

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: 4th Cycle, 42nd Session

REPUBLIC OF KOREA

I. BACKGROUND INFORMATION

The Republic of Korea ("Korea") acceded to both the *1951 Convention Relating to the Status of Refugees* and the *1967 Protocol ("1951 Convention")* on 3 December 1992. The Republic of Korea also ratified the *1954 Convention Relating to the Status of Stateless Persons ("1954 Convention")* on 22 August 1962 but is not yet a State party to the *1961 Convention on the Reduction of Statelessness ("1961 Convention")*.

Korea adopted the Refugee Act in 2013 as domestic implementation of the *1951 Convention*. The Refugee Act also allows for 'humanitarian status' to those who do not meet the refugee definition but are in need of international protection. The Ministry of Justice ("MoJ") has thereafter established a separate division in charge of refugee policy (currently Refugee Policy Division), and on 25 Feb 2020 has established the Refugee Appeals Division that focuses on administrative appeals against non-recognition decisions.

UNHCR commends the MoJ for its continuation of its pilot resettlement programme, through which it has resettled a total of 186 refugees from Thailand and Malaysia, most of whom are Myanmar nationals. UNHCR also commends Korea for implementing a series of policies to provide special residence permits to persons from Myanmar, Afghanistan, and Ukraine, in 2021 and 2022. It has also evacuated 391 Afghans as "special contributors" in 2021 and provided them with a stable status similar to refugee status in Korea.

From 1994 to 31 April 2022, a total of 74,610 asylum claims have been lodged in Korea. Out of these, 1,194 persons were recognised as refugees and 2,424 persons were granted humanitarian status.¹ The number of asylum applications has risen from approximately 1,000 applications in 2012 to more than 7,500 applications in 2016 and more than 15,000 in 2018 and 2019, before being reduced to 2,341 in 2021. The reduction is generally attributed to COVID-19 travel restrictions, and the number is expected to increase post COVID-19. The refugee recognition rate has been below 2% since 2019, and the cumulative recognition rate as of 31 April 2022 is 2.8%.

It is generally agreed that no reliable official figures exist on the number of stateless persons in Korea.² The main groups of stateless or persons at risk of statelessness are (a) defectors from the Democratic People's Republic of Korea who fail to be accorded Korean citizenship after their defection, usually due to Chinese ethnicity or long periods of stay in China and (b) foreigners who acquire Korean citizenship, renounce their birth citizenship and subsequently have their Korean citizenship revoked. Children born to foreigners in Korea, as they are not entitled to Korean birth registration and may not be able to obtain a birth certificate from their

¹ Ministry of Justice, Monthly Statistics for Immigration and Foreigner Policies, April 2022 (in Korean), p.38.

² Chulhyo Kim, Seori Choi, Mapping Statelessness in the Republic of Korea, UNHCR Representation in the Republic of Korea, pp.56-79.

embassy, are also at risk of statelessness. There exists no credible or official estimate on the number of such children.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 3rd cycle UPR recommendations

Linked to UPR Recommendation no. 132.130: “Completely stop deportation of undocumented migrant children enrolled in schools and their detention after deportation orders”

MoJ, on 20 Jan 2022, implemented a new round of regularization policy for undocumented children, regardless of nationality, including those who have unsuccessfully completed or opted out of refugee status determination procedure. Based on this policy, visas will be given to undocumented children who are in or have completed primary and secondary education and have lived in Korea for 6 or 7 years. Parents will not be deported and will be allowed to work until their children have graduated from high school. This policy is effective until March 2025.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 3rd cycle UPR recommendations

Issue 1: Lack of access to livelihood, social support, or livelihood support for asylum-seekers

Linked to UPR Recommendations 130.63: “Implement measures to facilitate access to health care and education, particularly for the most vulnerable population”

Asylum-seekers are given labour permits 6 months after the submission of their applications. During the first 6 months, they have no legal means of livelihood or access to health services. According to recent official statistics, livelihood support is given to only 4% of the total asylum-seeker population during this initial 6-month period.³

Some asylum-seekers in violation of immigration laws are labeled as “subsequent refugee applicants, etc.”, and denied visas. While the departure date can be deferred until a final decision on their application is confirmed, they are denied documentation, access to livelihoods including employment permits, livelihood support, and health services.

NHRCK has recently recommended the Ministry of Justice to provide livelihood support or employment permit for subsequent applicants, in case of prolonged refugee status determination procedure.⁴ UNHCR has also emphasised that all asylum-seekers should be issued documentation and ensured minimum standards of living.⁵

Recommendations:

UNHCR recommends that the Government of the Republic of Korea:

- a) Adopt measures to ensure that all asylum-seekers are given access to livelihoods, including to the labor market, social support, and/or livelihood support in order to sustain themselves and their families; and,

³ MoJ Press Release, “A simple comparison between livelihood support for refugee applicants and war veterans is not appropriate”, 8 Jan 2020 (in Korean).

⁴ NHRCK, Chairpersons’ statement for World Refugee Day: government must strengthen its role to protect refugees, and must ensure survival of subsequent applicants, 20 June 2022 (in Korean).

⁵ UNHCR, *Opinion by the Office of the United Nations High Commissioner for Refugees for the Petition of 21-Jinjeong-0274200 submitted to the National Human Rights Commission of Korea*, December 2021, available at: <https://www.refworld.org/docid/61d43f2d4.html>

- b) Adopt measures to ensure that all asylum-seekers are given access to healthcare during the refugee status determination procedure.

Issue 2: Lack of universal birth registration

Linked to UPR Recommendations 132.118 to 132.124, including: “Establish a universal birth registration system that includes children of refugees and asylum seekers”; “Establish a national birth registration system to register all births in Korea irrespective of the nationality of parents”

The Korean birth registration system lacks an effective enforcement or monitoring mechanism for registration of births of children. Further, children born in Korea to parents with foreign nationality are not able to register their birth in Korea and the parents are expected to register births with their respective embassies in Korea. This poses a considerable challenge for the children of refugees, asylum-seekers, and stateless persons as well as undocumented migrants, who are unable to approach their embassies, or have their registration denied or face considerable administrative hurdles. While the MoJ has been working towards legislating universal birth registration,⁶ relevant legislative proposals have not been proposed or not passed the legislature as of June 2022. The current Korean State practice does not reflect the commitment by UN ESCAP Member States to remove barriers to universal civil registration.⁷

Recommendation:

UNHCR recommends that the Government of the Republic of Korea:

- a) Establish a universal birth registration system which includes children of refugees, asylum-seekers, stateless persons, persons of undetermined nationality and undocumented persons; and,
- b) Ensure that all children have access to birth registration immediately after birth, regardless of immigration, marital, documentation or any other status of their parent(s).

Issue 3: Lack of integration and support for humanitarian status holders, including pathway to naturalization, sufficient access to labour market and healthcare

Linked to UPR Recommendations 130.63: “Implement measures to facilitate access to health care and education, particularly for the most vulnerable population”

Changes to Korea’s health insurance scheme in 2019 allows for the mandatory enrolment of humanitarian status holders. However, the scheme provides disadvantageous conditions for humanitarian status holders compared to Korean nationals, including narrower definition of the ‘household’ which is covered by single insurance and high insurance premiums that do not reflect their financial abilities. Moreover, the short period of stay accorded to the humanitarian status holders, which renewed every 6 or 12 months, limits their right to work and means of accessing livelihoods. Challenges in finding employment arise from requirements that they have already received their work permit prior to beginning employment, as well as a lack of administrative assistance in transfer of qualifications and vocational training. In addition, the Nationality Act, as amended in 2017, does not grant permanent resident status to humanitarian status holders, thereby denying them pathway to naturalization, regardless of the length of their stay.

Recommendations:

UNHCR recommends that the Government of the Republic of Korea:

⁶ Combined Report from various Ministries, Ensuring Social Rights of Undocumented Migrant Children, 24 Nov 2021 (in Korean).

⁷ See ESCAP Resolution 78/4 of 27 May 2022, confirmation ESCAP/MCCRVS/2021/8/Add.1 of 29 November 2021.

- a) Adopt measures to ensure that all humanitarian status holders are given full, fair and stable access to the labour market and the healthcare system; and
- b) Allow humanitarian status holders a pathway to stable status and nationality.

Issue 4: Hate speech and discrimination against persons of concern, including refugees, humanitarian status holders, asylum-seekers, and stateless persons

Linked to UPR Recommendations 132.26, 132.27, 132.32, 132.35, 132.36, 132.38, 132.39, 132.40, 132.44, 132.45, and 132.64, including: “Approve general legislation to combat discrimination, which expressly covers all spheres of life and prohibits discrimination on any ground, particular on grounds of race, sexual orientation and gender identity”

Racist hate speech directed against non-citizens persist in the media and on the internet. Discrimination based on race, origin, and ethnicity has also been pervasive,⁸ posing severe challenges to the protection and integration of refugees, asylum-seekers, humanitarian status holders, and stateless persons in Korea. While anti-discrimination legislation exists for some forms of discriminations including on disability and gender, a comprehensive anti-discrimination law that would define and prohibit discrimination in all forms, including but not limited to discrimination against refugees, asylum-seekers, and stateless persons due to their race, origin, or ethnicity, does not yet exist in Korea.

Recommendation:

UNHCR recommends that the Government of the Republic of Korea:

- a) Implement a comprehensive anti-discrimination legislation to effectively address all forms of discrimination, particularly against non-citizens including refugees, asylum seekers, humanitarian status holders, and stateless persons.

Additional protection challenges

Issue 5: Asylum procedure at ports of entry

An amendment to the Immigration Act, effective as of August 2022, provides for the Government’s responsibility for operating the airport waiting room (“waiting room”), heretofore under the control of airline operators. Several human rights violations against asylum-seekers, who have been *de facto* detained in the waiting room, had been reported in the past. Despite this positive change that allows for better accountability, concerns remain on access to asylum at ports of entry. Between 2018-2019, an asylum-seeking family, including infants below 10 years of age, had to stay in the departure area of Incheon International Airport for 287 days without any livelihood support, while the decision to not refer their asylum applications to the full refugee status determination procedure (non-referral decision) was disputed in court. On 8 April 2022, 5 Ethiopians were given non-referral decisions which forced them to stay at the Airport for more than two months until such decisions were cancelled.

Recommendation:

UNHCR recommends that the Government of the Republic of Korea:

- a) Revise the ‘non-referral’ grounds under Article 5 of the Enforcement Decree of the Refugee Act and process asylum applications at ports of entry with full respect to the *1951 Convention* and the principle of *non-refoulement*.

Issue 6: Detention of asylum-seekers

Some groups of asylum-seekers, including undocumented asylum-seekers who apply for refugee status after being apprehended by immigration authorities, asylum-seekers re-

⁸ National Human Rights Commission of Korea, Press Release, “It is racial discrimination to perceive as normal discriminatory status between Korean nationals and non-nationals”, 19 Mar 2020 (in Korean).

applying for refugee status while undocumented, and those who have not complied with the departure order for more than a month, are systematically detained. Their detention is maintained while their asylum applications are ongoing, including in any administrative or judicial appeals, which can take several years. Detainees may receive “temporary release” on a provisional basis, but it is upon the complete discretion of immigration authorities, and rarely given. While in 2022 Korea has commendably begun to remodel its immigration detention facilities to allow for better living conditions, including access to regular exercise and cell phone usage,⁹ concerns persist on the risk of prolonged detention of asylum-seekers.

Recommendations:

UNHCR recommends that the Government of the Republic of Korea:

- a) Adopt alternatives to detention for asylum-seekers in order to avoid arbitrary and/or prolonged detention of asylum-seekers;
- b) Ensure that the detention of asylum-seekers, refugees and stateless persons is only used as a measure of last resort, with liberty being the default position; and
- c) Adopt measures and laws to set maximum limits to detention, and to subject extension of detention to independent judicial oversight.¹⁰

Issue 7: Family reunification for refugees and humanitarian status holders

Although Article 37 of the Refugee Act provides that the spouse and minor children of a recognised refugee may enter Korea, there are no implementing regulations or instructions relating to refugee family reunification to Korean missions abroad. Humanitarian status holders are not granted the right to family reunification. As a result, recognised refugees and humanitarian status holders continue to face legal and practical challenges in bringing their immediate family members to Korea.

Recommendation:

UNHCR recommends that the Government of the Republic of Korea:

- a) Establish a legal and policy framework for the reunification of family members of recognised refugees and humanitarian status holders.

Issue 8: Quality of decision-making in refugee status determination

While the MoJ has commendably made considerable efforts to fulfill its pledge made at the 1st Global Refugee Forum to strengthen national capacity for protecting refugees, particularly through establishment of the Refugee Appeals Division, incidents in previous years and recent reports have raised concerns regarding the application of the refugee criteria in line with international standards. Notably in relation to refugee applications of individuals fleeing war, their applications may not be fully considered on their merits under *1951 Convention* grounds for refugee status and are processed for humanitarian protection status.

Recommendations:

UNHCR recommends that the Government of the Republic of Korea:

- a) Continue its work on strengthening asylum capacity, including through capacity building efforts for Refugee Status Determination officers, staffing retention and expansion of resources, in order to ensure quality decision-making in line with international standards; and
- b) Ensure full respect of the primacy of the *1951 Convention* in the decision-making, through a full and inclusive application of the refugee criteria, with considerations of

⁹ MoJ Press Release, “Hwaseong Immigration Processing Center now changed to a human rights friendly open facility”, 7 Apr 2022 (in Korean).

¹⁰ This is in line with the MoJ’s announced intent to introduce third party review of commencement and extension of detention, and to set a maximum period of detention. MoJ Press Release, “Results of Fact-Finding Investigations on the Hwaseong Immigration Processing Center Human Rights Violations and Plans for Improvement”, 1 Nov 2021 (in Korean).

other forms of protection being made only if the refugee criteria are not met.

Issue 9: Implementation of the 1954 Convention and accession to the 1961 Convention

Korea has not yet passed implementing legislation to give effect to the *1954 Convention*. Without a statelessness determination procedure in place, many stateless persons are not given stable status and are instead undocumented, giving rise to considerable hardship in their enjoyment of basic rights. Attempts to regularize their status are hindered in practice by the imposition of large fines.

Recommendations:

UNHCR recommends that the Government of the Republic of Korea:

- a) Incorporate the rights and standards recognized in the *1954 Convention* into the national legal framework, establish a statelessness determination procedure, and provide for facilitated and expedited naturalization of stateless persons in accordance with Art. 32 of the *1954 Convention*; and
- b) Accede to the *1961 Convention* and incorporate it into the national legal framework.

**UNHCR
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