-country adoption at all. Nothing in the Convention requires ratifying nations to engage in inter-country adoption, and hence ratification will have no legal impact as South Korea decides whether and to what degree it participates in inter-country adoption.

We do urge Korea to withdraw its reservation to Article 21(a) of the Convention on the Rights of the Child concerning adoption. We believe that the combined force of the Hague Convention and the CRC will be more effective in the Korean context than has been, and would be, the CRC alone.

Despite this, the Hague Convention has serious limitations that can be challenging for Korea, and which must be addressed by good faith and serious efforts at implementation of both the Hague Convention and the CRC.

First of all, the Hague does not automatically create any national system of redress or system of filing a complaint if a Hague adoption is found to be corrupt or fraudulent. It is possible that the agencies can continue to process adoptions involving falsified paperwork, as has occurred in the past. While the Special Adoption Law revision sought to correct this by installing a court procedure, if the court is not sufficiently diligent, wrongful adoptions may still occur. The government should ensure that there are proper redress and complaint procedures as it moves toward implementation of the Convention.

Second, the Hague does not offer any redress for the tens of thousands of adoptees and their families of origin who have already been harmed by Korea's past practices of child laundering, where an adoption may look clean on the surface, but is actually the result of practices such as kidnapping, document forgery, and child-switching done in order to give the impression of an ethical and legal, as opposed to fraudulent, adoption. Proper alleviation and redress for decades of past wrongs will not be accomplished through signing and ratifying the Hague Convention, even if it is successful in preventing or minimizing future wrongs.

Thirdly, as with the CRC, there is no effective international investigatory or enforcement mechanism regarding the Hague Convention. It is possible that Korea will just continue on, business as usual, and that the Hague will in fact change nothing, but only give people a false sense of having acted in "the best interests of the child."

Although every country has its own unique culture, every country must also find a way to meet obligations under international agreements. The Korean government should sincerely seek to fulfil the spirit of the Hague Convention by requesting technical assistance from the Hague Conference on Private International Law immediately after signing the convention. It should not sign the Convention just to save face, or lean on "culture" as an excuse to not meet its obligations.

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