

UNHCR’s Comments on the 2009 Draft Bill on Refugee Status Determination and Treatment of Refugees and Others

Part 1: Introduction

1. UNHCR offers these comments as the agency entrusted by the United Nations General Assembly with the responsibility for providing international protection to refugees and other persons within its mandate, and for assisting governments in seeking permanent solutions to the problem of refugees.¹
2. As set forth in its Statute, UNHCR fulfils its international protection mandate by, inter alia, "[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto."² UNHCR's supervisory responsibility under its Statute is reiterated in Article 35 of the 1951 Convention relating to the Status of Refugees ("the 1951 Convention")³ according to which State parties undertake to "co-operate with the Office of the United Nations High Commissioner for Refugees [...] in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the Convention". The same commitment is included in Article II of the 1967 Protocol relating to the Status of Refugees ("the 1967 Protocol").⁴
3. UNHCR is extremely pleased to take this opportunity to provide comments to the Draft Bill on Refugee Status Determination and Treatment of Refugees and Others of May 2009.⁵ At the same time, UNHCR regrets the short time made available to review and submit its opinion on this important initiative. The below comments should therefore be seen and understood within these limitations and do not claim to be of the level of detail and comprehensiveness this draft legislation would merit. UNHCR remains at the full disposal of the authorities of the Republic of Korea for a more extensive and detailed exchange on reforming the national asylum system.

¹ See Statute of the Office of the United Nations High Commissioner for Refugees, UN General Assembly Resolution 428(V), Annex, UN Doc. A/1775, para. 1, available at <http://www.unhcr.org/refworld/docid/3ae6b3628.html> ("Statute").

² *Ibid.*, para. 8(a).

³ UNTS No. 2545, Vol. 189, p. 137. It is suggested to add a reference either in the text or in a footnote to the domestic legislation by which the country concerned ratified or acceded to the Convention and/or the Protocol.

⁴ UNTS No. 8791, Vol. 606, p. 267.

⁵ Comments are based on an unofficial translation of the draft law into English by UNHCR. The full unofficial translation is annexed to these comments.

4. UNHCR's primary aims in providing these comments are threefold. Firstly, UNHCR would like to assist the Republic of Korea in meeting its international obligations with regard to refugee protection. Secondly, UNHCR would like to offer its expertise to the ongoing efforts of aligning the Republic of Korea's domestic legislation with international standards. Thirdly, UNHCR would like to contribute to the establishment of clear asylum regulations and procedures and thereby enhance the overall legal certainty of the national legal system, avoid unnecessary duplications and reduce costs of the national asylum system.
5. In order to facilitate the reading of UNHCR's comments, this document is divided into general comments followed by more specific comments to each of the chapters and articles of the draft law. Where appropriate, UNHCR takes the liberty to provide alternative wording for some of the provisions.

Part 2: General Comments

6. UNHCR fully supports the passing of a new and separate law on asylum and refugee protection. A stand-alone law has the strong advantage of providing the essential framework for a clear and comprehensive regulation of all necessary areas of refugee protection. It will also help to avoid gaps as well as perceived or real conflicts of law and thereby contribute to a more effective and efficient national legal system.
7. While the draft law addresses many of the essential issues of a modern asylum system, UNHCR notes that there are also a number of provisions and safeguards that have not been fully covered or developed. Where possible, UNHCR provides concrete suggestions but, due to time constraints, could not engage in fully elaborating all aspects that it deems important to be part of national asylum legislation. In such instances, a general remark is made.
8. UNHCR notes that Article 6 of the Constitution of the Republic of Korea prescribes that:
 - (1) 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 of the Republic of Korea.
 - (2) The status of aliens shall be guaranteed as prescribed by international law and treaties.
9. The Republic of Korea acceded to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol on 3 December 1992.
10. It follows that the 1951 Convention is considered to be part of the domestic law of the Republic of Korea and is the primary source for regulating the rights and obligations of refugees in the Republic of Korea.

11. UNHCR therefore strongly suggests that core definitions and concepts contained in the 1951 Convention should be retained in their original wording, rather than reformulated in new language, thereby exposing the new legislation to the risk of conflicting interpretations and undermining legal certainty.
12. A new refugee bill in the Republic of Korea, thus should focus on elaborating on procedural issues, standards of treatment and implementation of the rights and obligations contained in the 1951 Convention and ensure that the executive as well as the judiciary has all the necessary means and clarity, both in legal and procedural terms, to ensure the Republic of Korea's compliance with international and national law.
13. Determining the status of asylum seekers ("refugee status applicants") is a highly specialized task and should be carried out only by officers specially trained and fully prepared for it. In line with common practice in most developed asylum countries, UNHCR strongly suggests the establishment of a group of specially designated refugee status officers as well as a re-conceptualized Refugee Committee (Chapter 3 of the draft law) as a fully independent and impartial second instance quasi-judicial appeal instance.
14. It is UNHCR's opinion, that assigning fully trained and equipped experts to both levels of the refugee status determination process would substantially improve the quality of refugee status determination decisions and lead to a necessary and significant reduction of the time spent on refugee status applications between application and final decision on a case.
15. Currently most refugee status applications, including many deserving cases, receive negative decision, at the first instance as well as through the Refugee Recognition Council. Consequently, a sizeable number of the claims are appealed at the court level, often resulting in their recognition by the Seoul Administrative Court, the Seoul High Court or even Supreme Court. This clearly represents an undue and unnecessary burden to the judicial system and it is suggested that questions related to the facts of a refugee status application could more effectively be addressed through a specialized refugee determination system as set out above, were such a system to be adopted.
16. Such measures could not just ensure the full compliance of the Republic of Korea's asylum system with international standards, but may also lead to a substantial reduction of financial costs.
17. UNHCR understands and supports the idea that many procedural issues which are not covered in the current draft law would be regulated in a Presidential Decree. This approach would permit the necessary flexibility to deal with refugee status applications in the most effective way. UNHCR stands ready to assist the authority of the Republic of Korea in drafting such a Presidential Decree.

Part 3: Specific Comments on Particular Provisions of the Draft Law

Chapter 1. General Provisions

Article 1. (Objectives)

This law aims at stipulating determination of refugee status and humanitarian status; and treatment of refugees, persons with humanitarian status and refugee status applicants, in pursuant to international human rights instruments such as the 1951 Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees.

UNHCR Comment on Article 1: In UNHCR’s view, the stated objective of this article, and the draft law in general, should be broadened to include all aspects of refugee registration, reception, status determination, rights and obligations and durable solutions. A possible rephrasing of this paragraph could be “The objective of this law is to ensure that the Republic of Korea meets its international obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol as well as other applicable international human rights treaties.”

Article 2. (Definitions)

Definitions of the terms in this law are as follows:

1. “refugees and other persons” refers to any person with refugee status, humanitarian status and who applied for refugee status.
2. a “refugee” refers to any person who has well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; is outside the country of his/her nationality or citizenship (abbreviated to “country of nationality” below) and is unable or, owing to such fear, is unwilling to avail him/herself of the protection of that country; or who, not having a nationality and being outside the country of his/her former residence (abbreviated to “country of residence” below) as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

UNHCR Comment on Article 2(2): As pointed out in the general comments above, the definition of a refugee, as contained in Article 1 of the 1951 Convention, should when ever possible be retained in its original wording. UNHCR therefore recommends to revise Article 2(2) and use the exact language of Article 1(A)(2), omitting only the reference to “As a result of events occurring before 1 January 1951 and” and the words “as a result of such events”, as this time limitation has been removed through the 1967 Protocol. It is further recommended to apply the same approach to the exclusion definition, (Article 19 of the draft law), cessation (Article 23 of the draft law) as well as

cancellation and revocation clauses and add them to this section as they form an integral part of the refugee definition. See also comments to Article 19(1) and Article 23.

3. a “humanitarian status holder” refers to a status of a person who does not meet the criteria of a “refugee”, but owing to inhumane treatment or punishment, or other situations that seriously harm public safety such as violence, aggression, domestic disputes, mass human rights violation, and torture, is unwilling to avail him/herself of the protection of country of nationality; or who, not having a nationality and being outside the country of his/her former residence, is unable or unwilling to return to it.
4. a “refugee status applicant” refers to a person who, being a foreigner or a stateless person, filed the refugee status application and whose claim is being examined under the process of refugee status determination procedure; a person who has not expired the period given to file an appeal after whose refugee application or appeal application was denied; a person who is in the process of appeal at the court; or a person who has not been given the final decision from the appeal suit.

UNHCR Comment on Article 2(4): The article does not specify what act or action constitutes a refugee status application under this law. The legal implications of being a “refugee status applicant” are considerable, most importantly to be protected by the non-refoulement obligations and it is therefore essential to avoid ambiguity. By internationally recognized standards, a refugee status application is made as soon as a person signifies his or her intention to seek international protection against return to a territory where the applicant fears persecution or serious harm. It is therefore strongly recommended that this clarification is added to the definition of a “refugee status applicant”. The provision could read:

“A refugee status application is made as soon as a person expresses an intention, either orally or in writing, to a representative of the Ministry of Justice or to a member of the Police, Border Guards or any other Korean Government official that he or she wishes to seek protection against return to a territory where the applicant fears persecution or serious harm.

An application can be made wherever the Republic of Korea exercises its jurisdiction and is not limited to the territory of the Republic of Korea, and the application can be made irrespective of the status of the applicant at the time the application is made.”

Not all who meet the criteria in Article 2(2) of the 1951 Convention are refugees, however, because the 1951 Convention definition also includes the grounds on which a person, who might otherwise be a refugee, should be excluded from international protection. As the exclusion criteria are an integral part of the refugee definition, UNHCR recommends that Article 19 be moved and dealt with under the definition of a refugee. Exclusion is also of relevance to humanitarian status. UNHCR recommends that Article 19 include not only exclusion from refugee status, but also exclusion from humanitarian status.

5. a “resettled refugee” refers to a person who is allowed to resettle in the Republic of Korea among overseas refugees.
6. a “foreigner” refers to any person who does not have the nationality of the Republic of Korea, that is, a person with a foreign nationality or a stateless person.

UNHCR Comment on Article 2(6): In order to ensure full compatibility with the 1951 Convention, UNHCR recommends that the provision refers to “any person who does not have the nationality of the Republic of Korea”, without limiting it to “a person with a foreign nationality or a stateless person”.

7. a “country of origin” refers to the country of nationality for the person with a foreign nationality and the country of residence for the stateless person.

Article 3. (Non-Refoulement)

Refugees and other persons shall not be repatriated to the following countries:

1. a country where a person’s life or freedom could be threatened for reasons of race, religion, nationality, membership of a particular social group or political opinion.

UNHCR Comment on Article 3(1): The *refoulement* definition of Article 33(1) of the 1951 Convention is slightly wider than Article 3(1), making reference to “expel or return ... to the frontiers of territories” rather than “repatriate to a country”. The *non-refoulement* obligation is considered to have become customary international law and is particularly important to the effectiveness of the international protection regime. It is recommended that the language of Article 3(1) be altered to “expelled or returned to the frontiers of territories: 1. where a person’s life or freedom ...”.

2. a country where a person could be subjected to torture, inhumane treatment, punishment or other similar treatment articulated by the conventions or treaties that the Republic of Korea has ratified.
3. a country where a person has the possibility of being repatriated to a third country under the situations referred to in Clause 1 and 2.

UNHCR Comment on Article 3(2) and (3): Similarly, the reference to “a country” at the beginning of Article 3(2) and (3) could be dropped, since the new language of the first sentence of Article 3 would already make reference to “the frontiers of territories”.

UNHCR Comment on new paragraph on Extradition: In order to ensure full compliance with the Republic of Korea’s *non-refoulement* obligations, it is recommended that a new paragraph is added to deal with extradition requests concerning refugee status applicants, refugees and persons with humanitarian status. This new provision could read:

“Refugees and other persons shall not be extradited if the extradition would be in violation of the *non-refoulement* obligation under international law. Recognition of refugee status shall be binding and no extradition decision shall be taken prior to a final decision on a refugee status application. Diplomatic assurances or other guarantees by the country of origin or habitual residence shall not have a dissolving effect on this obligation.”

UNHCR Comment on new paragraph on Deportation: Similarly to extradition, expulsion and deportation of refugees and other persons could lead to a violation of the international protection regime. It is therefore important to incorporate a provision, stating that expulsion and deportation shall only be executed in accordance with Article 32(1) of the 1951 Convention and the procedural safeguards of Article 32(2) and (3) of the 1951 Convention. Deportation orders for immigration offences shall not be implemented prior to a final decision on the refugee status application and, if the person is recognized as a refugee, shall lose their validity automatically.

Article 4. (Laws)

Regarding the aspects of the status and treatment of refugees, not specifically stipulated under this law, regulations under the Immigration Control Act shall be followed.

UNHCR Comment on Article 4: As mentioned under the general comments to this draft law, it is important to avoid conflicts of law, especially with regard to provisions contained in the 1951 Convention. It is therefore recommended to amend this article and include a direct reference to the 1951 Convention. A revised Article 4 could read “Rules and regulations under the Immigration Control Act shall apply to refugees and other persons in all aspects not specifically stipulated under this law, the 1951 Convention, or other relevant international treaties to which the Republic of Korea is a party”.

Chapter 2. Refugee Status Determination Procedures

Article 5. (Refugee Status Application)

- (1) A foreigner in the territory of the Republic of Korea, willing to attain refugee status, shall apply for refugee status to Minister of Justice. A foreigner willing to attain refugee status should submit his/her refugee status application attached with

documentary evidence and two pictures to Chief of Immigration Office, Immigration Branch Office or Immigration Processing Center.

UNHCR Comment on Article 5(1): The sub-section should be modified to accommodate the changed definition proposed in the comment to Article 2(4):

“A refugee status applicant shall confirm his or her refugee status application by submitting his or her claim in writing, in Korean or English, or if the applicant is not sufficiently fluent in either language, in his or her mother tongue, to the Ministry of Justice. Applications can be made in person or through a legal representative.”

- (2) When applying in pursuant to Section(1), the applicant should provide one of the following documents:
 1. Passport or Certificate of Alien Registration. If these documents not available, written statement explaining the reasons.
 2. Documents regarding the refugee status determination, if existent.
- (3) Immigration officer shall fully support any person requesting information on or expressing showing intention to undergo refugee status application procedure.
- (4) When a person applies refugee status as provided in Section (1), Minister of Justice shall issue a certificate accordingly, confirming the person is in the process of refugee status determination.

UNHCR Comment on Article 5(4): UNHCR recommends that the term “certificate” is changed to “an individual document issued in his or her own name certifying his or her identity and status”. The document shall also indicate that the applicant is allowed to stay in Korea until a final determination is made on the claim. This will include, as a minimum, the ninety days appeal period foreseen in Article 20 of the Administrative Litigation Act following a second instance rejection by the Refugee Committee. To enhance the protection function of the document, it should be similar in format and duration to those issued to permanent residents. Each accompanying dependent of the primary applicant should be issued with an individual document, indicating the relationship to the primary applicant.

- (5) A refugee status applicant can legally stay in the Republic of Korea, regardless of his/her status and possession thereof, regulated by the Immigration Control Act, until the decision on his/her refugee status recognition is made (including if an appeal has been lodged after denial of his/her refugee status application, until the proceeding is concluded)

UNHCR Comment on adding new sub-section to Article 5: Refugee status applicants should be fully informed on their rights and obligations as well as status determination procedures, including the right to appeal at the administrative and judicial level. The information should be provided in a language they understand.

Article 6. (Refugee Status Application at Ports of Entry)

- (1) A foreigner may apply for refugee status at ports of entry or the border prior to undergoing the immigration procedure, despite regulations under the Immigration Control Act.
- (2) A person, who applied for refugee status at ports of entry or the border, shall be allowed to stay at the port or airport until he receives first instance decision on his/her application.
- (3) Minister of Justice should make decision within 4 weeks and if not, the applicant shall be allowed to enter, and issued permit for temporary stay in the Republic of Korea. The applicant's case shall be processed according to ordinary refugee status determination procedure.
- (4) Refugee status applicant at ports of entry or the border should be provided with food, accommodation, and clothing, during the time period specified under Section (2).
- (5) Refugee status determination procedure at ports of entry or the border should follow the ordinary refugee status determination procedure, except for limitation on time and location specified in this Article.

UNHCR Comment on Article 6(2)-(5): Keeping refugee status applicants in holding areas at points of entry is not in conformity with international standards and should be kept to the absolute minimum.⁶ The airport procedure should only encompass assessments of manifestly unfounded or abusive claims. In the Procedural Standards for RSD under UNHCR's Mandate manual⁷, manifestly unfounded claims are considered to be claims that are clearly fraudulent or manifestly outside the scope of the refugee definition. UNHCR processes such claims under normal refugee status determination procedures. Under no circumstances should claims believed to be manifestly unfounded be decided on the basis of a document review alone. All applicants have a right to an individual refugee status determination interview. In relation to the issue of manifestly unfounded and abusive claims and the issues that must be considered when claims are suspected to be such, UNHCR strongly recommends that the Executive Committee Conclusion No. 30 (XXXIV) of 1983⁸ be referred to for guidance.

The assessment of manifestly unfounded refugee status applications must also be conducted by refugee status officers, and should be completed within 24 hours of a person indicating the wish to seek protection. UNHCR strongly recommends that persons applying at borders are allowed into the country once a written confirmation of their application has been finalized and they have been issued with the documentation regulated in Article 5(4). Only in exceptional circumstances should a refugee status applicant be detained and the provision on detention (Article 20 of the draft law) should be followed accordingly. UNHCR recommends revising Article 6 (2)-(5) to read:

⁶ UNHCR's Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers, 26 February 1999, at: <http://www.unhcr.org/refworld/docid/3c2b3f844.html>.

⁷ Accessible at: <http://www.unhcr.org/publ/PUBL/4316f0c02.html>.

⁸ Accessible at: <http://www.unhcr.org/refworld/docid/3ae68c6118.html>.

“Persons, applying for refugee status at ports of entry or the border, shall be allowed to enter, and issued permit for temporary stay in the Republic of Korea by the relevant the authorities.”

UNHCR strongly recommends that particularly vulnerable persons who are refugee status applicants should be exempt from border procedures and admitted into Korea.

Article 7. (Notice of the Details on Refugee Status Determination Procedure)

- (1) Minister of Justice shall post notice(including notice on the internet website) or provide handbook fully describing documents, offices responsible for accepting application, time period for decision making, decision making procedure (including procedural guarantees), decision making standards, and other facts relating to refugee status determination at Immigration Offices, Immigration Branch Offices, Immigration Processing Center, Ports, Airports, and border areas.

UNHCR Comment on Article 7(1): Relevant information should be made available at all places where refugee status applications may be made. “Other facts” should also include the applicant’s right to contact a legal adviser or representative of his of her choice and the possibility to contact a representative of UNHCR.

- (2) The notice referred to in Section (1) should be made in languages understood by foreigners. The notice should be made in Korean, English, Chinese and other languages designated by presidential decree. When a foreigner does not fully understand the content of the notice, proper explanation shall be provided by translation or other appropriate measures.

Article 8. (Assessment of the Claim)

- (1) When an application referred to in Article 5 is submitted, Chief of Immigration Office, Immigration Branch Office or Immigration Processing Center shall immediately have immigration officers interview the applicant, perform factual investigation, and deliver the report to Minister of Justice. If requested by applicants, interviews shall be conducted by the officers of the same sex.

UNHCR Comment on Article 8(1): UNHCR strongly supports the establishment of a specialized refugee determination division within the Ministry of Justice. Accordingly references to “immigration officers” in this provision should be replaced with “refugee status officer”. UNHCR questions the use of the word “immediately” and recommends that a time frame of when an interview should be undertaken be defined. The maximum delay for conducting first-instance interviews should be regulated in the Implementation Decree. A revised Article 8(1) could read:

“Refugee applications shall be allocated to a refugee status officer, who will determine whether the applicant is a refugee set out by the definition contained in the 1951 Convention, and make a first instance decision.”

It is also important to note that refugee status applicants have the right to an interview.⁹ This right to an interview should be guaranteed clearly in the draft law. Each family member should have the right to have the individual merits of his or her own claim considered. Therefore, it cannot be rendered inadmissible for separate claims to be lodged by family members after a negative decision is reached in relation to the primary applicant's claim.

- (2) When the report referred in Section (1) delivered, Minister of Justice decides whether the applicant has reasonable cause in applying for refugee status on the basis of assessment made by refugee officers from Nationality and Refugee Team of Korea Immigration Service.

UNHCR Comment on Article 8(2): This Provision should be deleted (see comment above on Article 8(1)).

- (3) A refugee officer from Nationality and Refugee Team of Korea Immigration Service, Ministry of Justice is responsible for assessment of refugee status applications; gathering and managing information regarding refugee status determination standards and procedures, facts regarding countries of origin and other regional information; and training immigration officers.

UNHCR Comment on Article 8(3): This provision should be reworded to reflect potential changes in the determination process (see comment to Article 8(1) above). UNHCR would like to stress the importance of accurate and up to date country of origin information from objective and reliable sources in assessing refugee claims.

Article 9. (Burden and Standard of Proof)

A refugee applicant assumes the burden of proof. He/she shall not be denied of refugee status recognition on the grounds of absence of supporting evidence, unless there are substantial reasons why his/her testimony is suspected to be false.

UNHCR Comment on Article 9: While the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the refugee status officer. Indeed, in some cases, it may be for the refugee status officer to use all the means at his or her disposal to produce the necessary evidence in support of the application.¹⁰ UNHCR recommends that this international standard is better reflected in this provision and suggests the following wording:

⁹ See for example Executive Committee Conclusions No. 8 (XXVII) of 1977 and 30 (XXXIV) of 1983

¹⁰ See also, UNHCR Handbook on Procedures and Criteria for determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, paragraphs 196-197.

“While the burden of proof in principle rests on the applicant, in view of the particularities of a refugee’s situation, the refugee status officer shares the duty to ascertain and evaluate all the relevant facts.”

Article 10. (Factual Investigation)

- (1) Minister of Justice shall have refugee officers from Korea Immigration Service, Immigration Office, Immigration Branch Office or Immigration Processing Center, perform factual investigation in making decisions on refugee status determination according to Article 4 and cancellation according to Article 23.

UNHCR Comment on Article 10(1): As suggested in comments to Article 8(1), UNHCR recommends that specially trained and designated refugee status officers of the Ministry of Justice undertake all tasks related to refugee status determination.

- (2) When needed in pursuant to Section (1), the applicant or other related persons shall be requested to present, be investigated and submit relevant materials.

UNHCR Comment on Article 10(2): In order to maintain the important requirement of confidentiality, prior consent of the applicant must be sought before third parties are contacted on any information regarding personal details of the applicant. See also comments in relation to Article 17. In accordance with Executive Committee Conclusions No. 8 and No. 30, all refugee status applicants should in principle be granted personal interviews.

- (3) On completing factual investigation by refugee officers, the Head of the Nationality and Refugee Team of Korea Immigration Service, Chief of Immigration Office, Immigration Branch Office and Immigration Processing Center should report to Minister of Justice without delay.

UNHCR Comment on Article 10(3): If status determination decisions are made by refugee status officer as suggested above, the reporting requirement of Article 10(3) in no longer necessary and should be deleted.

Article 11. (Cooperation by Related Organizations)

- (1) When pursuing investigation for refugee status recognition and such referred to in Article 10 Section (1), immigration officers can request support from other related organizations in ways such as submission of materials or verification of facts.

UNHCR Comment on Article 11(1): Once more, UNHCR would like to stress the importance of confidentiality and the requirement to seek the consent of the applicant before sharing personal details with any outside entity. This applies in particular to

representations of the country of origin. The term “immigration officer” should read “refugee status officer”.

- (2) When request for cooperation according to Section (1) is made, requested organizations should not decline without any reasonable ground.

Article 12. (Right to Legal Assistance)

- (1) A refugee status applicant has the right to be assisted by a lawyer.

UNHCR Comment on Article 12(1): UNHCR recommends this provision be clarified by adding the phrase “, both in preparation of his or her claim, during interviews and at the appeal stage.”

- (2) When a refugee is unable to be assisted by a lawyer due to financial or other reasons, he/she shall be able to ask one to be appointed at the cost borne by the government.

Article 13. (Participation by a Reliant Companion)

When requested by a refugee applicant, Minister of Justice should allow presence of a reliant companion, except for in unavoidable situations such as concerns with interference of the interview.

Article 14. (Interpretation)

- (1) When a refugee status applicant cannot fluently communicate in Korean, Minister of Justice should provide in the course of the application procedure, such as during interviews, by an interpreter who meets the qualification as prescribed in presidential decree.
- (2) A refugee applicant shall be allowed to designate an interpreter at his/her own expense.

UNHCR Comment on Article 14: UNHCR does not recommend that refugee status applicants be allowed to designate their own interpreter, as it could create concerns of partiality in interpretation. In UNHCR mandate refugee status determination, applicants are not allowed to bring their own interpreters. UNHCR would therefore advise that Article 14(2) be deleted.

Article 15. (Confirmation of Written Record of Interview)

On completing the interview, refugee officers should enable the refugee applicant to understand and confirm the interview report in a language understood by the applicant by providing translation if he/she cannot read the written record of interview in Korean.

Article 16. (Right to Read and Copy Relevant Materials)

- (1) A refugee applicant can read and copy relevant materials such as documentary evidence submitted by the applicant to Minister of Justice, interview record, unclassified information on country of origin or the region held by the Minister, and documents from factual investigation.
- (2) If a refugee applicant requests to read and copy relevant documents, immigration officer shall immediately respond to it.

UNHCR Comment on Article 16: UNHCR welcomes the possibility for applicants to have access to their files. This is in full accordance with international standards. In Article 16(2) “immigration officer” should be replaced with “refugee status officer”, and the provision, or the Implementation Decree, may allow a reasonable timeframe for providing access to the file.

Article 17. (Confidentiality)

- (1) Any civil servant involved in refugee status determination procedure shall not release nor disclose to others personal details or photos of refugee applicants; reliant companions participating in interview referred to in Article 13; address, name, age, occupation, or appearance of the lawyer; and any other information that may specify the applicant’s identity.
- (2) No individual is allowed to disclose information referred to in Section (1) through publication, broadcasting and other means of communication, unless permitted by the person whom the information belongs to.
- (3) Any information on refugee status applicants shall not be provided to their country of origin.

UNHCR Comment on Article 17: UNHCR strongly recommends the addition of a phrase such as “In principle, no information obtained in the RSD procedure should be shared with third parties without the consent of the individual concerned”. This is because Article 17(1) is limited to civil servants and the information is limited to “specifying the applicant’s identity”, although it is information related to the claim that is particularly sensitive and all parts of the claim should remain confidential.

Article 18. (Recognition of Refugee Status)

- (1) When Minister of Justice acknowledges that an application for refugee status has reasonable grounds, he/she should decide to recognize the applicant as a refugee; and issue the Certificate of Refugee Recognition to the applicant via Chief of Immigration Office, Immigration Branch Office or Immigration Processing Center.

UNHCR Comment on Article 18(1): Rather than referring to “reasonable grounds” this provision should simply make reference to fulfilling the criteria of the refugee definition. A revised Article 18(1) could read:

“When the refugee status officer or the Refugee Committee determines that the refugee status applicant is a refugee as set out by the definition contained in the 1951 Convention, the applicant shall be issued a document certifying his or her refugee status.”

Family members/dependents of a recognized refugee should be able to apply for derivative refugee status in accordance with their right to family unity. Family members/dependents who are determined to fall within the criteria for refugee status in their own right should be granted refugee status rather than derivative refugee status. Individuals who obtain derivative refugee status should enjoy the same rights and entitlements as other recognized refugees.

- (2) When Minister of Justice decides that application for refugee status does not have reasonable cause, he should decide not to recognize the applicant as a refugee; and issue Notice of Denial to the applicant. A denial notice should state reasons for denial (including the decision on applicant’s factual and legal claims) and the fact that the applicant may appeal within 30 days.

UNHCR Comment on Article 18(2): Taking into account other comments made on the refugee status determination process, UNHCR recommends rewording this provision as follows:

“When the refugee status officer determines that the refugee status applicant is not a refugee as set out by the definition contained in the 1951 Convention, the officer shall issue the applicant a written document confirming the denial of his or her refugee status. This document shall state the reasons for denial (including the decision on applicant’s factual and legal claims), the fact the applicant may appeal this decision within 30 days, and an explanation of appeal procedures.”

The applicant should have the option of receiving all relevant information in English or, if he or she does not sufficiently communicate in English, in a language he or she understands.

- (3) Determination of refugee status should be made within 6 months after registration of application. In cases of unavoidable situations, however, Minister of Justice shall extend the time period by six months at his discretion.

UNHCR Comment on Article 18(3): Clarity of the provision may be improved by referring to “justifiable reasons” rather than “unavoidable situations”. The 6 months period should start to apply from the date of submission of the documents referred to in Article 5(1).

- (4) When period of determination extended following the exception proviso in Section (3), the applicant should be notified 7 days before the expiry of initial six months.

UNHCR Comment on Article 18(4): UNHCR recommends to further specify “the applicant should be notified that there will be a delay in making a decision on the refugee status claim and provided with an estimate of when the refugee status officer expects to make a determination on the claim”.

- (5) Certificate of Refugee Recognition and Notice of Denial of Refugee Status as specified in sections 1 and 2 shall be picked up via postal delivery according to Article 14 of Administrative Procedures Act. Only when a refugee status applicant expresses wish to pick up the documents in person, the applicant or his/her representative may do so via Chief of Immigration Office, Immigration Branch Office or Immigration Processing Center. However this shall not be arranged when, at the fault of the applicant, the documents were not picked up for three months.

UNHCR Comment on Article 18(5): The provision may benefit from clarifying that the applicant who has expressed a wish to collect the documents in person must be notified that a decision has been made.

Article 19. (Exclusion of Refugee Status Recognition)

- (1) Even when a refugee status applicant satisfies the criteria for refugee status recognition, Minister of Justice may decide not to recognize the applicant as a refugee, if there are substantial reason linking the applicant to one of the following:
1. a person who is at present receiving protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. Only when such protection or assistance has ceased for any reason, without the position of such persons being ultimately resolved in accordance with the relevant resolution adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.
 2. a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of that country;
 3. a person who has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;
 4. a person who has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
 5. a person who has been guilty of acts contrary to the purposes and principles of the United Nations.

UNHCR Comment on Article 19(1): As pointed out in the comment to Article 2(2), the definition of a refugee should be in full conformity with the provision of the 1951 Convention and the 1967 Protocol. It is therefore recommended to apply the same approach to both, inclusion criteria (Article 1(A) and, in some cases (D), of the 1951 Convention) and the questions of cessation (Article 1(C) of the 1951 Convention) and exclusion (Article 1(D), (E) and (F)). The grounds for exclusion found in Articles 1(D), (E) and (F) of the 1951 Convention are exhaustive. Moreover, exclusion provisions are also of relevance to humanitarian status. UNHCR recommends that this Article be redrafted to include exclusion from humanitarian status recognition. See also comment on Article 2(2).

- (2) When Minister of Justice decides not to recognize the applicant as a refugee in pursuant to Section (1), he/she should issue Notice of Denial to the applicant via Chief of Immigration Office, Immigration Branch Office or Immigration Processing Center. The notice should state reasons for denial and the fact that the applicant may appeal within 30 days.

UNHCR Comment on Article 19(2): As recent changes to the asylum system in the Republic of Korea foresee that first instance refugee decisions will exclusively be made by the refugee status officers, this paragraph needs to be amended. This refugee claim denial process should be consistent with Article 18(2) which deals with denial decisions. Therefore it should reflect the wording of Article 18, or be reworded to read:

“When the refugee status officer determines that the applicant should be denied refugee status, the officer should proceed in accordance with the provisions of Article 18(2) of this Act.”

Article 20. (Detention to Verify Identification and others)

- (1) Immigration Officers can detain a foreigner who applied for refugee status for the purpose of identifying verification if it is obvious that the person destroyed means of identification (i.e. passport) to conceal one’s identity or used forged documents as to receive refugee recognition more easily, with order of detention issued by Chief of Immigration Office under Article 51 of the Immigration Control Act..
- (2) Any person, who is detained in pursuant to Section (1), shall be immediately released when the person’s identification is verified. If his/her identity cannot be verified within 10 days, the detainee shall be released. Only under unavoidable circumstances, Chief of Immigration Office, Immigration Branch Office or Immigration Processing Center may extend the detention period by maximum of 10 days.

UNHCR Comment on Article 20: Individuals should be informed promptly, in a language which they understand, of the reasons for their detention. If detained, refugee status applicants should be given the opportunity to contact a legal representative or the UNHCR office. Refugee status applicants should not be detained in the same facilities as criminal offenders. UNHCR recommends adding two new sub-section:

“(3) Any person, who is detained pursuant to Section (1), shall be informed, in a language which they understand, of the reasons for their detention and the right to contact a legal representative or the office of UNHCR.

(4) Refugee status applicants who are detained pursuant to Section (1) shall not be accommodated with persons detained for criminal offences.”

Article 21. (Submission of Refugee Status Application by a Detainee)

- (1) When a refugee status applicant is already being detained on application under Article 51 and Article 63 of the Immigration Control Act, detention shall last no longer than 6 months. With the court’s permission, this may be extended only once.
- (2) Certain conditions may be imposed upon the release of a refugee status applicant, such as bail.

Article 22. (Appeal)

- (1) A person whose refugee status application is denied in pursuant to Article 18 Section (2) or Article 19; or a person whose refugee status is cancelled in pursuant to Article 23, may appeal to Minister of Justice within 30 days after receipt of notice. The appellant should attach reasons for appeal when filing appeal through Chief of Immigration Office, Immigration Branch Office or Immigration Processing Center. The appellant cannot lodge an administrative appeal as guaranteed in Korean Administrative Judgment Act.
- (2) When an appeal is filed in pursuant to Section (1), Chief of Immigration Office, Immigration Branch Office or Immigration Processing Center should without delay forward it to Minister of Justice with written opinion attached.
- (3) Minister of Justice, when an appeal is forwarded in pursuant to Section (2), should immediately send the case to Refugee Committee in pursuant to Article 29.
- (4) Refugee Committee, when an appeal is sent in pursuant to Section (3), evaluates and decides whether the appeal has rational grounds.

UNHCR Comment on Article 22(4): UNHCR is concerned at the use of the term “rational grounds”, as this is not defined anywhere in the draft law. The Refugee Committee should be assessing claims for refugee status in accordance with the refugee definition in the 1951 Convention. UNHCR therefore recommends that this section be reworded and suggests to read:

“The Refugee Committee shall assess the claim in accordance with the refugee definition in the 1951 Convention.”

- (5) Refugee Committee should perform factual investigation on its own or by refugee officers.
- (6) Article 8 through Article 17 is applied for appeal procedures. However, appellant's opportunity to oral statement should be guaranteed.
- (7) When Refugee Committee decides that the appeal has reasonable grounds following the procedure in Section (4), Minister of Justice should issue Certificate of Refugee Status to the appellant via Chief of Immigration Office, Immigration Branch Office or Immigration Processing Center. When Refugee Committee decides that the appeal has no reasonable grounds, Minister of Justice should issue notice of decision to the appellant via Chief of Immigration Office, Immigration Branch Office or Immigration Processing Center. The notice should state reasons for the negative decision (including the decision on applicant's factual and legal claims) and the fact that the applicant may lodge an appeal at the Administrative Court within 90 days.
- (8) Decision on appeal should be made within 6 months after receipt of appeal. In cases of unavoidable situations, however, Refugee Committee may extend the period for another 6 months at its discretion.
- (9) When period of decision extended following the provisions in Section (8), extension should be noticed to the appellant until 7 days before the initial decision period expires.

Article 23. (Cancellation)

UNHCR Comment on Article 23: This article is entitled "Cancellation", however the contents of the article discuss the process of "Cessation", addressed in Article 1(C) of the 1951 Convention. Cessation may take place, in accordance with Article 1(C) of the Convention, where international protection is no longer necessary or justified on the basis of certain voluntary acts of the individual concerned or a fundamental change in the situation prevailing in the country of origin. UNHCR recommends that this article be re-entitled "Cessation".

- (1) Minister of Justice may cancel refugee status of a person when he/she corresponds to one of the following:
 1. a person who has voluntarily re-availed him/herself of the protection of the country of his/her nationality;
 2. a person having lost his/her nationality, has voluntarily re-acquired it;
 3. a person who has acquired a new nationality and enjoys the protection of the country of his/her new nationality;
 4. a person who has voluntarily re-established him/herself in the country which he/she left or outside which he remained owing to well-founded fear of persecution;
 5. a person who can no longer, because the circumstances in connection with which he/she has been recognized as a refugee have ceased to exist, continue to refuse to avail him/herself of the protection of the country of

his/her nationality; this paragraph shall not apply to a refugee who is able to invoke humanitarian reasons arising out of previous persecution, making it difficult to request him/her to return to the country of his/her former habitual residence.

6. Being stateless, because of the circumstances in connection with which he/she has been recognized as a refugee has ceased to exist, a person able to return to the country of his/her former habitual residence; this paragraph shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his/her former habitual residence.

UNHCR Comment on Article 23(1): UNHCR recommends that the wording of Article 23(1) precisely reflects the language of Article 1(C) of the 1951 Convention. See also comment to Articles 2(2) and 19(1).

- (2) Minister of Justice shall, when canceling refugee status in pursuant to Section (1), shall notify the foreigner with written notice of cancellation. A notice of cancellation should state reasons for cancellation and the fact that the person may appeal within 30 days.

UNHCR Comment on Article 23(2): Similarly to above, the term used should be brought in line with the internationally agreed terminology, replacing “canceling” and “cancellation” with “cessation”. UNHCR further recommends that there is a provision that requests relevant authorities to consult with UNHCR, as the international expert body in refugee matters, when considering the application of cessation clauses. The second instance decision should be by a court or other independent body and cover both facts and law.

UNHCR Comment on Cancellation and Revocation: UNHCR also notes that the legislation contains no provisions on Cancellation and Revocation and recommends that a robust and complete refugee law should obtain provisions on these matters. “Cancellation” is the invalidation of the refugee status of persons who, at the time of recognition, were not entitled to refugee status, either because they did not fall within the inclusion criteria or the exclusion criteria applied. “Revocation” is the withdrawal of refugee status that was properly conferred, when subsequent to recognition a refugee engages in conduct that would bring him or her within the exclusion clauses of Article 1F(a) or (c) of the 1951 Convention, which would make him or her undeserving of continued international refugee protection.

Article 24. (Decisions from UNHCR’s Executive Committee)

Minister of Justice and Refugee Committee shall respect Conclusions on the International Protection of Refugees, adopted by the UNHCR’s Executive Committee, in their refugee status determination and appeal procedures.

Article 25. (Exception on Disclosed Procedure)

- (1) Refugee Committee and the Court may decide to close the sessions concerning refugees to the public in order to protect identity of refugee status applicant.
- (2) A refugee status applicant may request a closed session to the Refugee Committee and the court in order to protect his/her identity. In such case, Refugee Committee and the court may decide on whether to grant such request, how to carry out the procedure and the where to hold the session.

UNHCR Comment on Article 25: UNHCR recommends that the appeal procedures shall be closed as a matter of principle, unless otherwise agreed to by the applicant.

Article 26. (Laws)

- (1) This Act is the primary law regarding refugee matters, except for cases where special provisions exist.
- (2) Administrative Procedure Act and Administrative Judgment Act shall be applied for matters on refugee status determination procedures which this Act does not specifically regulate.

Article 27. (Humanitarian Status Determination Procedure)

Provisions on refugee status determination procedure shall be applied for humanitarian status determination procedure. Refugee status application and humanitarian status application shall be submitted either together or separately. Even when only refugee status application is submitted, Minister of Justice may grant humanitarian status if considered appropriate.

UNHCR Comment on Article 27: UNHCR supports the approach taken in the draft law, that is to identify international protection needs through a single procedure. UNHCR believes that a single asylum procedure will help to increase efficiency and reduce the costs of decision-making in asylum matters.

Article 28. (Acceptance of Resettled Refugees)

Minister of Justice may allow refugees overseas to resettle out of considerations with respect to humanitarian spirit and international cooperation, after review by the ministerial meeting on key issues such as the need to accept refugees to resettle, the scale of resettlement and the country of origin.

Chapter 3. Refugee Committee

UNHCR Comment on Chapter 3. Refugee Committee: UNHCR recommends that the administrative review of first instance refugee status decisions should be made by an independent and impartial body. Such a body should be comprised of refugee status experts and have the jurisdiction to review questions both of fact and law.

Article 29. (Establishment and Organization of Refugee Committee)

- (1) Refugee Committee is established within Ministry of Justice to review and decide on matters regarding refugee policy and appeal provided in Article 31 Section (1).
- (2) Refugee Committee consists of 1 chairperson and other members, at most 15 members including the chairperson. More than one member shall be standing members of the committee.

UNHCR Comment on Article 29: As outlined above in the general comment on Chapter 3, UNHCR advocates for an independent body dealing with refugee appeal cases. It is further recommended that policy issues should be dealt with separately from appeal procedures and not fall within the terms of reference for the Refugee Committee. The revised version of Article 29 could read:

- “(1) A Refugee Committee is established as an independent body to determine appeals from decisions of refugee status officers as set out in Article 31.
- (2) The Refugee Committee consists of a Chairperson and four standing committee members (part-time and full-time).”

Article 30. (Nomination and Qualification of Refugee Committee Members)

- (1) The President makes the final nomination of committee members following recommendations made by Minister of Justice, via Prime Minister. Minister of Justice shall recommend persons who held administrative office at least as a 4th grade official¹¹ and high ranking officials in other governmental branches as governmental delegates of persons with expert knowledge and experience in refugee matters, and recognized to be able to fairly and independently pursue

¹¹ 4th grade officials are equivalent to persons such as major in the army, adjunct professors, or persons with doctoral degrees.

activities guaranteeing and promoting human rights of refugees, who correspond to one of the followings are eligible to be recommended;

1. a person who is admitted to the Korean Bar;
2. a person who has been teaching law as a position higher than assistant professor at institutions defined in Article 2 Section(1) or Section(3) of Higher Education Act;
3. a person who held office at least as a 4th level administrative governmental officer, or who held office as other higher-governmental officer; or
4. a person who corresponds to qualifications provided above with knowledge and experience in refugee matters.

UNHCR Comment on Article 30(1): As UNHCR’s recommendation above on Article 29 would limit the mandate of the Refugee Committee to appeal proceedings, and not cover wider policy issues, it is also suggested that the qualification for Refugee Committee Members should primarily focus on their expertise on refugee matters. A revised Article 30(1) could read:

“(1) The president makes the final nomination of committee members on the recommendations of the Minister of Justice. The Minister of Justice shall recommend persons with expert knowledge and experience in refugee matters, and recognized to be able to fairly and independently pursue activities guaranteeing and promoting the human rights of refugees. Recommended persons shall meet at least one of the following criteria:

1. A person who has been admitted to the Korean Bar and has at least five years practice experience and knowledge of refugee issues;
2. Or a person with corresponding qualifications and knowledge and expertise in refugee matters;
3. Retired judges with a special interest and experience in refugee adjudication.

- (2) The Chairperson of the Refugee Committee and standing members are nominated among the Committee members by the President.

UNHCR Comment on Article 30(2): UNHCR recommends that all members of the Refugee Committee are standing members. Article 30(2) should therefore be limited to: “The Chairperson of the Refugee Committee is nominated among the Committee members by the President.”

- (3) The Chairperson of the Refugee Committee and standing members are administrative officials.
- (4) The number of governmental members cannot exceed the number of non-governmental members.

UNHCR Comment on Article 30 (3)-(4): In light of the above mentioned recommendations, these provisions would no longer be required and should be deleted.

- (5) The term of office for Chairperson and other members is 3 years. It may be extended once.

UNHCR Comment on Article 30 (5): UNHCR recommends that committee members should be eligible for serving repeated terms of three years.

Article 31. (Mandate of the Refugee Committee)

- (1) Refugee Committee reviews and decides on the following issues:
1. Policies on refugee status determination and support for refugees
 2. Appeal by persons denied of refugee status or persons whose refugee status is cancelled;
 3. Appeal by persons denied of humanitarian status or persons whose humanitarian status is cancelled;
 4. Cooperation and exchange with UNHCR;
 5. Issues considered relevant and thus put up for discussion by Minister of Justice; and
 6. Other relevant issues in guaranteeing and promoting human rights of refugees.
- (2) The Chairperson, as a representative of the Refugee Committee, oversees the operation of Refugee Committee. When he/she is unable to fulfill his/her duty due to unavoidable circumstances, a standing member will act as the Chairperson.
- (3) A decision is made when more than half of the entire members present and more than half of the present members consent.
- (4) Refugee Committee's decisions in pursuant to Section (1)-2 and Section (1)-3 are binding. Other decisions shall be respected by Minister of Justice as well, unless considered posing threat to national security, public order or social welfare.

UNHCR Comment on Article 31: The revised Article 31 on the Mandate of the Refugee Committee could read:

- (1) Refugee Committee reviews and decides on the following issues:
1. Appeal by persons who have received a negative decision on their refugee status application, including those granted humanitarian status.
 2. Appeal by persons whose refugee status or humanitarian status has been terminated following the cessation procedures of Article 23.
 3. Appeal by persons whose refugee status or humanitarian status has been cancelled or revoked.
 4. Appeal by persons whose refugee status application at the border or points of entry has been declared manifestly unfounded or clearly abusive.
- (2) The Chairperson, as the representative of the Refugee Committee, oversees the operation of the Refugee Committee. When he/she is unable to fulfill his/her duty due to unavoidable circumstances, a standing member will act as Chairperson.
- (3) The Refugee Committee has the authority to hear and decide on appeal cases as listed in Section (1). Decisions will be taken by individual members or in panels of two or three Committee members as determined in the Presidential Decree.
- (4) Where the decision is made by more than one member, the decision must be a

majority decision. If the members are evenly divided, the matter must be determined in favor of the applicant.

(5) A negative decision by the Committee must be given in writing, and include reasons for the decision. A copy of the decision and a translation into English, or if the applicant is not sufficiently fluent in English, in another language he or she understands, shall be delivered to the applicant.

(6) Refugee Committee's decisions pursuant to Section (3) are binding.

Article 32. (Research Officer on Refugee Issues)

(1) More than 1 research officer on refugee issues should be placed with the Refugee Committee. Research officer on refugee issues belongs to Human Rights Bureau of Ministry of Justice.

(2) Research officer, by order of the Chairperson, deals with the following:

1. Support operation of Refugee Committee;
2. Research refugee policies and others;
3. Investigate the appeals; and
4. Other administrative affairs for the Refugee Committee.

UNHCR Comment on Article 32: UNHCR recommends that the number of research officers should be increased to at least five. The research officers' main mandate should be to provide accurate and up to date country of origin information from objective and reliable sources to assist in the assessment of the refugee status applications. In addition they may provide other administrative support to the Refugee Committee.

Article 33. (Consultative Body)

(1) Refugee committee may establish a consultative body as to consult matters regarding its mandate.

(2) Organizational and operational details of consultative body shall be regulated by the regulations of Refugee Committee.

UNHCR Comment on Article 33: UNHCR supports the idea of establishing a consultative body on asylum and refugee policies but recommends fully de-linking it from the Refugee Committee. A refugee policy body could be created within the Ministry of Justice to advise the relevant authorities, including the Minister of Justice and Commissioner of the Korea Immigration Service on all matters related to asylum and refugees.

Article 34. (Operation of Refugee Committee)

Details regarding operation of Refugee Committee not regulated by this Act shall be regulated by presidential decree.

Article 35. (Cooperation with UNHCR)

- (1) Minister of Justice and Refugee Committee shall cooperate when UNHCR makes requests for information and statistics related to refugees and others on one of the following:
1. Information on current condition of a refugee(s);
 2. Information on compliance and implementation of the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees and the Protocol;
 3. Information on laws and administrative regulations on refugee affairs and relevant draft bills and administrative regulations;
 4. Expression of an opinion to Minister of Justice or Refugee Committee after reviewing relevant documents on refugee status determination or appeal

UNHCR Comment on Article 35(1): UNHCR is the international body mandated to oversee the protection of refugees and stateless persons. In this respect, it is essential that UNHCR is kept informed by the authorities of the Republic of Korea on new laws and regulations as well as revisions to existing laws and regulations that potentially affect persons of concern to UNHCR. It is recommended that such information is shared in advance and that UNHCR be offered the opportunity to contribute its expert opinion on these pieces of legislation. Therefore UNHCR suggests that a further section be added to this article with the following wording:

“(2) The Ministry of Justice shall inform UNHCR about new laws and regulations and revisions to existing laws and regulations that affect or have the potential to affect persons of concern to the UNHCR, and provide the opportunity for UNHCR to share its expert opinion in relation to these.”

- (2) Minister of Justice and Refugee Committee shall cooperate UNHCR to do one of the following upon requests by UNHCR or a refugee status applicant:
1. Interview with a refugee status applicant
 2. Participation in interviews conducted by refugee officer or research officer on refugee issues
 3. Participation in Refugee Committee’s sessions
 4. Expression of an opinion to Minister of Justice or Refugee Committee after reviewing relevant documents on refugee status determination or appeal
- (3) Minister of Justice and Refugee Committee shall provide convenience in order for UNHCR’s to fulfill its mandate of supervising implementation of and compliance with the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees, cooperate with UNHCR to develop and run training program for government officials engaged in refugee status determination and appeal procedures.
- (4) The Chairperson shall request UNHCR to provide information on refugee issues and an expert from UNHCR to be present at Refugee Committee to give opinion.

UNHCR Comment on Article 35: UNHCR recommends that this article regarding cooperation with UNHCR not be included in Chapter 3 Refugee Committee, but be moved to a chapter dealing with general provisions.

Chapter 4. Treatment of Refugees and Other Persons

(1) Treatment of Refugees

Article 36. (Treatment of Refugees)

- (1) A foreigner who is recognized as a refugee by the Republic of Korea shall enjoy the rights designated in the Convention relating to the Status of Refugees and other international human rights treaties signed and ratified by the Republic of Korea, regardless of other related domestic laws.
- (2) In order to accomplish the goal of Section 1, national and local authorities shall strive to establish and implement policy on refugees, to revise relevant laws, support relevant ministries and departments, and to put in place other measures.

UNHCR Comment on additional article on Legal Status: UNHCR recommends that refugee status applicants who are recognized as refugees should be granted a secure legal status, preferably in the form of a residence permit. Currently recognized refugees in the Republic of Korea are issued with a residence visa that must be renewed every three years. UNHCR recommends that recognized refugees be granted permanent residence status that has no time limitation. This permanent residence status should ideally be granted immediately or, at the latest, following expiry of the initial permit held, in order that the refugee can achieve self-reliance and integrate more easily into Korean society, including into the labour market.

Article 37. (Social Security of Refugees)

A person of refugee status shall enjoy equal treatment in terms of social security with nationals of the Republic of Korea, despite regulations in Article 8 of Social Security Law and other laws on social security.

UNHCR Comment on Article 37: This article is in line with international standards and UNHCR emphasizes the importance of including this provision in the refugee law.

Article 38. (Basic Livelihood of Refugees)

A person of refugee status experiencing economic difficulties shall be protected by Article 7 through Article 15 of National Basic Livelihood Security Act upon his/her request, regardless of Article 5 and Article 5-2 of National Basic Livelihood Security Act.

UNHCR Comment on additional article on Right to Work: The 1951 Convention enshrines the right of refugees to be granted the right to work in their country of asylum. UNHCR would therefore recommend that this is specifically mentioned in the draft law. The relevant provision could read:
“Refugee status applicants recognized as refugees shall have the right to work and access to the labour market on the same basis as nationals, including self employment, employment with remuneration, or exercise of liberal professions.”

Article 39. (Medical Care)

Refugees and their family members shall be provided with medical assistance (or care) by Medical Care Act.

UNHCR Comment on Article 39: Refugee status applicants recognized as refugees should have the same access to medical facilities as nationals in accordance with Article 23 of the 1951 Convention. UNHCR recommends that this article be rephrased to read: “Recognized refugees and their dependents shall have the same access to medical care as nationals.”

Article 40. (Right to Education and others)

- (1) Minors recognized as refugees and underage children of recognized refugees have the right to enjoy elementary and secondary education equivalent to nationals of the Republic of Korea.
- (2) Minister of Justice may provide educational support as prescribed by the presidential decrees, appropriate for a refugee considering his/her age, learning ability and other situations.

UNHCR Comment on Article 40: UNHCR recommends that all children have access to free primary education (see also comment to Article 51). Recognized refugees should also have access to higher and tertiary education at the same level as nationals. In particular, they should benefit from the same financial support such as scholarships available to nationals. Such access will further support their integration prospects.

Article 41. (Social Adjustment Training and others)

- (1) Minister of Justice may provide social adjustment training, such as Korean language training, essential for local integration in Korea, as prescribed by presidential decree.
- (2) Minister of Justice may provide vocational training when requested by persons with refugee status as prescribed by presidential decree.

UNHCR Comment on Article 41: UNHCR applauds the inclusion of this article in that such training plays an important role in facilitating the integration of refugees in the Republic of Korea. See also comment to Article 52. A revised Article 41 could read:

- (1) The Minister of Justice shall provide social adjustment training, including but not limited to Korean language training, essential for local integration in Korea, as prescribed by Presidential Decree to recognized refugees.
- (2) The Minister of Justice shall provide access to recognized refugees to publicly available vocational training programmes.

Article 42. (Recognition of Education)

A person with refugee status may be recognized his/her educational attainment at a level corresponding to the degrees pursued in other countries in the past, as prescribed by presidential decree.

Article 43. (Recognition of License)

- (1) A person with refugee status may be authorized with license, equivalent or partly equivalent to the license the person attained in other countries according to related domestic laws.
- (2) Minister of Justice may provide necessary complementary training or re-training in order to recognize qualifications in pursuant to Section (1), as prescribed by presidential decree.
- (3) To implement Section (1) and Section (2), a committee deciding whether to grant recognition may be established as prescribed by presidential decree.

Article 44. (Family Unity)

- (1) Minister of Justice may grant refugee status to spouses and children under 20 of persons with refugee status. When spouses or children under 20 of persons with refugee status attempt to enter the Republic of Korea, admission should be allowed for family unity.

UNHCR Comment on Article 44(1): The right to family unity is a fundamental right enshrined in international human rights law. As section (1) is currently worded in a discretionary manner, UNHCR recommends that section (1) be rephrased to read “The Minister of Justice shall grant ...”. UNHCR also notes that Article 44 limits family to spouse and children under 20. In UNHCR’s view all members of a genuine and stable family unit need to be included. That is other family members with whom there is a dependency (economic, emotional) and who have been living in the same household as the applicant.

- (2) Refugee status of spouses or children under 20 obtained according to the above section (1) shall be maintained in cases of death of spouse with refugee status;

divorce with spouse with refugee status; or reaching the age of 20, unless voluntarily waived. Persons with waived refugee status should be issued with transferred sojourn permission in pursuant to Article 24 of Immigration Control Act if the person wishes to stay and remain in the Republic of Korea.

Article 45. (Exemption from Reciprocity)

A person with refugee status is exempted from reciprocity regardless of other laws.

UNHCR Comment on additional article on Right to Own Property: While Articles 13 and 21 of 1951 the Convention only require the right to own property be granted to refugees “as other foreigners in the same circumstances”, UNHCR recommends that a more liberal approach should be taken, particularly in the light of fostering integration. UNHCR understands that currently there are some restrictions on the ability of foreigners in the Republic of Korea to own land (under the Foreigners’ Land Acquisition Act) and property (under the Foreign Investment Promotion Act) and would therefore recommend that a new article be added regarding these rights and suggests the following wording:

“Right to Own Property

Recognized refugees shall have the same right as nationals to housing and to own movable and immovable property.”

UNHCR Comment on new article on Right to Association: Article 15 of the 1951 Convention grants refugees the right of association. UNHCR would therefore recommend that a new article be added regarding this rights and suggests the following phrasing:

“Right of Association

Recognized refugees shall have the same rights to join non-profit associations and trade unions as the most favorable treatment accorded to other nationals of foreign countries.”

UNHCR Comment on additional article on Right to choose Place of Residence: Article 26 of the 1951 Convention grants refugees the right to choose their place of residence and to move freely within the territory of the host state. UNHCR recommends this right be added in a new article and suggests the following:

“Right to Choose Place of Residence

Recognized refugees shall enjoy the same freedom to choose their place of residence as nationals.”

UNHCR Comment on additional article on Travel Documents for Refugees: Article 28 of the 1951 Convention requests states to issue refugees with travel documents for the purpose of travel outside their territory. While this issue is currently dealt with in the Immigration Control Act, UNHCR recommends this right be also added in the draft law and suggests the following:

“Travel documents for refugees

Recognized refugees shall be issued with travel documents for the purpose of travel outside their territory.”

Article 46. (Naturalization)

A person with refugee status and lived in the Republic of Korea for more than three years with permanent address may be naturalized even if the person does not meet requirements set out in Article 5 section (1) of Naturalization Act.

Comment on Article 46: UNHCR welcomes the inclusion of provision for recognized refugees to be naturalized in the Republic of Korea. This is in line with the Republic of Korea’s obligations under Article 34 of the 1951 Convention. In particular this article obliges States to make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

(2) Treatment of Persons with Humanitarian Status

Article 47. (Treatment of Persons with Humanitarian Status)

Regarding treatment of persons allowed to stay in the Republic of Korea in pursuant to Article 27, regulations under the Articles 35 through 46 shall be followed. However, restrictions may render regarding travel in and out of the Republic of Korea as prescribed by presidential decree.

UNHCR Comment on Article 47: There are compelling reasons to align the rights of persons granted complementary protection with the rights of refugees, including as regards access to the labour market and integration support. The protection needs of beneficiaries of complementary protection are often of equal duration to those of refugees, and return to the home country is not a likely option for most such persons. UNHCR therefore applauds the granting of the rights refugees have to individuals with humanitarian status. However, UNHCR questions the necessity for a restriction on the freedom of movement of a person with humanitarian status, and would advise that this sentence “However, restrictions... by presidential decree.” of Article 47 be deleted.

(3) Treatment of Refugee Status Applicants

UNHCR Comment on Section (3) Treatment of Refugee Status Applicants: Refugee reception is the treatment of refugee status applicants from when a person expresses interest to seek protection until final determination of the refugee status application. Reception includes measures that aim to protect the basic dignity and right of applicants. UNHCR is pleased to see a section relating to the reception of refugee status applicants included in this legislation.

Article 48. (Support for Living Cost of Refugee Status Applicants and others)

UNHCR Comment on Article 48: UNHCR’s Executive Committee, as well as the Global Consultations on International Protection, have recognized that reception arrangements can be beneficial both to the State and to the asylum seeker where they provide an opportunity for the asylum-seeker to attain a degree of self-reliance.¹² The European Commission, in its “Proposal for a recast of the Directive laying down minimum standards for the reception of asylum seekers”¹³, also expresses the aim of facilitating access to the labour market and emphasizes the benefits of employment for both the asylum seeker and host States. UNHCR therefore applauds the inclusion of provision for the right to work for refugee status applicants in Korea. UNHCR welcomes the promotion of refugee status applicants’ self-sufficiency and recommends that they should be granted access to the labour market no later than six months from the date of application or earlier where the support offered pursuant to section (1) of this Article is insufficient to maintain an adequate standard of living.

- (1) Minister of Justice shall provide living allowance to refugee status applicants as prescribed by presidential decree.

UNHCR Comment on Article 48(1): UNHCR recommends that the wording of this section be revised to ensure that the living allowance allows for an adequate standard of living, particularly in light of the fact that there are currently no other support systems for refugee status applicants in the Republic of Korea:

“The Ministry of Justice shall provide a living allowance to refugee status applicants that enables them to have an adequate standard of living.”

- (2) Minister of Justice may allow employment of a refugee applicant when refugee status determination procedure does not conclude within 6 months from the application date.

UNHCR Comment on Article 48(2): As Section (2) is currently worded in a discretionary manner, UNHCR recommends it be rephrased as follows:

“The Minister of Justice will permit refugee status applicants to work in Korea after a period of six months from date of application, if the refugee status determination procedure has not been completed within this period.”

¹² See UNHCR, *Reception of asylum-seekers, including standards of treatment in the context of individual asylum systems*, Global Consultations on International Protection, 4 September 2001, EC/GC/01/17, available at <http://www.unhcr.org/refworld/docid/3bfa81864.html>, and ExCom Conclusion No. 93 ((LIII) – 2002) on reception of asylum-seekers in the context of individual asylum systems, 8 October 2002, available at <http://www.unhcr.org/refworld/docid/3dafdd344.html>.

¹³ UNHCR, *UNHCR Comments on the European Commission's Proposal for a recast of the Directive laying down minimum standards for the reception of asylum-seekers (COM (2008)815 final of 3 December 2008)*, 13 March 2009, available at: <http://www.unhcr.org/refworld/docid/49ba8a192.html>.

Article 49. (Housing Support for Refugee Status Applicants and others)

UNHCR Comment on Article 49: Experience has shown in many places in the world that providing housing facilities for asylum-seekers and refugees, although useful to vulnerable claimants, is expensive, difficult to operate and can lead to conditions of dependency. They also discourage local integration and in some cases have contributed to creating tensions with host populations. UNHCR therefore does generally not recommend the creation of collective accommodation centers.

- (1) Minister of Justice shall establish and operate housing facility for refugee applicants to stay until the conclusion of refugee status determination procedure. The housing facility, however, should allow the applicants to come and leave at any time.

UNHCR Comment on Article 49(1): UNHCR recommends that the Ministry of Justice should, either directly or in collaboration with other organizations, ensure that refugee status applicants are provided with appropriate shelter, but should not be required to live in collective accommodation centers. If, nevertheless, reception centers are established for refugee status applicants, they should not unnecessarily restrict refugee status applicants' freedom of movement and not be a long-term shelter solution. Appropriate provision should be made to take into account the specific needs of victims of sexual abuse and exploitation, trauma and torture; and include measures for early identification of applicants with special needs; and be gender and age-sensitive. UNHCR should have right of access to all reception facilities.

- (2) Relevant matters regarding the housing facility such as its type and management shall be regulated by presidential decree.

Article 50. (Medical Aid)

Minster of Justice may provide medical aid to refugee status applicants as prescribed by presidential decree.

UNHCR Comment on Article 50: UNHCR recommends that national refugee legislation should make provision for the health requirements of refugee status applicants. Ideally refugee status applicants will be provided with primary medical and emergency medical care, both on arrival and throughout the refugee status determination process. Provision should also be made for psychological care and counseling free of charge for survivors of torture or persons suffering from severe trauma. As Article 50 is currently worded in a discretionary manner, UNHCR recommends that it be rephrased as follows:

“Refugee status applicants shall have access to primary medical and emergency medical care, both on arrival and throughout the refugee status determination process, at the same level as nationals”.

Article 51. (Right to Education of Minor Refugee Applicants)

Minor refugee applicants or underage children of refugee applicants shall enjoy the right to elementary and secondary education equivalent to nationals of the Republic of Korea.

UNHCR Comment on Article 51: In accordance with Article 28 of the Convention on the Rights of the Child, ratified by the Republic of Korea on 20 December 1991,¹⁴ primary education should be free and compulsory for all children. Therefore the children of refugee status applicants, and minor refugee status applicants, should have access to free primary education in Korea. Given the importance of education, secondary education should also be made available to applicants. While UNHCR is pleased that provision has been made for primary education in this legislation, UNHCR recommends that the wording of this section be revised to read:

“(1) Refugee applicants and children of refugee applicants shall have access to free primary education.
(2) Refugee applicants and children of refugee applicants shall have access to secondary education.”

Article 52. (Educational Support for Refugee Applicants)

Minister of Justice shall provide education such as Korean language training as prescribed by presidential decree.

¹⁴ Office of the United Nations High Commissioner for Human Rights (UNHCHR), *Status of Ratifications of the Principal Human Rights Treaties*, as of 16 June 2006, <http://www2.ohchr.org/english/bodies/docs/RatificationStatus.pdf> (Accessed 12 June 2009).

UNHCR Comment on Article 52: UNHCR welcomes the inclusion of this provision. Good knowledge of the Korean language will assist refugee status applicants to become self-sufficient and may facilitate good relations with the local community. UNHCR recommends that opportunities for vocational training, through publicly available programmes, also be provided to refugee status applicants. UNHCR therefore recommends that this Article be rephrased as follows:

- (1) The Ministry of Justice shall provide training, including but not limited to Korean language training to refugee status applicants.
- (2) The Ministry of Justice shall provide access to refugee status applicants to publicly available vocational training programmes.

UNHCR Comment on additional article on Special Protection for Children: UNHCR recommends the addition of an article relating to the protection of children in line with Executive Committee Conclusion 107 at (b) ii¹⁵ as follows:

“Special Protection for Children

Access to national child protection systems shall be granted to all refugee status applicant, refugee or humanitarian status holder children within the jurisdiction of the Republic of Korea.”

UNHCR Comment on additional article on Persons with Special Needs: UNHCR recommends that provisions should be added that take into account and provide for persons with special needs, including unaccompanied and separated children.

UNHCR Comment on additional Article on Statelessness: UNHCR strongly recommends that provisions are added which ensure that statelessness is prevented. In particular regulations should be foreseen which allow children born to refugee status applicants and refugees in the Republic of Korea, who would otherwise become stateless to acquire nationality.

UNHCR Comment on additional Article on Presidential Decree: Procedures related to the implementation of this law will be specified through Presidential Decree, which shall be enacted at the date of coming into force of this law.

Appendix

This act shall enter into force 6 months after the date of its promulgation.

**UNHCR Representation to the Republic of Korea
Seoul, 15 June 2009**

¹⁵ Accessible at: <http://www.unhcr.org/excom/EXCOM/4717625c2.html>.