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| Press Release | Date Distributed: April 21, 2020 | Date Reported: April 21, 2020 | +82-2-2125-9870 | Yoon Seol-ah, Manager of Public Relations Division |
| Department in Charge: Civil and Political Rights Bureau | Park Hong-geun, Manager of Investigation on Civil and Political Rights Division | (+82-2-2125-9900) | Officer in Charge: Investigation Officer Park Hye-kyung | +82-2-2125-9924 |

NHRCK says MOJ must protect the human rights of child asylum-seekers staying at the airport terminal for an extended period

- Expressed opinion to prepare and improve relevant laws and systems to the Justice Minister -

- The National Human Rights Commission of Korea (NHRCK, Chairperson: Choi Young-ae) hereby recommends to the Justice Minister that, if the person who challenges the justification of the decision of the Ministry of Justice to not refer his/her asylum application for refugee status determination through lawsuits and other method is a child, the relevant laws and systems need to be improved so as to ▲ensure his/her basic treatment during the relevant period provided that asylum application is not clearly abusive in nature and to ▲allow his/her entry into Korea considering the best interest of the child as a primary concern.
- The petitioners are children of Angolan nationality. These children arrived at Incheon International Airport with their parents in December 2018 and applied for refugee status. However, upon the decision of non-referral of their case for refugee status determination, the petitioners filed a suit to seek a revocation of the decision and have been staying at the passenger lounge in Incheon International Airport Terminal 1 for approximately ten months.
- On July 3, 2019, the petitioners requested the Minister of Justice for an entry permit by the reason that staying in the airport terminal seriously damages the rights of children. However, as their request was denied, they filed a petition to the NHRCK that the government of the Republic of Korea did not perform its duty as a state party that ratified the Convention on the Rights of the Child and that this is a violation of the human rights of children.
- The Ministry of Justice responded that, “according to the Immigration Act, an alien who intends to enter the country is required not to be subject to the reasons for refusal of entry and to meet the requirements for entry permission,” and that it has “no plans to allow the entry of the petitioners into the country for not meeting the entry requirements and for their case being refused to be referred for refugee status determination as well as not having additional reasons for permitting their entry.”
- On September 27, 2019, the Seoul High Court ruled that “the decision of non-referral of the petitioners’ case for refugee status determination was unlawful,” permitting the petitioners’ entry into the country. Upon the decision, the petitioners expressed the intention to withdraw the petition and the NHRCK dismissed the petition.
- The NHRCK, however, decided that, in the case repatriation of the children who had been denied of entry and applied for refugee status is postponed by reason of a lawsuit and the like, the act to not consider entry of the children in view of human rights protection for the children is not in compliance with the U.N. Convention on the Rights of the Child that prescribes to guarantee children’s rights as well as the intent of the Constitution of the Republic of Korea that prescribes to guarantee human dignity and basic human rights, and thus reviewed the expressed opinion.
- In regard to the petitioners, an alien whose case is not referred for refugee status determination and who does not meet the requirements for entry is denied entry and becomes subject to repatriation. An alien subject to repatriation must depart as soon as his/her flight is arranged. However, if the alien files suit to revoke the decision of non-referral of his/her case for refugee status examination, his/her departure is postponed until the outcome of the suit. Under the current system, an alien who is subject to repatriation must stay at the airport terminal or departure lounge since the alien is not allowed for entry even during the period of a lawsuit.
- The departure lounge is where aliens who are denied entry can stay temporarily until their departure. The departure lounge is small and lacks convenience facilities. Therefore, a long-term stay at the departure lounge can lead to hygiene

and health issues. The environment of the airport terminal can be considered to be relatively better than the departure lounge. However, aliens staying at the airport terminal ▲ have limited access to sunlight or fresh outdoor air, ▲ lack access to proper nutrition, ▲ lack access to educational institutes such as schools and ▲ are exposed in a public area 24 hours a day. As such, the environment threatens their health, causing stress and affecting their quality of sleep, and is bad for children such as the petitioners.

- Amid this environment, it is difficult to guarantee children's right to health, education and development, which is prescribed by the U.N. Convention on the Rights of the Child. Therefore, for the government of the Republic of Korea, which is a contracting state (*A country that agreed to be bound by the respective convention or agreement), to not review entry of a child who has applied for refugee status contravenes Article 3 of the Convention, which states "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the children shall be a primary consideration."
- It is also in violation of the Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees of the United Nations High Commissioner for Refugees, which prescribes that the contracting states must provide basic guarantees to refugee status applicants by considering their special circumstances according to the Convention Relating to the Status of Refugees and that the refugee status applicants must be permitted to stay in the respective countries during the period of the related lawsuits and determinations as long as the applications are clearly not abusive in nature.

※ Attachment: Anonymous Decision Letter. End of transmission.