

## **UNHCR's Comments on the Draft Presidential Decree and Regulations to the Refugee Act of the Republic of Korea**

### **Part 1: Introduction**

1. UNHCR wishes to commend the Republic of Korea on the comprehensiveness of the draft Presidential Decree and Regulations to the Refugee Act, which will come into force on 1 July 2013. UNHCR welcomes the degree to which the draft Presidential Decree and Regulations adhere to the Republic of Korea's international obligations in relation to refugee protection, including to the 1951 Convention Relating to the Status of Refugees (1951 Refugee Convention) and its 1967 Protocol Relating to the Status of Refugees (1967 Protocol). The draft Presidential Decree and Regulations appropriately supplement the Refugee Act in many areas. With some further development, full compliance with the 1951 Refugee Convention, 1967 Protocol and other relevant international instruments and standards can be ensured.
2. UNHCR offers these comments as the agency entrusted by the United Nations General Assembly with the mandate for providing international protection and seeking permanent solutions for refugees and other persons of concern.<sup>1</sup> 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."<sup>2</sup> UNHCR's supervisory responsibility under its Statute is reiterated in Article 35 of the 1951 Refugee Convention<sup>3</sup> and Article II of the 1967 Protocol 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".<sup>4</sup>
3. UNHCR highly appreciates being consulted in the process of the drafting of the Decree and Regulations and being given the opportunity to provide comments on

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

<sup>2</sup> Statute of the Office of the United Nations High Commissioner for Refugees, UN General Assembly Resolution 428(V), Annex, UN Doc. A/1775, paragraph 8(a), available at <http://www.unhcr.org/refworld/docid/3ae6b3628.html>.

<sup>3</sup> UNTS No. 2545, Vol. 189, page 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.

<sup>4</sup> UNTS No. 8791, Vol. 606, page 267.

these documents.<sup>5</sup> At the same time, UNHCR regrets the short time available to review and submit its opinion on these important documents. The below comments should be seen and understood within these limitations and do not claim to be of the level of detail and comprehensiveness this draft Presidential Decree and Regulations would merit.

4. UNHCR's aim in providing these comments is threefold. Firstly, UNHCR would like to assist the Republic of Korea in meeting its international obligations with regards to refugee protection. Secondly, UNHCR would like to offer its expertise to the ongoing efforts to align the Republic of Korea's domestic legislation with the 1951 Refugee Convention, 1967 Protocol and other international standards. Thirdly, UNHCR would like to contribute to the establishment of clear regulations and procedures regarding reception, asylum, local integration and resettlement 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 this document UNHCR's comments are shared in two main parts. Part 2 provides general comments on the Presidential Decree and Regulations, and Part 3 provides specific comments to most provisions of the Decree and Regulations. UNHCR's key recommendations to the Republic of Korea are summarized at the end of this document. *UNHCR seeks* the Republic of Korea's consideration of these comments and recommendations. UNHCR also welcomes further cooperation and discussion regarding these comments and recommendations and their implementation.
6. UNHCR remains at the full disposal of the authorities of the Republic of Korea for a more extensive and detailed exchange on the Presidential Decree and Regulations and on developing the national asylum system.

## **Part 2: General Comments**

7. The draft Presidential Decree and Regulations provide much detail that appropriately supplements and complements the Refugee Act in addressing many of the essential issues for the protection of persons of concern to UNHCR in the Republic of Korea. However, UNHCR notes that there are a number of provisions and safeguards that have not yet been fully covered or developed. With appropriate amendments these can be brought into consistency with the 1951 Refugee Convention, and other relevant international instruments and standards.
8. UNHCR notes that Article 6 of the Constitution of the Republic of Korea prescribes that:

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<sup>5</sup> Comments are based on an unofficial English translation by UNHCR of the draft Presidential Decree and Regulations.

- (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.

The Republic of Korea acceded to the 1951 Refugee Convention and the 1967 Protocol on 3 December 1992. It follows that the 1951 Refugee 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. Article 1 of the Refugee Act states that the aim of the Act is to stipulate matters on the status and treatment of refugees pursuant to the 1951 Refugee Convention and 1967 Protocol. Article 30(1) of the Refugee Act further provides that recognized refugees in the Republic of Korea will be treated in accordance with the 1951 Refugee Convention, notwithstanding other laws and regulations. UNHCR therefore recommends that all provisions of the Presidential Decree and Regulations be in accordance with the provisions of the 1951 Refugee Convention to avoid exposing domestic legislation to the risk of conflicting interpretations and undermining legal certainty.

9. UNHCR notes that Addenda Article 2 of the Refugee Act, the Presidential Decree and the Regulations limits the scope of their applicability to refugee status applications submitted on or after 1 July 2013, the enforcement date. A literal application of this provision will create two separate groups of refugee status applicants resulting in them not being treated equally and without discrimination under domestic law. UNHCR therefore recommends that Addenda Article 2 be amended to apply to all refugee status applicants regardless of the date of their application, thereby allowing equal treatment of all refugee status applicants.
10. To avoid inappropriately wide discretion, lack of transparency and ambiguity, UNHCR recommends that, where appropriate, discretionary wording be avoided and that the Decree provide comprehensive detail, especially where required by the Refugee Act.
11. UNHCR requests that all authorities of the Republic of Korea act in accordance with the principle of *non-refoulement* in Article 33 of the 1951 Refugee Convention as well as other international human rights conventions. The *non-refoulement* principle obliges States not to return asylum-seekers, pending a final determination of their status, or refugees to a country where their life or freedom would be threatened. A State is subject to the *non-refoulement* obligation in relation to refugees and asylum-seekers wherever a State exercises jurisdiction, including at the frontier, on the high seas or on the territory of another State.<sup>6</sup> To ensure the respect of this principle, every

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<sup>6</sup> UN High Commissioner for Refugees, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, available at: <http://www.unhcr.org/refworld/docid/45f17a1a4.html>; UN High

refugee status applicant should be admitted to the territory and have their asylum claim processed. In particular, persons with specific needs, such as separated and unaccompanied children, elderly people, and the sick and traumatized, should always be admitted to the territory and their claims processed.

12. In UNHCR's view, border officials at ports of entry should not interview or make or influence decisions regarding refugee status applications. Border officials should act in accordance with the principle of *non-refoulement* and only identify asylum-seekers, inform them about their right to asylum and the Refugee Status Determination (RSD) procedure, register their applications and refer them to the designated RSD authority.
13. In UNHCR's view, there should be one single designated RSD authority responsible for examining claims to refugee status in their entirety.<sup>7</sup> There should not be different entities processing different parts of the asylum claim, for example at ports of entry and during the official RSD procedure. It should be stressed that determining the status of refugee status applicants is a highly specialized task and should be carried out only by fully qualified officials. This is particularly important in relation to refugee claims that raise issues of exclusion.
14. UNHCR strongly recommends that all refugee status applications be referred to and processed in the RSD procedure. This includes claims with issues related to threats to national security, verification of identity, false documents and false statements, exclusion and repeat applications, as it is not possible to determine them in an admissibility procedure.
15. All refugee status applicants should be given the opportunity for review of a negative decision in an appeal procedure.<sup>8</sup>

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Commissioner for Refugees, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/IP/4/ENG/REV. 3, available at:

<http://www.unhcr.org/refworld/docid/4f33c8d92.html>, paragraph 28; and UN High Commissioner for Refugees, *Non-refoulement*, No. 6 (XXVIII) - 1977, in UN High Commissioner for Refugees, *Conclusions Adopted by the Executive Committee on the International Protection of Refugees*, December 2009, 1975 - 2009 (Conclusion No. 1 - 109), available at: <http://www.unhcr.org/refworld/docid/4b28b1f2.html>, page 7.

<sup>7</sup> UN High Commissioner for Refugees, *UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (COM(2009)554, 21 October 2009)*, August 2010, available at: <http://www.unhcr.org/refworld/docid/4c63ebd32.html>, pages 9 to 11; UN High Commissioner for Refugees, *UNHCR Comments on the European Commission's amended recast proposal for a Directive of the European Parliament and the Council laying down standards for the reception of asylum-seekers*, July 2012, (COM (2011) 320 final, 1 June 2011), available at:

<http://www.unhcr.org/refworld/docid/500560852.html>, pages 4 to 5.

<sup>8</sup> UN High Commissioner for Refugees, *Determination of Refugee Status*, No. 8 (XXVIII) - 1977, in UN High Commissioner for Refugees, *Conclusions Adopted by the Executive Committee on the International Protection of Refugees*, December 2009, 1975 - 2009 (Conclusion No. 1 - 109), available at:

<http://www.unhcr.org/refworld/docid/4b28b1f2.html>, page 9; and UN High Commissioner for Refugees, *The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum*, 20 October 1983, No. 30 (XXXIV) - 1983, available at: <http://www.unhcr.org/refworld/docid/3ae68c6118.html>.

16. As for basic services and assistance, all refugee status applicants should be treated equally without discrimination until a final determination is made on their claim. In particular they should be provided with living assistance and/or permission to work to ensure a dignified standard of living. Access to free primary education and emergency medical care should also be provided.
17. UNHCR recommends that the Decree contain details to supplement Article 30(2) of the Refugee Act, which relates to the treatment of recognized refugees. Coordination with relevant central and municipal government bodies, including those responsible for education, work and health, will be essential to meet the requirements of the Act for the treatment of recognized refugees, humanitarian status holders and refugee status applicants.
18. UNHCR welcomes the generosity of the Republic of Korea to offer resettlement to refugees. UNHCR recommends that specific categories for this be provided in the Decree, avoiding criteria that are hard to predict and problematic to determine.
19. UNHCR is pleased that the Decree confirms humanitarian status will be considered if refugee status is denied. UNHCR calls upon the Republic of Korea to interpret the criteria for refugee status in the 1951 Refugee Convention in such a manner that all persons who fulfil them are duly recognized and protected under those instruments, rather than being accorded a complementary form of protection. UNHCR encourages the use of complementary protection forms only for individuals, who do not meet the refugee definition. UNHCR notes that the Decree is silent as to the rights and entitlements of humanitarian status holders. The standard of treatment of humanitarian status holders should provide for the protection of basic civil, political, social and economic rights. UNHCR suggests that humanitarian status holders be treated the same way and have the same entitlements as refugees. This includes granting them the right to work with their status.
20. UNHCR seeks clarification in regards to some of the Articles of the Decree. In particular to the process referred to in Article 2, to the procedure in relation to repeat applications in Article 4(5), and in relation to the nature of case being referred to in Article 4(6). These and other queries are set out in detail in the Specific Comments below.

### **Part 3: Specific Comments on Particular Provisions of the Draft Presidential Decree**

#### **Article 1. (Purpose)**

This Decree aims to stipulate matters delegated by the Refugee Act as well as matters necessary for the enforcement thereof.

## **Article 2 (Refugee Status Applications at the Port of Entry, etc.)**

- (1) The Chief of an Immigration Office (hereinafter “Office Chief”) or Head of an Immigration Branch Office (hereinafter “Branch Head”) who received a refugee status application form pursuant to Article 6 (1) of the Refugee Act (hereinafter “the Act”) shall conduct review of the refugee status applicant at the port of entry, such as conducting an interview, without delay.
- (2) When conducting review pursuant to the preceding paragraph, the Office Chief or Branch Head may question to the applicant about matters necessary for the review, such as flight number/name of vessel, personal information, reasons for entry, reasons for application, and request for submission of relevant materials.
- (3) When the review under paragraph 1 was completed, the Office Chief or Branch Head shall send the refugee status application form to the Minister of Justice without delay with attachment of an opinion letter and other reference materials.
- (4) For other matters concerning refugee status application procedures at the port of entry, Article 5 paragraphs 2 to 4 of the Act shall apply *mutatis mutandis*.

### **UNHCR Comment on Article 2:**

UNHCR seeks clarification regarding the nature of the process referred to in Article 2 of the Decree and regarding who will conduct these activities.

Article 2 of the Decree states that the Office Chief or Branch Head at the port of entry shall be responsible for reviewing refugee status applications, including conducting an interview, questioning and requesting materials, and sending the application with an opinion and other reference materials to the Minister of Justice. According to Article 5(1) of the Decree, the Minister of Justice will make a decision based on this opinion as to whether to refer the refugee status application to the RSD procedure or not. Therefore, it appears that border officials at ports of entry will conduct certain elements of RSD during a screening process before they refer an asylum-seeker to the RSD procedure.

Article 8(4) of the Refugee Act states that the Minister of Justice will keep on staff at the Immigration Office, Immigration Branch Office, and Immigration Processing Center RSD officers responsible for interviews and factual investigations. Article 7 of the Decree and Article 10 of the Refugee Act make reference to refugee officers. However, there appears to be no clear requirement either in the Act or the Decree that such personnel be present at ports of entry. As such, UNHCR has a number of concerns regarding Article 2:

1. There should be one single clearly designated competent authority responsible for receiving and registering asylum claims, examining each claim in its entirety and making first instance decisions.<sup>9</sup> The designated body should have adequate

<sup>9</sup> UN High Commissioner for Refugees, *UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (COM(2009)554, 21 October 2009)*, August

resources, including qualified and trained staff, so that it can effectively exercise its duties.<sup>10</sup>

2. In UNHCR's view, border officials should not interview or make decisions regarding refugee status applications.<sup>11</sup> UNHCR recommends that Article 2 clearly state that border officials only have the role of referring asylum claims to the designated RSD authority. UNHCR would also suggest that the Decree provide for training to relevant border officials on definitions of migrants and refugees, to ensure they know who to refer to the RSD procedure. In addition, they should be given clear instructions on how to respond to asylum applications and asylum-seekers with specific needs.<sup>12</sup>

In relation to these issues, please also refer to the comments on Article 4 of the Decree. Reference can be made to UNHCR's *Refugee Protection and Mixed Migration: The 10-Point Plan in action*<sup>13</sup>, which provides some good practice examples of how States deal with the training of border officials and the referral of cases to relevant procedures.

### **Article 3 (Waiting Area at the Port of Entry, etc.)**

- (1) The Office Chief or Branch Head who is in charge of the port of entry in accordance with the Immigration Control Act may have a waiting area at the port of entry so that refugee status applicants may stay during the period stipulated in Article 6 (2) of the Act.
- (2) Basic food, accommodation and clothing pursuant to Article 6 (4) of the Act shall be provided in consideration of the applicant's safety and sanitation, customs and living culture of his/her country of nationality.

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2010, available at: <http://www.unhcr.org/refworld/docid/4c63ebd32.html>, pages 9 to 11; UN High Commissioner for Refugees, *UNHCR Comments on the European Commission's amended recast proposal for a Directive of the European Parliament and the Council laying down standards for the reception of asylum-seekers*, July 2012, (COM (2011) 320 final, 1 June 2011), available at:

<http://www.unhcr.org/refworld/docid/500560852.html>, pages 4 to 5.

<sup>10</sup> UN High Commissioner for Refugees, *Determination of Refugee Status*, No. 8 (XXVIII) - 1977, in UN High Commissioner for Refugees, *Conclusions Adopted by the Executive Committee on the International Protection of Refugees*, December 2009, 1975 - 2009 (Conclusion No. 1 - 109), available at: <http://www.unhcr.org/refworld/docid/4b28bf1f2.html>, page 9.

<sup>11</sup> UN High Commissioner for Refugees, *Reception Standards for Asylum Seekers in the European Union*, July 2000, available at: <http://www.unhcr.org/refworld/docid/3ae6b3440.html>, pages 8 to 9.

<sup>12</sup> UN High Commissioner for Refugees, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, January 2007, Rev.1, available at: <http://www.unhcr.org/refworld/docid/45b0c09b2.html>.

<sup>13</sup> UN High Commissioner for Refugees, *Refugee Protection and Mixed Migration: The 10-Point Plan in action*, February 2011, available at: <http://www.unhcr.org/refworld/docid/4d9430ea2.html>.



**UNHCR Comment on Article 3:**

The confinement of refugee status applicants in holding areas at ports of entry should be kept to an absolute minimum.<sup>14</sup> In addition, legislation should provide that asylum-seekers who submit an application at the border are admitted into the territory of the State. This is often a pre-condition to accessing RSD procedures.<sup>15</sup>

Given the definition of “refugee status applicants” in Article 2(4) of the Refugee Act, which refers to those who have “filed a refugee status application”, UNHCR recommends that Article 3(1) of the Decree use broader terminology to include asylum-seekers who have expressed a wish to file a refugee status application, but have not yet completed the refugee status application form.<sup>16</sup>

The use of the term “may” in Article 3(1) of the Decree infers that having waiting areas at ports of entry is discretionary; and the use of the term “ports of entry” is vague. Article 6(2) of the Refugee Act states that there will be designated locations within ports of entry. UNHCR recommends that the Decree specify the location for the designated waiting areas for asylum-seekers at ports of entry and the institution that has jurisdiction over this waiting area. This is crucial for identifying from whom permission should be sought for access to asylum-seekers in this area.

UNHCR recommends that Article 3(2) of the Decree specifies who will be responsible for providing “basic food, accommodation and clothing” to refugee status applicants in the waiting area. Given that the provisions allow for a person to be held at the waiting area for up to seven days, it would also be appropriate to include wording providing for any necessary medical and psycho-social services, or perhaps a broader phrase, encompassing any necessary assistance, could be used. In addition to specifying assistance appropriate to the applicant’s “safety and sanitation, customs and living culture of the country of nationality”, this provision should include specific reference to gender, separate areas for men and women, and areas for families. However, in principle, children should not be detained at all.<sup>17</sup>

<sup>14</sup> UN High Commissioner for Refugees, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.unhcr.org/refworld/docid/503489533b8.html>.

<sup>15</sup> UN High Commissioner for Refugees, *Conclusion on International Protection*, No. 85 (XLIX) – 1998, available in UN High Commissioner for Refugees, *Conclusions Adopted by the Executive Committee on the International Protection of Refugees*, December 2009, 1975 – 2009 (Conclusion No. 1 – 109), available at: <http://www.unhcr.org/refworld/docid/4b28b1f2.html>, page 128, paragraph(q).

<sup>16</sup> See for example: UN High Commissioner for Refugees Executive Committee Conclusions No. 6 paragraph (c), No. 81 paragraph (h), No. 82, No. 91 and No. 93 available in: UN High Commissioner for Refugees, *Conclusions Adopted by the Executive Committee on the International Protection of Refugees*, December 2009, 1975 – 2009 (Conclusion No. 1 – 109), available at: <http://www.unhcr.org/refworld/docid/4b28b1f2.html>.

<sup>17</sup> UN High Commissioner for Refugees, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.unhcr.org/refworld/docid/503489533b8.html>, page 34.



#### **Article 4 (Criteria for Referring Application to the Refugee Status Determination Procedure)**

The Minister of Justice may decide not to refer an application to the refugee status determination procedure if the applicant falls into one of the followings:

##### **UNHCR Comment on Article 4:**

UNHCR's comments on Article 4 of the Presidential Decree are to be read in conjunction with the General Comments and comments to Article 2 above.

UNHCR's view is that most of the categories listed in Article 4 should be dealt with in the normal RSD procedure and not in an admissibility procedure at ports of entry. This includes threats to national security, verification of identity, false documents and false statements, exclusion and where there is a material change in circumstance for the re-submission of a refugee claim, because it is not possible to determine them in an admissibility procedure. Therefore, UNHCR is concerned about the use of "may" in Article 4, which gives the Minister discretion to decide whether an application should be referred to the RSD procedure.

Protection against *refoulement* (expulsion or return) is provided for under Article 33(1) of the 1951 Refugee Convention and applies to any person who fulfils the criteria of the refugee definition.<sup>18</sup> It is an established principle of international refugee law that asylum-seekers should not be returned or expelled pending a final determination of their status. A State is subject to the *non-refoulement* obligation in relation to refugees and asylum-seekers wherever a State exercises jurisdiction, including at the frontier, on the high seas or on the territory of another State.<sup>19</sup>

Every person has the right to seek asylum and to have his or her claim determined in an RSD procedure. In particular, asylum-seekers with specific needs, such as separated and

<sup>18</sup> UN High Commissioner for Refugees, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at:

<http://www.unhcr.org/refworld/docid/4f33c8d92.html>, paragraph 28: A person is a refugee with in the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee.

<sup>19</sup> UN High Commissioner for Refugees, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, available at: <http://www.unhcr.org/refworld/docid/45f17a1a4.html>; UN High Commissioner for Refugees, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.unhcr.org/refworld/docid/4f33c8d92.html>, paragraph 28; and UN High Commissioner for Refugees, *Non-refoulement*, No. 6 (XXVIII) - 1977, in UN High Commissioner for Refugees, *Conclusions Adopted by the Executive Committee on the International Protection of Refugees*, December 2009, 1975 - 2009 (Conclusion No. 1 - 109), available at: <http://www.unhcr.org/refworld/docid/4b28b1f2.html>, page 7.

unaccompanied children, older people or persons with mental or physical disabilities should always be admitted to the territory and their claims processed.<sup>20</sup>

Paragraph 3(i) and (iii) of Executive Committee Conclusion No. 30 (XXXIV) of 1983 clearly states that all refugee status applications should be registered, granted personal interviews by fully qualified officials and have the opportunity for review of a negative decision before being rejected or forcibly removed from the territory. This also applies for manifestly unfounded or abusive claims, which should be “established by the authority normally competent to determine refugee status”.<sup>21</sup>

If the decision is made to “accelerate” certain cases, it seems they may be referred to the procedure offered at Article 8(5) of the Refugee Act. What is of concern to UNHCR is that, while Article 8(5) of the Refugee Act allows for omitting part of the RSD procedure, there is no guidance as to what part might be omitted or when it might be omitted. UNHCR recommends that the Decree set out this guidance, including the procedural safeguards of a personal interview by a qualified official and the opportunity for review of a negative decision.<sup>22</sup> Within UNHCR, accelerated RSD procedures exist for when there are compelling protection reasons to process a claim on a priority basis. Accelerated RSD procedures allow for reduced waiting periods at each stage of the RSD procedures and shortened timelines for the issuance of RSD decisions. Applicants who are processed through accelerated RSD processing procedures must have a RSD interview and the right to appeal a negative decision through ordinary appeal procedures.<sup>23</sup> Within UNHCR, applicants considered for such procedures are asylum-seekers, who are manifestly in need of protection intervention, victims of torture or trauma, women who are at risk, elderly and disabled asylum-seekers who are without necessary support or who require urgent medical assistance, and certain child applicants, in particular children who are unaccompanied or otherwise separated from their parents or caregivers.<sup>24</sup>

1. There is a considerable reason to acknowledge that the applicant might harm safety or public order of the Republic of Korea;

<sup>20</sup> Please refer to UNHCR Executive Committee Conclusion No. 90 and also Conclusions No. 71, No. 93, and No. 98, available in: UN High Commissioner for Refugees, *Conclusions Adopted by the Executive Committee on the International Protection of Refugees*, December 2009, 1975 – 2009 (Conclusion No. 1 – 109), available at: <http://www.unhcr.org/refworld/docid/4b28bf1f2.html>.

<sup>21</sup> UN High Commissioner for Refugees, *The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum*, 20 October 1983, No. 30 (XXXIV) - 1983, available at: <http://www.unhcr.org/refworld/docid/3ae68c6118.html>, paragraph (e)(ii).

<sup>22</sup> UN High Commissioner for Refugees, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice - Key Findings and Recommendations*, March 2010, available at: <http://www.unhcr.org/refworld/docid/4bab55752.html>, pages 54 to 58.

<sup>23</sup> UN High Commissioner for Refugees, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, 20 November 2003, available at: <http://www.unhcr.org/refworld/docid/42d66dd84.html>, page 4-21.

<sup>24</sup> UN High Commissioner for Refugees, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, 20 November 2003, available at: <http://www.unhcr.org/refworld/docid/42d66dd84.html>, page 4-22.

**UNHCR Comment on Article 4(1):**

Article 4(1) of the Decree appears to be an expulsion provision, similar to Article 33(2) of the 1951 Refugee Convention, which states that a refugee can be removed from a country, if there are reasonable grounds for regarding him or her as a danger to the security of the country in which he or she is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country. Article 33(2) of the 1951 Refugee Convention is an exception to the principle of *non-refoulement* enshrined in Article 33(1).

A determination that the individual concerned is a refugee (inclusion) is a precondition for applying an exception to the *non-refoulement* principle in Article 33(2).<sup>25</sup> UNHCR therefore recommends that such cases are referred to the RSD procedure to determine whether the applicant falls under the refugee definition before reasons for expulsion are assessed. Article 33(2) should be applied subject to adequate procedural guarantees and in strict compliance with due process of law.<sup>26</sup> This requires an individualized determination by the host country. The burden of proof is on the State, who must demonstrate that there exist “reasonable grounds”, which requires reliable and credible evidence. Removal of a refugee is lawful only if it is necessary and proportionate. This means:

- (i) There must be a rational connection between the removal of the refugee and elimination of the danger resulting from their presence in the host country.
- (ii) *Refoulement* must be the last possible resort for eliminating the danger.
- (iii) The danger for the host country must outweigh risk of harm to the person as a result of *refoulement* (proportionality assessment).<sup>27</sup>

Article 33(2) does not result in the termination of refugee status, but means the individual no longer enjoys the protection against *refoulement* under Article 33(1). However, the application of Article 33(2) does not affect the host State’s *non-refoulement* obligations under other international human rights conventions. A State is thus barred from removing a refugee if this would result in exposing him or her to substantial risk of torture or other

<sup>25</sup> See for example: UN High Commissioner for Refugees, *Additional UNHCR Observations on Article 33(2) of the 1951 Convention in the Context of the Draft Qualification Directive*, December 2002, available at: <http://www.unhcr.org/refworld/docid/437c6e874.html>.

<sup>26</sup> See UN High Commissioner for Refugees, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, HCR/GIP/03/05, available at: <http://www.unhcr.org/refworld/docid/3f5857684.html>: Exclusion should in principle be dealt with in the context of the regular refugee status determination procedures and not in either admissibility or accelerated procedures, so that full factual and legal assessment of the case can be made; by specialized unit within the institution responsible for refugee status determination; confidentiality respected; burden of proof on State; in order to satisfy the standard of proof, clear and credible evidence is required; should not be based on sensitive evidence that cannot be challenged by the individual concerned (with some exceptions).

<sup>27</sup> See for example: UN High Commissioner for Refugees, *Advisory Opinion from the Office of the United Nations High Commissioner for Refugees (UNHCR) on the Scope of the National Security Exception Under Article 33(2) of the 1951 Convention Relating to the Status of Refugees*, 6 January 2006, available at: <http://www.unhcr.org/refworld/docid/43de2da94.html>.

forms of irreparable harm according to Article 3 of the Convention Against Torture, and Articles 6 and 7 of the International Covenant on Civil and Political Rights.<sup>28</sup>

2. The applicant's identity cannot be verified due to his/her denial to answer questions about personal information etc;

**UNHCR Comment on Article 4(2):**

UNHCR recommends that persons who do not answer questions are provided with access to RSD procedures. There are often different reasons why asylum-seekers may not answer questions. Consideration needs to be given to such issues as language barriers, the age of the applicant (for example, children may not understand or may be unable to communicate), and physical or mental disabilities. Special consideration also needs to be given if the asylum-seeker is a victim of trafficking, Sexual-and-Gender-Based violence or torture and/or is suffering from trauma.<sup>29</sup>

3. The applicant attempts to be recognised as a refugee by concealing facts through means such as submission of false documents or false statements;

**UNHCR Comment on Article 4(3):**

In UNHCR's view, individuals who entered the country in an irregular manner or used false documents should not be denied access to asylum procedures. Moreover, in UNHCR's view, absence of documents or the use of false documents is also not, per se, a sufficient reason to process applications in an accelerated manner. UNHCR bases this position on Article 31 of the 1951 Refugee Convention, which states that asylum-seekers shall not be penalised for their illegal entry or stay, provided they present themselves to the authorities without delay and show good cause for their illegal entry or presence.<sup>30</sup>

<sup>28</sup> See for example: UN High Commissioner for Refugees, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, available at: <http://www.unhcr.org/refworld/docid/45f17a1a4.html>; and UN High Commissioner for Refugees, *Advisory Opinion from the Office of the United Nations High Commissioner for Refugees (UNHCR) on the Scope of the National Security Exception Under Article 33(2) of the 1951 Convention Relating to the Status of Refugees*, 6 January 2006, available at: <http://www.unhcr.org/refworld/docid/43de2da94.html>.

<sup>29</sup> See for example: UN High Commissioner for Refugees, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice - Key Findings and Recommendations*, March 2010, available at: <http://www.unhcr.org/refworld/docid/4bab55752.html>, page 58.

<sup>30</sup> Cambridge University Press, *Article 31 of the 1951 Convention Relating to the Status of Refugees: Non-Penalization, Detention, and Protection*, June 2003, available at: <http://www.unhcr.org/refworld/docid/470a33b10.html>, page 318. Although Article 31 (1) of the 1951 Convention refers to refugees, it applies to any person who claims to be in need of international protection, including asylum-seekers. This publication refers to Executive Committee Conclusions No. 15, No. 22, No. 44, and No. 58 from page 214 to page 215. The Executive Committee Conclusions can be accessed at the following link: <http://www.unhcr.org/refworld/pdfid/4b28b1f2.pdf>; and Cambridge University Press,

Many asylum-seekers are forced to leave their country and enter another country without prior authorization or with false documents. They may, for example, be unable to obtain the necessary documentation in advance of their flight out of fear their travel plans could be discovered by the persecutor and/or the urgency of their departure. They may make false statements at ports of entry, because they are afraid of the authorities or that the authorities would inform the persecutor about their whereabouts.

4. The applicant is from a safe country where there is no possibility of persecution or arrived from a safe country;

**UNHCR Comment on Article 4(4):**

The discretion given to the Minister under Article 4(4) of the Decree, to not refer an applicant from a “safe country” to the RSD procedure, is potentially inconsistent with the spirit and possibly the letter of the 1951 Refugee Convention, in so far as application of this discretion could a priori preclude a whole group of asylum-seekers from refugee status.<sup>31</sup> UNHCR therefore recommends that such cases be referred to the RSD procedure.

In UNHCR’s opinion, the concept of safe country may be utilized for the purpose of channelling applicants from so-called “safe countries of origin” into accelerated procedures, which still provide for an interview. However, such provisions should not bar asylum claims on the basis that the applicant originates from a safe country of origin, and such applicants should be given the opportunity to challenge the presumption of safety in their particular case.<sup>32</sup>

Moreover, the Decree does not specify who will be responsible for designating countries as safe, or if and how the decision to determine a country as safe may be reviewed by an independent body. It would be preferable that any list of supposed safe countries be consulted with UNHCR, or another suitably qualified independent body, on a regular basis, so that there is the opportunity for sharing up-to-date country of origin information.

In relation to the concept of safe third countries, UNHCR has found the safe third country concept problematic, and continues to question its consistency with international refugee law, as the implication is that access to territory and to an asylum procedure may be

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Summary Conclusions: Article 31 of the 1951 Convention, June 2003, available at:

<http://www.unhcr.org/refworld/docid/470a33b20.html>. This publication has general conclusions and specific considerations regarding Article 31, including: page 256, paragraph (g).

<sup>31</sup> UN High Commissioner for Refugees, *Background Note on the Safe Country Concept and Refugee Status*, 26 July 1991, EC/SCP/68, available at: <http://www.unhcr.org/refworld/docid/3ae68ccec.html>, paragraph 5.

<sup>32</sup> UN High Commissioner for Refugees, *UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (COM(2009)554, 21 October 2009)*, August 2010, available at: <http://www.unhcr.org/refworld/docid/4c63ebd32.html>, pages 35 to 36.



denied altogether to asylum-seekers who may have protection needs.<sup>33</sup> As regards the return to a third country of an asylum-seeker whose claim has yet to be determined from the territory of the country where the claim has been submitted, it should be established that the third country will treat the asylum-seeker in accordance with international standards, will ensure effective protection against *refoulement*, and will provide the asylum-seeker with the possibility to seek and enjoy asylum.<sup>34</sup> No country may knowingly return a refugee or asylum-seeker to a country that is not a party to the 1951 Refugee Convention or where there is no guarantee that the asylum-seeker will be accorded a fair eligibility assessment.<sup>35</sup>

5. The applicant re-applies for refugee status without material change in circumstances after previous application was denied or previous refugee status recognition was cancelled;

**UNHCR Comment on Article 4(5):**

UNHCR seeks clarification in relation to Article 4(5) of the Decree, as this article appears to be inconsistent with Article 8(5)(2) of the Refugee Act, which provides for a specific procedure for re-applications for asylum.

In order to assess whether a subsequent application is justified, it is necessary to examine whether new elements have arisen, new evidence has emerged or whether there has been changes in the situation of the individual concerned, which would warrant an examination of the claim. An interview is needed to determine these issues. UNHCR would therefore recommend that the Decree elaborate on the meaning of “material change in circumstances”, and that re-applications for refugee status be referred to the RSD procedure.<sup>36</sup>

6. There is a considerable reason to believe that the applicant falls into one of the subparagraphs of Article 19 of the Act;

<sup>33</sup> UN High Commissioner for Refugees, *UNHCR comments on the European Commission's Amended Proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast) COM (2011) 319 final*, January 2012, available at: <http://www.unhcr.org/refworld/docid/4f3281762.html>, pages 29 to 30.

<sup>34</sup> UN High Commissioner for Refugees, *Conclusion on International Protection*, No. 85 (XLIX) - 1998, in UN High Commissioner for Refugees, *Conclusions Adopted by the Executive Committee on the International Protection of Refugees*, December 2009, 1975 - 2009 (Conclusion No. 1 - 109), available at: <http://www.unhcr.org/refworld/docid/4b28bf1f2.html>, page 7.

<sup>35</sup> UN High Commissioner for Refugees, *Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries: The Meaning of Effective Protection*, February 2003, PPLA/2003/01, available at: <http://www.unhcr.org/refworld/docid/3f4de85d4.html>, pages 54 to 57.

<sup>36</sup> UN High Commissioner for Refugees, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice - Key Findings and Recommendations*, March 2010, available at: <http://www.unhcr.org/refworld/docid/4bab55752.html>, pages 72 to 82.

**UNHCR Comment on Article 4(6):**

UNHCR also seeks clarification in relation to Article 4(6), as this article appears to be inconsistent with Article 19 of the Refugee Act, which states that a finding of exclusion may be made through the RSD procedure.

UNHCR strongly recommends that exclusion decisions are dealt with in the context of the regular RSD procedure, and not in either admissibility or accelerated procedures, in order to allow for a full assessment of the case by qualified personnel.<sup>37</sup>

Excluding an individual, who is otherwise determined to be in need of refugee protection, from refugee status has serious implications. Due to the complex criteria that are relevant to the determination, the exclusion assessment within UNHCR is conducted by designated officers who have received special training to adjudicate and review cases that raise exclusion issues.<sup>38</sup> In addition, applicants that are excluded from refugee status have the opportunity to appeal the exclusion decision.<sup>39</sup> Assessing exclusion at the admissibility stage can risk unfairly associating asylum-seekers with criminality. Consideration of exclusion issues in the regular RSD procedure allows the reasons justifying refugee status to be assessed alongside the factors pointing towards exclusion.

The exceptional nature of Article 1F of the 1951 Refugee Convention suggests that inclusion should generally be considered before exclusion. This holistic approach facilitates a full assessment of the factual and legal issues of the case, which are often complex and require an evaluation of the nature of the alleged crime and the applicant's role in it on the one hand, and of the nature of the persecution feared on the other.<sup>40</sup> To ensure that the exclusion clauses are applied in a manner consistent with the overriding humanitarian object and purpose of the 1951 Refugee Convention, the exclusion clause must be applied in a manner proportionate to its objective. It is therefore necessary to

<sup>37</sup> UN High Commissioner for Refugees, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, HCR/GIP/03/05, available at: <http://www.unhcr.org/refworld/docid/3f5857684.html>, pages 8 to 9; and UN High Commissioner for Refugees, *Addressing Security Concerns Without Undermining Refugee Protection - UNHCR's Perspective*, 29 November 2001, Rev.1, available at: <http://www.unhcr.org/refworld/docid/3c0b880e0.html>, pages 2 to 3.

<sup>38</sup> UN High Commissioner for Refugees, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, 20 November 2003, available at: <http://www.unhcr.org/refworld/docid/42d66dd84.html>, pages 4-25 and 4.26.

<sup>39</sup> UN High Commissioner for Refugees, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, 20 November 2003, available at: <http://www.unhcr.org/refworld/docid/42d66dd84.html>, page 4-27.

<sup>40</sup> UN High Commissioner for Refugees, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, available at: <http://www.unhcr.org/refworld/docid/3f5857d24.html>; UN High Commissioner for Refugees, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, HCR/GIP/03/05, available at: <http://www.unhcr.org/refworld/docid/3f5857684.html>; UN High Commissioner for Refugees, *Addressing Security Concerns Without Undermining Refugee Protection - UNHCR's Perspective*, 29 November 2001, Rev.1, available at: <http://www.unhcr.org/refworld/docid/3c0b880e0.html>.



weigh up the gravity of the offence for which the individual appears to be responsible against the possible consequences of the person being excluded, including notably the degree of persecution feared.<sup>41</sup>

7. The refugee status application is manifestly unfounded as in cases of applying for refugee status only for economic reasons and so on.

**UNHCR Comment on Article 4(7):**

UNHCR recommends that Article 4(7) of the Decree fully explains the meaning of “manifestly unfounded”.

As the Refugee Act does not make reference to manifestly unfounded claims, it would be useful for the Decree to provide a specific definition to avoid too broad an interpretation of the term “manifestly unfounded”. UNHCR recommends that manifestly unfounded claims are defined as those that are clearly fraudulent or manifestly outside the scope of the refugee definition.<sup>42</sup> Such claims are processed by UNHCR under normal RSD procedures, are not decided on the basis of a document review alone and are not referred to accelerated procedures.<sup>43</sup>

**Article 5 (Determination on Whether to Refer an Application at the Port of Entry to Refugee Status Determination Procedure, etc.)**

- (1) When the decision whether to refer the application to the refugee status determination procedure is made pursuant to Article 6 (3) of the Act, the Minister of Justice shall notify the decision to the refugee status applicant at the port of entry without delay through the Office Chief or Branch Head.
- (2) An immigration official shall conduct immigration inspection without delay in accordance with the Immigration Control Act for the applicant who received the decision whether to refer his/her application to the refugee status determination procedure. If the applicant received the decision to refer his/her application to the refugee status determination procedure, then the applicant’s entry shall be permitted

<sup>41</sup> UN High Commissioner for Refugees, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, available at: <http://www.unhcr.org/refworld/docid/3f5857d24.html>, paragraphs 76 to 78. See also UN High Commissioner for Refugees, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, HCR/GIP/03/05, available at: <http://www.unhcr.org/refworld/docid/3f5857684.html>.

<sup>42</sup> UN High Commissioner for Refugees, *The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum*, 20 October 1983, No. 30 (XXXIV) - 1983, available at: <http://www.unhcr.org/refworld/docid/3ae68c6118.html>, paragraph (d).

<sup>43</sup> UN High Commissioner for Refugees, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, 20 November 2003, available at: <http://www.unhcr.org/refworld/docid/42d66dd84.html>, page 4-22.

pursuant to Article 12 or be conditionally permitted pursuant to Article 13 of the Immigration Control Act.

- (3) When the Office Chief or Branch Head grants conditional entry permission pursuant to paragraph 2, he/she may determine the permission period within the period of 90 days.
- (4) The Office Chief or Branch Head may extend the permission period for the person whose entry was conditionally permitted pursuant to paragraph 2 but who was not able to fulfill the condition within the permitted period or who is expected to be unable to fulfill the condition due to unavoidable circumstances.
- (5) The Minister of Justice shall conduct review of the refugee status determination without delay for applicants whose application was referred to the refugee status determination procedure.

#### **UNHCR Comment on Article 5:**

Pursuant to Article 5(2) of the Decree, an asylum-seeker, whose refugee status application was referred to the RSD procedure shall be permitted entry pursuant to Article 12 of the Immigration Control Act or be conditionally permitted entry pursuant to Article 13 of the Immigration Control Act. Article 13(2) of the Immigration Control Act provides that when granting the conditional entry permit, the permit shall include any restriction of residence, the obligation to comply with the request of appearance, and any other necessary conditions, and may, if necessary, request that the foreigner deposit a bond not exceeding ten million Won. The conditions stipulated in Article 13(2) of the Immigration Control Act appear to provide grounds for the restriction of freedom, or detention, of asylum-seekers.

As noted above in the comments on Article 2 of the Decree, legislation should provide that asylum-seekers who submit an application at the border are admitted into the territory of the State without restrictions on movement, and the detention of asylum-seekers should be a measure of last resort. UNHCR therefore recommends, when the decision is made to refer the refugee status application, that except for in exceptionally justifiable cases<sup>44</sup>, the asylum-seeker's entry be permitted without conditions.

In addition, Article 5(5) of the Decree is silent as to procedures applicable to asylum-seekers whose applications are not referred to the RSD procedure. UNHCR reiterates that each asylum-seeker should be given the opportunity for review of a negative decision as set out at paragraph 3(iii) of Executive Committee Conclusion No. 30 (XXXIV) of 1983.

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<sup>44</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html>, Article 12, paragraphs (1) and (3); and UN High Commissioner for Refugees, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.unhcr.org/refworld/docid/503489533b8.html>, pages 16 to 20.

It is further recommended that referral and non-referral decisions made at ports of entry are shared with UNHCR for bilateral consultations in the spirit of Article 29 of the Refugee Act on cooperation between the Ministry of Justice and UNHCR.

### **Article 6 (Qualification of Refugee Status Determination Officer)**

The refugee status determination officer (hereinafter “RSD officer”) under Article 8 (4) of the Act shall be appointed by the Minister of Justice out of immigration officers who hold a position as a fifth level governmental officer or above who has expertise and experience in refugee matters.

#### **UNHCR Comment on Article 6:**

UNHCR welcomes the Republic of Korea’s decision to specify minimum qualifications for RSD officers. This contributes to enhancing the quality of decision-making.

The phrase “expertise and experience in refugee related matters” is unclear and could cover a very broad range of activities. UNHCR recommends including the training and supervision of RSD officers in this provision. For example, the provision could state that RSD officers will receive specific RSD training, and conduct RSD under supervision for six months to one year before conducting RSD alone.

### **Article 7 (Task of Refugee Status Determination Officer)**

RSD officers and refugee officers within the Ministry of Justice (hereinafter “RSD officer et al.”) perform the following tasks:

1. Interview refugee status applicants;
2. Conducts factual investigation pursuant to Article 10 (1) of the Act;
3. Request to appear, answer questions or submit documents pursuant to Article 10 (2) of the Act.

#### **UNHCR Comment on Article 7:**

Article 7 of the Decree is entitled “Task of Refugee Status Determination Officer”, but refers to refugee officers also conducting RSD-related tasks. Such officers are also mentioned in Article 10 of the Refugee Act. However, there appears to be no details as to the qualifications required of the “refugee officer” position. UNHCR recommends that the Decree elaborate on the qualifications of refugee officers and clearly specifies that only fully qualified RSD officers can conduct RSD tasks.

UNHCR also recommends that the list of RSD officer tasks in this Article include the duty to inform the refugee status applicant:

- of their right to request that the interview be recorded or videotaped, in line with Article 8(3) of the Refugee Act; and
- that they can request to bring a trusted individual with them in accordance with Article 13 of the Refugee Act, and that this individual can be their legal representative, whose assistance they have the right to receive under Article 12 of the Refugee Act.

### **Article 8 (Request to Appear)**

When the RSD officer et al. requests a refugee status applicant and/or other related persons to appear, he/she shall issue the Summon which states purpose of the request, date, location and so on, and record the issuance in the Log of Issuance of Summons. In case of emergencies, however, the request to appear may be made orally.

#### **UNHCR Comment on Article 8:**

Article 8 of the Decree does not explain what the term “emergency” means or who decides what circumstances constitute an emergency. UNHCR recommends that Article 8 provides guidance as to the meaning and to the authority, who decides that an emergency has arisen, such that an oral request must be made.

UNHCR further recommends that Article 8 stipulates that an oral Request to Appear should be made in a language the refugee status applicant understands. Article 8 contains no information on how a record of the oral request will be kept. Such evidence may be necessary in the event that there is a difference of opinion as to whether the oral Request to Appear was actually made. There is also no information on what action will be taken if the refugee status applicant cannot be contacted.

Under normal circumstances, refugee status applicants should be given advance notice of their interview to ensure that they are afforded a reasonable period of time to receive and consider information on the RSD process and procedures and to adequately prepare and present their claim. It would therefore seem appropriate for the Decree to specify the minimum time period of advance notice that officers must give asylum-seekers regarding the interview date.

### **Article 9 (Writing Refugee Interview Report)**

- (1) When conducting interview of a refugee status applicant, the RSD officer et al. shall record statements of the applicant in the refugee interview report.
- (2) RSD officer et al. shall ask to the applicant if there was any error in the refugee interview report after reading or letting the applicant to read the refugee interview report and enter any requests to add, delete or revise the contents in the report.

- (3) RSD officer et al. shall let the applicant to sign or put his/her name and seal on the refugee interview report, and record the fact in the report if the applicant is unable to sign or put his/her name and seal on the report, or refuses to do so.
- (4) When an interpreter or translator was provided pursuant to Articles 14 and 15 of the Act, the interpreter or translator shall sign or put his/her name and seal on the refugee interview report.

**UNHCR Comment on Article 9:**

As per comments in relation to Article 7 of the Decree, UNHCR recommends that only trained RSD officers conduct RSD interviews.

Article 9(1) does not specify the form in which the interview will be recorded. Under Article 8(3) of the Refugee Act, refugee status applicants can request that their interview be recorded or videotaped, however, this may not be requested on every occasion. UNHCR therefore recommends that the Decree specify the manner in which a verbatim record of every interview will be ensured, either written or recorded by audio tape.

Article 15 of the Refugee Act provides for the translation or interpretation of the written refugee interview report into a language that the applicant understands. However, this is not specified in Article 9(2) of the Decree. UNHCR recommends including reference to Article 15 of the Refugee Act in Article 9(2) of the Decree so that it is clear that applicants will have the interview record explained to them in a language that they understand before they sign the interview report.

**Article 10 (Interpreter)**

- (1) The Minister of Justice may appoint a person as an interpreter specialising in refugee interpreting after going through refugee interpreter training if the person is fluent in a foreign language and has suitable skills to interpret for refugees.
- (2) Notwithstanding paragraph 1, the Minister of Justice may allow a person who is fluent in the foreign language to interpret in accordance with Article 14 of the Act when no interpreter specialising in refugee interpreting is available or in case of emergencies.
- (3) The Minister of Justice may pay certain fees to interpreters specialising in refugee interpreting and interpreters under paragraph 2.
- (4) Details on training, appointment and payment of interpreters specialising in refugee interpreting shall be determined by the Minister of Justice.

**UNHCR Comment on Article 10:**

UNHCR commends the Republic of Korea for considering the importance of the payment and training of interpreters.

While Article 14 of the Refugee Act provides that an interpreter “shall” be provided when a refugee status applicant cannot fully express himself in Korean, Article 10(1) of the Decree uses the term “may” in relation to the appointment of an interpreter, thus creating discretion. UNHCR recommends that Article 10(1) of the Decree also uses the obligatory “shall” to be consistent with Article 14 of the Refugee Act.

Article 10(2) of the Decree does not explain what the term “emergencies” means or who decides what circumstances constitute an emergency. UNHCR recommends that Article 10(2) of the Decree provides guidance as to what may be considered an emergency and as to who will decide that an emergency has arisen such that another person can be used as an interpreter.

When persons are engaged as interpreters under Article 10(2) of the Decree, appropriate measures should be taken to ensure effective interpretation and to protect the confidentiality of the RSD procedure. The interviewing officer should:

- briefly question the interpreter on their language background and interpreting experience;
- ascertain the interpreter’s relationship with the refugee status applicant;
- explain to the interpreter the character and purpose of the RSD interview and the type of interpretation that will be expected;
- explain the confidential nature of RSD interviews and procedures;
- make a written note on the refugee applicant’s file of any other details that may be relevant to the quality or the reliability of the interpretation.<sup>45</sup>

Given the reluctance some refugee status applicants may have to disclose facts that are relevant to their claim in the presence of another family member, and the difficulty of assessing whether the refugee status applicant truly consents to the attendance of family members in RSD procedures, interpretation by family members should be avoided.<sup>46</sup> Advocates or legal representatives should also not interpret in RSD procedures. Asylum-seekers, humanitarian status holders or refugees who are not qualified and trained interpreters should not interpret in RSD procedures, unless there is no other means of communicating with a refugee status applicant. Where the interpretation services of other asylum-seekers and refugees are used, the interpretation should be limited to communication in initial reception procedures, and every effort should be made to obtain a qualified interpreter for counselling, registration and RSD interviews.

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<sup>45</sup> UN High Commissioner for Refugees, *Procedural Standards for Refugee Status Determination Under UNHCR’s Mandate*, 20 November 2003, available at: <http://www.unhcr.org/refworld/docid/42d66dd84.html>, page 2-18.

<sup>46</sup> UN High Commissioner for Refugees, *Self-Study Module 3: Interpreting in a Refugee Context*, 1 January 2009, available at: <http://www.unhcr.org/refworld/docid/49b6314d2.html>, page 26.

In relation to Article 10(4), UNHCR recommends that the Decree be worded in a manner that ensures the training, supervision and oversight of interpreters involved in the RSD procedure.<sup>47</sup> UNHCR is available to offer technical support for such trainings.

There are some additional points in relation to interpreters that UNHCR would recommend the Decree address:

1. Interpreters should maintain confidentiality regarding the information they receive and should sign an undertaking of confidentiality before assuming their responsibilities.<sup>48</sup>
2. All refugee status applicants should be given the option to communicate with interpreters of the gender they prefer. Wherever possible, female interpreters should be assigned to interviews with female asylum-seekers.<sup>49</sup>
3. Asylum-seekers should be asked whether they consent to the interpretation arrangement. Refugee status applicants who have concerns about the participation of an assigned interpreter should have the opportunity to explain their concerns, in confidence, to the interviewing RSD officer.<sup>50</sup> There should also be a complaint procedure, that is clearly communicated to all refugee status applicants and RSD officers through which comments and complaints about the services of interpreters can be made.
4. The impartial role of the interpreter should be maintained throughout the RSD process. RSD officers should not ask interpreters to assess the credibility of a refugee status applicant, or to investigate or comment on the reliability of evidence provided by a refugee status applicant.<sup>51</sup>

### **Article 11 (Means and Procedures for Access to and Copy of Relevant Documents)**

- (1) Access to and copying of relevant documents pursuant to Article 16 of the Act shall be made at the time and location designated by immigration officers.
- (2) A person who wishes to request access to and/or copying of relevant documents pursuant to Article 16 (1) of the Act must submit an application for perusal and/or copying of relevant documents to immigration officers specifying necessary parts.

<sup>47</sup> UN High Commissioner for Refugees, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, 20 November 2003, available at:

<http://www.unhcr.org/refworld/docid/42d66dd84.html>, page 2-21.

<sup>48</sup> UN High Commissioner for Refugees, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, 20 November 2003, available at:

<http://www.unhcr.org/refworld/docid/42d66dd84.html>, page 2-19; UN High Commissioner for Refugees, *Self-Study Module 3: Interpreting in a Refugee Context*, 1 January 2009, available at:

<http://www.unhcr.org/refworld/docid/49b6314d2.html>, page 26.

<sup>49</sup> UN High Commissioner for Refugees, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, 20 November 2003, available at:

<http://www.unhcr.org/refworld/docid/42d66dd84.html>, page 2-17.

<sup>50</sup> UN High Commissioner for Refugees, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, 20 November 2003, available at:

<http://www.unhcr.org/refworld/docid/42d66dd84.html>, page 2-17.

<sup>51</sup> UN High Commissioner for Refugees, *Self-Study Module 3: Interpreting in a Refugee Context*, 1 January 2009, available at: <http://www.unhcr.org/refworld/docid/49b6314d2.html>, page 25.



- (3) When an immigration officer responds to the request pursuant to Article 16 (2) of the Act, the immigration officer shall be present at the reading and/or copying and take necessary actions in order to prevent any damages to the documents.
- (4) Fees for access to and/or copying of relevant documents pursuant to Article 16 of the Act shall be determined by the Ordinance of the Ministry of Justice.

#### **Article 12 (Reissuance of Certificate of Refugee Recognition)**

- (1) The Office Chief or Branch Head may reissue the Certificate of Refugee Recognition when it is necessary for reasons such as loss or damage.
- (2) Procedures necessary for the reissuance of the Certificate of Refugee Recognition and so on pursuant to paragraph 1 shall be determined by the Ordinance of the Ministry of Justice.

#### **UNHCR Comment on Article 12:**

Article 12(1) of the Decree gives the Office Chief or Branch Head discretion as to whether to reissue the Certificate of Refugee Recognition. Given this discretion, UNHCR is pleased to see that some procedures for the replacement of refugee certificates are set out at Article 5 of the Regulations.

UNHCR offices require refugees seeking such replacement to attend in person at the UNHCR office and to provide a written and signed explanation of the circumstances leading to the need for a replacement certificate, as well as an undertaking to return the original to UNHCR if it is found. In addition, before issuing the replacement certificate the identity and refugee status of the individual concerned are confirmed.<sup>52</sup>

#### **Article 13 (Permission to Stay on Humanitarian Grounds)**

- (1) The Minister of Justice may give permission to stay to a refugee status applicant whose application for refugee status was denied pursuant to Article 18 (2) of the Act but for whom there are reasonable grounds to believe his/her life or personal freedom may be egregiously violated by torture or other inhumane treatment or punishment or other circumstances.
- (2) The decision to give permission to stay on humanitarian grounds pursuant to paragraph 1 shall be informed to the refugee status applicant in writing. The written notification may be made stating the reasons for denial of application for refugee status in the Notice of Denial pursuant to Article 18 (2) of the Act.
- (3) Articles 23 to 25 of the Immigration Control Act shall apply concerning procedures to grant the permission to stay and so on to the applicant who received notification under the preceding paragraph.

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<sup>52</sup> UN High Commissioner for Refugees, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, 20 November 2003, available at: <http://www.unhcr.org/refworld/docid/42d66dd84.html>, page 8-2.

**UNHCR Comment on Article 13:**

While Chapter 4, Section 2, Article 39 of the Refugee Act refers to the treatment of humanitarian status holders, it does not specifically mention the granting of humanitarian status. UNHCR therefore welcomes Article 13 of the Decree, which confirms that humanitarian grounds will be considered after refugee status is denied. UNHCR supports identifying international protection needs through a fair and efficient single comprehensive procedure by a single clearly designated competent authority, which allows the assessment of refugee status followed by other international protection needs.

UNHCR acknowledges that complementary forms of protection, such as humanitarian status are a positive way of responding to certain international protection needs. However, UNHCR calls upon the Republic of Korea to interpret the criteria for refugee status in the 1951 Refugee Convention in such a manner that all persons who fulfil them are duly recognized and protected under those instruments, rather than being accorded a complementary form of protection. UNHCR encourages the use of complementary protection forms only for individuals, who do not meet the refugee definition.<sup>53</sup>

It appears that under Article 13(1) of the Decree an assessment on the need for another form of protection will be made in reference to the Convention Against Torture and the International Covenant on Civil and Political Rights. However, Article 13 does not set out the specific criteria by which a grant of permission to stay on humanitarian grounds will be determined. UNHCR recommends that the criteria for the granting of humanitarian status be made clear in the Decree. In particular, UNHCR suggests that objective and clear criteria are transparently set out for cases where it is considered appropriate to end complementary forms of protection.<sup>54</sup>

Article 13(2) appears to make it discretionary as to whether the reasons for a denial of refugee status are provided when humanitarian status is granted. UNHCR recommends that the reasons for denial of refugee status are always provided to give asylum-seekers the opportunity for review of a negative refugee status finding.<sup>55</sup>

In principle, all human beings shall enjoy human rights and fundamental freedoms without discrimination.<sup>56</sup> Therefore, humanitarian status holders should be able to enjoy human rights, including basic civil, political, social and economic rights such as access to

<sup>53</sup> UN High Commissioner for Refugees, *Conclusion on the Provision of International Protection Including Through Complementary Forms of Protection*, 7 October 2005, No. 103 (LVI) - 2005, available at: <http://www.unhcr.org/refworld/docid/43576e292.html>.

<sup>54</sup> UN High Commissioner for Refugees, *Conclusion on the Provision of International Protection Including Through Complementary Forms of Protection*, 7 October 2005, No. 103 (LVI) - 2005, available at: <http://www.unhcr.org/refworld/docid/43576e292.html>.

<sup>55</sup> UN High Commissioner for Refugees, *The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum*, 20 October 1983, No. 30 (XXXIV) - 1983, available at: <http://www.unhcr.org/refworld/docid/3ae68c6118.html>.

<sup>56</sup> UN High Commissioner for Refugees, *Conclusion on the Provision of International Protection Including Through Complementary Forms of Protection*, 7 October 2005, No. 103 (LVI) - 2005, available at: <http://www.unhcr.org/refworld/docid/43576e292.html>.

adequate housing, assistance or employment, health care and education, right to family unity and to be issued with documentation.<sup>57</sup> The needs of humanitarian status holders are often the same and of equal duration to those of refugees, and return to the home country is not a likely option for many. They also need integration support. Best practice implemented in several countries is to grant the same status and rights as 1951 Refugee Convention refugees or a status similar to this. In these countries, the cessation clauses of the 1951 Refugee Convention are also applied by analogy to persons under complementary forms of protection.<sup>58</sup>

#### **Article 14 (Decision on Appeal, etc.)**

- (1) The Office Chief or Branch Head or Director of an Immigration Processing Center (hereinafter “Center Director”) who received an application for appeal pursuant to Article 21 (1) of the Act shall convey it to the Minister of Justice without delay.
- (2) When the Minister of Justice decides that an appeal has merit after the review by the Refugee Committee in accordance with Article 25 of the Act, he/she shall make a decision to recognise the person as a refugee and issue the Certificate of Refugee Recognition to the applicant.
- (3) When the Minister of Justice decides that an appeal has no merit after the review by the Refugee Committee, he/she shall make a decision to deny the appeal and issue a Disapproval Notice on Appeal which states the reasons for denial.
- (4) Notwithstanding the denial decision on an appeal pursuant to the preceding paragraph, the Minister of Justice may give permission stay on humanitarian grounds in accordance with Article 13. For such cases the notification pursuant to Article 13 (2) may be made by the Disapproval Notice on Appeal which states the decision to permit stay on humanitarian grounds.
- (5) Article 18 (6) of the Act shall *mutatis mutandis* apply to means concerning the issuance of Certificate of Refugee Recognition in paragraph 3 and Disapproval Notice on Appeal in paragraph 4.

#### **UNHCR Comment on Article 14:**

Article 21(4) and Article 27 of the Refugee Act refer to the committee engaging a refugee research officer to carry out factual investigations and to “investigate appeals and dispose of other work of the Committee”. Article 14 of the Decree does not further elaborate on the qualifications of this refugee research officer. Given that the qualifications of RSD officers are elaborated on at Article 6 of the Decree, it would be useful for the Decree to include information regarding the qualifications of the refugee research officer.

<sup>57</sup> UN High Commissioner for Refugees, *Complementary Forms of Protection: Their Nature and Relationship to the International Refugee Protection Regime*, 9 June 2000, EC/50/SC/CRP.18, available at: <http://www.unhcr.org/refworld/docid/47fd491a.html>, page 5.

<sup>58</sup> UN High Commissioner for Refugees, *Providing International Protection Including Through Complementary Forms of Protection*, 2 June 2005, EC/55/SC/CRP.16, available at: <http://www.unhcr.org/refworld/docid/47fd49d.html>, paragraph 24.

It would also be helpful to include details of what a “factual investigation” entails, an activity that is also provided for at Article 10 of the Refugee Act in relation to the determination, cancellation or withdrawal of refugee status.

### **Article 15 (Criteria to Permit Settlement of Refugees Seeking Resettlement)**

The Minister of Justice may permit settlement of refugees seeking resettlement who qualifies all the following criteria pursuant to Article 24 (1) of the Act.

1. The refugee does not fall into one of the limitations in Article 19 of the Act.
2. There is a high likelihood to settle in the Republic of Korea.
3. There is no concern of harming the safety, public order or public health of the Republic of Korea.

#### **UNHCR Comment on Article 15:**

Resettlement is not a right of refugees and there is no obligation on States to accept refugees for resettlement. It is thus a demonstration of generosity to do so, and UNHCR welcomes the Republic of Korea’s willingness to offer resettlement to refugees.<sup>59</sup> Resettlement is a useful burden sharing tool, but it is important to remember that it must complement and not substitute for the provision of protection where needed to persons who apply for asylum.<sup>60</sup>

In Article 15 the term “seek” is used, however, refugees cannot seek resettlement.

As for Article 15(1) of the Decree referring to Article 19 of the Refugee Act, which is an exclusion provision, UNHCR would like to clarify that UNHCR assesses whether the person concerned is a refugee and whether she or he should be excluded from refugee status, before considering the person for resettlement.

Article 15(2) of the Decree adds an additional criterion for resettlement, the “high likelihood to settle”, which is difficult to predict and problematic to determine. UNHCR’s selection of refugees is based on a needs assessment as to whether resettlement is the most appropriate durable solution for the individual concerned. UNHCR recommends that only the categories listed below are used for the selection of refugees for resettlement:

- Legal and/or Physical Protection Needs of the refugee in the country of refuge (this includes a threat of *refoulement*);
- Survivors of Torture and/or Violence, where repatriation or the conditions of asylum could result in further traumatization and/or heightened risk; or where appropriate treatment is not available;

<sup>59</sup> UN High Commissioner for Refugees, *UNHCR Resettlement Handbook*, July 2011, available at: <http://www.unhcr.org/refworld/docid/4ecb973c2.html>.

<sup>60</sup> UN High Commissioner for Refugees, *Frequently Asked Questions about Resettlement*, September 2009, available at: <http://www.unhcr.org/refworld/docid/4ac0d7e52.html>.

- Medical Needs, in particular life-saving treatment that is unavailable in the country of refuge;
- Women and Girls at Risk, who have protection problems particular to their gender;
- Family Reunification, when resettlement is the only means to reunite refugee family members who, owing to refugee flight or displacement, are separated by borders or entire continents;
- Children and Adolescents at Risk, where a best interests determination supports resettlement;
- Lack of Foreseeable Alternative Durable Solutions, which generally is relevant only when other solutions are not feasible in the foreseeable future, when resettlement can be used strategically, and/or when it can open possibilities for comprehensive solutions.<sup>61</sup>

#### **Article 16 (Procedure to Permit Settlement of Refugees Seeking Resettlement in Korea)**

- (1) The Minister of Justice may, if necessary to permit settlement in Korea pursuant to Article 24 (1) of the Act, receive recommendation of candidates from UNHCR.
- (2) The Minister of Justice may dispatch RSD officers et al. and conduct on-site examination of recommended candidates in accordance with paragraph 1 if he/she satisfies the criteria stipulated in Article 15 (1).
- (3) The Minister of Justice may provide refugees seeking resettlement with medical examination and basic social integration training prior to their entry into Korea if it is decided to permit their settlement in the Republic of Korea in accordance with the result of the review under the preceding paragraph.
- (4) The Minister of Justice shall permit settlement of refugees seeking resettlement in Korea after going through entry permission procedure pursuant to the Immigration Control Act.
- (5) Matters necessary to permit settlement of refugees seeking resettlement in Korea other than those specified in paragraphs 1 to 4 such as procedure to permit settlement in Korea shall be determined by the Minister of Justice.

#### **UNHCR Comment on Article 16:**

Similar to comments on Article 15 of the Decree, in relation to the title and wording of Article 16, it should be noted that refugees do not “seek” resettlement.

UNHCR recommends that Article 16(4) either list the specific provisions of the Immigration Control Act or that the entry permission procedure be explicitly specified so that the immigration process through which resettlement refugees will gain entry to the Republic of Korea is clear and transparent.

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<sup>61</sup> UN High Commissioner for Refugees, *UNHCR Resettlement Handbook*, July 2011, available at: <http://www.unhcr.org/refworld/docid/4ecb973c2.html>, page 37.

It is important that the Decree make it clear what status or permit resettled refugees will be granted. Article 24(1) of the Refugee Act states that permission for resettlement will be “deemed recognition of refugee status”, implying that resettled refugees will receive the same status as refugees recognized by the Republic of Korea. UNHCR recommends that the Decree reiterates that resettled and recognized refugees will have the same status.

Ideally the procedures for granting resettlement should also be specified somewhere. UNHCR recommends that there be provision for assistance to resettled refugees to locally integrate.

#### **Article 17 (Dismissal of Member of the Refugee Committee, etc.)**

- (1) The Minister of Justice may dismiss or remove a member of the Refugee Committee if he/she falls under one of the followings.
  1. Due to physical or mental disability, it is acknowledged that the person is incapable of performing or has a significant difficulty in performing the task.
  2. It is inappropriate for the person to perform the task as a member due to neglect of duty, demeaning dignity and/or other reasons.
  3. The person has violated Article 17 of the Act.
  4. The government official who was assigned as a member in accordance with Article 26 (1) 3 of the Act changed his/her tasks into areas irrelevant with refugees.
- (2) The term of the member who is replacing the dismissed or removed member shall be equivalent to the remaining term of the preceding member.

#### **Article 18 (Review Process of the Refugee Committee)**

- (1) The Refugee Committee shall convene its meeting upon request of the Minister of Justice or when the Chairperson considers it necessary to review application for appeal submitted in accordance with Article 21 (3) of the Act.
- (2) When the Chairperson intends to convene the meeting, he/she shall notify the date, location and agenda of the meeting in writing no later than 7 days before the scheduled meeting. Such requirement, however, shall be waived in case of emergencies or other inevitable circumstances.
- (3) The Refugee Committee shall resume by a majority of incumbent members attending and make decisions by a majority of vote of the members attending the session.
- (4) The Chairperson may allow written examination in case of emergencies or other inevitable circumstances. In such circumstances, the decision shall be made by a majority of vote of the incumbent members.
- (5) Meetings of the Refugee Committee shall be held behind closed doors.

**UNHCR Comment on Article 18:**

Article 18(5) of the Decree states that Refugee Committee meetings “shall” be held behind closed doors. Under Article 23 of the Refugee Act, Refugee Committee hearings are open, but can be closed if deemed necessary.

The Refugee Committee’s procedures should be transparent and fair and therefore, the presence of a third party, including UNHCR and the applicant’s legal representative or trusted third party, during the whole appeal procedure should be possible. UNHCR therefore recommends that the word “shall” in Article 18(5) be replaced with the word “may” to allow discretion as to whether or not to permit the presence of third parties during the Refugee Committee’s meetings and hearings.

In relation to Article 18(4) of the Decree, as a general rule, it is not necessary to provide reasons for the appeal decision. However, where detailed reasons for rejection were not provided to the applicant upon notification of the RSD decision in the first instance, applicants who request it should have the possibility to know the reasons why their claim was rejected, either in writing or through counselling by qualified personnel.<sup>62</sup>

**Article 19 (Hearing from a Relevant Person)**

- (1) The Refugee Committee, if necessary for factual investigation in accordance with Article 21 (4) of the Act, may request the refugee status applicant and/or other relevant persons to appear and make a statement at the meeting.
- (2) The Refugee Committee, if necessary, may request a person with particular experience or expertise concerning matters under deliberation to submit a written opinion or to appear at the meeting and listen to his/her opinion.

**UNHCR Comment on Article 19:**

Article 19(1) of the Decree makes it optional for the Refugee Committee to interview the appealing refugee status applicant. UNHCR recommends that, as a general rule, asylum-seekers be given the opportunity to present their appeal in person. Moreover, when asylum-seekers are interviewed, they should be able to bring their legal representatives and/or UNHCR or, as Article 13 of the Refugee Act provides for in first instance interviews, a “trusted individual”. This will be particularly important if the meeting takes place behind closed doors as is indicated in Article 18(5) of the Decree.

Within UNHCR, the appeal procedure is to re-examine the first instance RSD decision to assess whether it was based on a reasonable finding of fact and a correct application of the refugee criteria. The appeal determination procedure includes a thorough review of

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<sup>62</sup> UN High Commissioner for Refugees, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, 20 November 2003, available at: <http://www.unhcr.org/refworld/docid/42d66dd84.html>, page 7-5.



the file, including the interview transcript, the RSD assessment, the appeal application form and any other information provided by the applicant. UNHCR considers that determination of the appeal through a paper review may be appropriate if, after a thorough examination of the file the RSD officer is satisfied that:

- all relevant evidence has been presented.
- the determination of the facts, including decisions to accept or reject particular evidence, is supported by the RSD interview transcript and RSD assessment.
- the RSD decision reached is based on a clearly correct or incorrect application of the refugee criteria to the accepted facts.

However, an appeal interview should be granted in the following circumstances:

- The negative RSD decision was based on credibility findings that were not adequately addressed during the RSD interview and supported in the RSD assessment.
- Evidence that was relevant to the determination of the claim was presented by the applicant but was not adequately considered in the RSD interview and the RSD assessment.
- New evidence is raised in the appeal application that is relevant to the determination of the refugee claim.
- The appeal application form and/or the RSD interview transcript and RSD assessment, or other reliable evidence, indicate that a breach of procedural fairness is likely to have occurred, which could have limited the ability of the applicant to establish his/her claim, including inadequate interpretation; the applicant's discomfort regarding the conduct or profile (ethnic, religious, gender etc.) of the RSD officer or interpreter; the denial of the opportunity to present relevant evidence; real or perceived concerns regarding the confidentiality of the RSD procedure and inappropriate questioning by the RSD officer.

At the beginning of the appeal interview, procedural issues should be explained to the applicant, including the general reasons why the refugee claim was rejected. As in the first instance an interview transcript should be taken (please also refer to comments made in relation to Article 9 of the Decree), the determination of the appeal should be documented, this determination should undergo an internal review, and applicants should be notified in writing of the decision on their appeal.<sup>63</sup>

## **Article 20 (Assistance related with Education)**

- (1) Recognised refugees and their children may enrol or be admitted into relevant class of schools in accordance with standards and procedures as prescribed by relevant laws and regulations on education.

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<sup>63</sup> UN High Commissioner for Refugees, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, 20 November 2003, available at: <http://www.unhcr.org/refworld/docid/42d66dd84.html>, pages 7-3 to 7-5.

- (2) The Minister of Justice may recommend recognised refugees and their children to the Minister of Education, Science and Technology if deemed necessary to provide education fees pursuant to Article 60-4 of the Elementary and Secondary Education Act.
- (3) Details on recommendation procedures in accordance with paragraph 1 and other necessary matters shall be stipulated by the Ordinance of the Ministry of Justice.

**UNHCR Comment on Article 20:**

Article 20 states that refugees and their children “may” be enrolled in schools, leaving it discretionary as to whether they are or not. Article 33(1) of the Refugee Act, however, states that recognized refugees, who are minors and the children of refugees “shall” receive primary and secondary education. In addition, there is no mention of access to education for minor asylum-seekers and humanitarian status holders.

UNHCR recommends that Article 20 of the Decree be worded in the same obligatory manner as Article 33 of the Refugee Act. In addition, in order for Korean domestic legislation to conform with Article 28(1) of the Convention on the Rights of the Child, to which the Republic of Korea is a signatory and which states that primary education should be compulsory and free for all children, UNHCR recommends that humanitarian status holders and refugee status applicants are included in this provision.

**Article 21 (Social Integration Program)**

Article 39 of the Immigration Control Act shall apply to the matters in relation to the social integration program pursuant to Article 34 (1) of the Act.

**UNHCR Comment on Article 21:**

UNHCR welcomes the continuous inclusion of recognized refugees in the Korea Immigration and Integration Program (KIIP), which includes Korean language courses and courses on Korean culture and society. UNHCR recommends that refugee status applicants and humanitarian status holders also benefit from the KIIP.

**Article 22 (Vocational Training)**

- (1) The Minister of Justice may recommend recognised refugees wishing to receive vocational training and for whom vocational training is deemed necessary in accordance with Article 12 of the Act on the Development of Workplace Skills of Workers to the Minister of Employment and Labour.
- (2) Details on recommendation procedures in accordance with paragraph 1 and other necessary matters shall be stipulated by the Ordinance of the Ministry of Justice.

**UNHCR Comment on Article 22:**

Based on the standard set out in the 1951 Refugee Convention, UNHCR recommends that refugees are granted the same access under the same procedures as other aliens in the same circumstances. As an important measure for successful integration into Korean society, UNHCR welcomes refugees with sufficient Korean language skills having facilitated access to re-qualification programs, most likely through vocational training programs, as an opportunity to re-gain previously obtained vocational training certificates, or to continue vocational training they may have started in their home country.<sup>64</sup> UNHCR further recommends that vocational training be made available and accessible to humanitarian status holders and refugee status applicants.<sup>65</sup>

**Article 23 (Criteria for Recognition of Academic Degrees)**

Recognition of academic degrees pursuant to Article 35 of the Act shall be in accordance with standards and procedures in relevant laws and legislations on education.

**UNHCR Comment on Article 23:**

UNHCR recommends that Article 23 of the Decree includes more specific information on the procedure for the recognition of academic degrees. UNHCR would like to emphasize the comments made on Article 22 of the Decree and stress that the facilitation of inclusion of refugees in vocational and re-qualification training programs is an important stepping stone for successful integration into Korean society. The availability and accessibility of Korean language classes are an important prerequisite to success in any vocational or re-qualification training.

**Article 24 (Provision of Living Expenses and Others)**

- (1) The Minister of Justice may provide living and other expenses to refugee status applicants in accordance with Article 40 (1) of the Act in consideration of the applicant's period of stay in Korea, employment activities, use of refugee assistance center, dependent family members, living condition, etc.
- (2) The Minister of Justice may determine the assistance period within the period not exceeding six months if he/she determines to provide living and other expenses. The assistance period, however, may be extended within the period not exceeding six months, if deemed necessary due to serious illness or physical disability of the applicant, etc.

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<sup>64</sup> UN High Commissioner for Refugees, *Rights of Refugees in the Context of Integration: Legal Standards and Recommendations*, June 2006, POLAS/2006/02, available at: <http://www.unhcr.org/refworld/docid/44bb9b684.html>, page 62.

<sup>65</sup> UN High Commissioner for Refugees, *UNHCR Manual on a Community Based Approach in UNHCR Operations*, March 2008, available at: <http://www.unhcr.org/refworld/docid/47da54722.html>, page 27.

- (3) The Minister of Justice may delegate works concerning provision of living and other expenses to relevant ministries, corporation or organisation.
- (4) Details on procedures to provide living and other expenses and other necessary matters shall be stipulated by the Ordinance of the Ministry of Justice.

**UNHCR Comment on Article 24:**

UNHCR recommends the provision of living and other expenses to all refugee status applicants for the first six months, and especially to those who have just arrived in the Republic of Korea, until they become eligible to work and have the opportunity to become self-reliant.

Article 24(2) of the Decree mentions the possible extension of the provision of living and other expenses for certain persons with serious illnesses or physical disabilities. UNHCR recommends that other persons with specific needs, such as elderly people, unaccompanied and separated children, persons with mental disabilities, single women with or without dependants (due to their risk of being exploited and marginalized), be included in the list of beneficiaries eligible for an extended period of assistance.<sup>66</sup>

**Article 25 (Permission to Engage in Wage-Earning Employment)**

Article 20 of the Immigration Control Act shall apply to matters relating to methods of granting permission to engage in wage-earning employment in accordance with Article 40 (2) of the Act.

**UNHCR Comment on Article 25:**

To promote the self-reliance of refugee status applicants, UNHCR recommends that they be permitted to work no later than six months after lodging their refugee application. UNHCR further recommends that humanitarian status holders automatically be entitled to work permits as part of their status.

The current system of obtaining work permission for both refugee status applicants and humanitarian status holders restricts their access to the labour market by requiring a work contract with the employer before permission to work is granted. UNHCR strongly recommends that a simplified process for the granting of work permission to refugee status applicants be devised.

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<sup>66</sup> UN High Commissioner for Refugees, *UNHCR Manual on a Community Based Approach in UNHCR Operations*, March 2008, available at: <http://www.unhcr.org/refworld/docid/47da54722.html>, page 12.

## Article 26 (Establishment and Operation of Residential Facilities)

- (1) The Minister of Justice may establish and operate residential facilities under Article 41 of the Act in the following places.
  1. Refugee assistance center under Article 45 (1) of the Act (hereinafter “Refugee Assistance Center”)
  2. Other facilities designated by the Minister of Justice
- (2) Articles 30 (limited to details concerning refugee status applicants) and 31(3), shall apply *mutatis mutandis* to matters on the operation of residential facilities.

### **UNHCR Comment on Article 26:**

UNHCR’s Executive Committee and the Global Consultations on International Protection have recognized that, where they provide an opportunity for a degree of self-reliance, reception arrangements can be beneficial both to the State and to refugee status applicants.<sup>67</sup> The experience has been, however, that the provision of housing facilities, although useful to vulnerable claimants, is expensive, difficult to operate and can lead to conditions of dependency. The provision of such facilities also discourages local integration and in some cases has contributed to creating tensions with host populations. UNHCR therefore does not generally recommend the creation of collective accommodation centres.<sup>68</sup>

UNHCR recommends that any reception arrangements should be guided by age, gender and diversity sensitivity and principles, as well as considerations of persons with specific needs, which requires respective training of all officials and staff in the initial reception process. In UNHCR’s view, reception standards should endeavour to address educational, medical, psychological, recreational and other needs of refugee status applicants and refugees. In particular, the needs of persons with specific needs, including unaccompanied and separated children, elderly persons, single parents, persons with mental or physical disabilities and pregnant women should be addressed.<sup>69</sup> Reception arrangements also need to take into account the specific needs of victims of sexual abuse, exploitation and torture.<sup>70</sup>

<sup>67</sup> UN High Commissioner for Refugees, *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)*, available at: <http://www.unhcr.org/refworld/docid/49ba8a192.html>.

<sup>68</sup> UN High Commissioner for Refugees, *UNHCR's Comments on the Republic of Korea 2009 Draft Bill on Refugee Status Determination and Treatment of Refugees and Others*, 15 June 2009, available at: <http://www.unhcr.org/refworld/docid/4a8d58092.html>, page 33.

<sup>69</sup> UN High Commissioner for Refugees, *Global Consultations on International Protection/Third Track: Reception of Asylum-Seekers, Including Standards of Treatment, in the Context of Individual Asylum Systems*, 4 September 2001, EC/GC/01/17, available at: <http://www.unhcr.org/refworld/docid/3bfa81864.html>, pages 9 to 10.

<sup>70</sup> UN High Commissioner for Refugees, *Conclusion on Reception of Asylum-Seekers in the Context of Individual Asylum Systems*, No. 93 (LIII) - 2002, available in: UN High Commissioner for Refugees, *Conclusions Adopted by the Executive Committee on the International Protection of Refugees*, December 2009, 1975 – 2009 (Conclusion No. 1 – 109), available at: <http://www.unhcr.org/refworld/docid/4b28b1f2.html>, page 144, paragraph (b)(iii).

In relation to the operation of the Refugee Assistance Centre, Article 45(3) of the Refugee Act states that the Decree will determine matters including the use, operation and management of the centre as well as the delegation to the private sector. The Decree, however, is silent on these matters. UNHCR recommends that the relevant details be provided in the Decree as required by the Refugee Act.

### **Article 27 (Support in Medical Services)**

- (1) The Minister of Justice, if deemed necessary to safeguard health of a refugee status applicant, may provide him/her with support in medical services including medical examination.
- (2) The Minister of Justice may provide refugee status applicants with information relating to emergency medical services and medical service support programs operated by relevant authorities and organisations in accordance with the Emergency Medical Service Act.
- (3) Head of relevant ministries and organisations intending to provide a refugee status applicant with support in medical services may request the Office Chief or Branch Head to verify if the alien under consideration is a refugee status applicant. To this end, the Office Chief or Branch Head shall notify the requesting ministries and organisations of the result without delay.

### **UNHCR Comment on Article 27:**

UNHCR recommends that refugee status applicants receive free primary (including antiretroviral treatment) and emergency medical care, if needed, upon arrival and throughout the RSD procedure.<sup>71</sup> UNHCR thinks it preferable that refugee status applicants are able to access medical care without the need for approval or referral by the Minister of Justice.

Article 27(2) of the Decree gives discretion to the Minister of Justice to decide whether refugee status applicants are provided with information about available medical services. As knowledge about medical services can be life-saving and prevent serious illnesses, UNHCR recommends that the wording of the paragraph be amended to ensure all refugee status applicants are informed of available medical services.

Article 42 of the Refugee Act states that medical services support will be determined by the Decree. However, it seems that the Decree does not elaborate on the provision of medical support to refugee status applicants.

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<sup>71</sup> UN High Commissioner for Refugees, *UNHCR Manual on a Community Based Approach in UNHCR Operations*, March 2008, available at: <http://www.unhcr.org/refworld/docid/47da54722.html>, page 27.

### **Article 28 (Limitations on Benefits for Certain Refugee Status Applicants)**

For a refugee status applicant under Article 44 of the Act, the benefits available under Articles 40 (1) and 41 of the Act and Article 27 (1) of this Decree shall not be provided. The proceeding paragraph, however, shall not apply if the Minister of Justice otherwise determines that it is necessary to provide special assistance for emergencies or humanitarian considerations.

#### **UNHCR Comment on Article 28:**

Article 28 of the Decree limits the assistance provided to refugee status applicants whose cases are pending at the courts, who have stayed in the Republic of Korea for one year or longer and applied for refugee status just before their visa expired, and for persons who have re-applied for refugee status. The Decree states that the above categories of refugee status applicants will not benefit from living expenses, provision of residential facilities or medical services, including a medical examination.

UNHCR recommends the provision of adequate reception conditions for all refugee status applicants until a final determination is made on their claim. According to Article 11 of the International Covenant on Economic, Cultural and Social Rights, to which the Republic of Korea is a signatory, everyone has the right to an adequate standard of living. This includes refugee status applicants, otherwise they will not be in an appropriate physical or psychological condition in which to adequately pursue their refugee status application.<sup>72</sup>

### **Article 29 (Operation of a Council Relating to the Treatment of Recognised Refugees and Others)**

The Minister of Justice may operate a council which consists of officials from relevant organisations, if necessary for the treatment of recognised refugees and refugee status applicants, and for matters necessary the enforcement of the Act and the Decree.

#### **UNHCR Comment on Article 29:**

UNHCR would like to be included in the Council, if possible, to have the opportunity to provide guidance on international standards related to the treatment of refugees and refugee status applicants.

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<sup>72</sup> UN High Commissioner for Refugees, *Conclusion on Reception of Asylum-Seekers in the Context of Individual Asylum Systems*, No. 93 (LIII) - 2002, available in UN High Commissioner for Refugees, *Conclusions Adopted by the Executive Committee on the International Protection of Refugees*, December 2009, 1975 – 2009 (Conclusion No. 1 – 109), available at: <http://www.unhcr.org/refworld/docid/4b28b1f2.html>, page 144.



**Article 30 (Users of Refugee Assistance Center, etc.)**

- (1) The Minister of Justice shall determine persons who will be eligible to use the Refugee Assistance Center among those who fall into one of the following subparagraphs, in comprehensive consideration of his/her ability to self-reliance, capacity of the Refugee Assistance Center, etc.
  1. Recognised refugees
  2. Refugee status applicants
  3. Humanitarian status holders
  4. Spouse and minor children of those specified in subparagraphs 1 to 3
- (2) The Minister of Justice may give a priority to refugees granted settlement in the Republic of Korea pursuant to Article 24 (1) of the Act and to refugee status applicants who was granted conditional entry permission pursuant to Article 13 of the Immigration Control Act.
- (3) The Minister of Justice may determine the period to use Refugee Assistance Center within the period not exceeding six months. The period, however, may be extended if deemed necessary to continue using the Refugee Assistance Center in consideration of his/her health, family relationship and so on.
- (4) The Minister of Justice may exclude or suspend the person from the list of eligible persons if he/she might harm or has potential to harm the security and public order of the Refugee Assistance Center.
- (5) Details on procedure to use the Refugee Assistance Center and other necessary matters shall be stipulated by the Ordinance of the Ministry of Justice.

**UNHCR Comment on Article 30:**

UNHCR welcomes the inclusion of all categories of persons listed under Article 30(1) of the Decree to be eligible to use the Refugee Assistance Centre.

Article 30(2) of the Decree stipulates that resettled refugees may be given priority in the use of the Refugee Assistance Centre. According to Article 3 of the 1951 Refugee Convention, refugees should be treated without discrimination as to race, religion or country of origin. UNHCR is of the opinion that all refugees should be treated equally in the settlement process, regardless of whether they are resettled refugees or refugees who came directly to the Republic of Korea. UNHCR therefore recommends that Article 30(2) be deleted.

UNHCR would like to suggest that refugees in the Refugee Assistance Centre are prepared for local integration into Korean society, including through learning useful skills. In this regard, UNHCR anticipates the successful implementation of the KIIP at the Refugee Assistance Centre.

UNHCR recommends that Article 30(3) provide clear criteria and guidance for deciding whether an extension of stay is appropriate and that it includes other persons with special needs, such as elderly persons, unaccompanied and separated children, persons with mental or physical disabilities, and single women with or without dependants due to their

risk of being exploited and marginalized.<sup>73</sup> The facilities should be made accessible for disabled persons.

UNHCR recommends that Article 30(4) provide clear guidance for the exclusion of persons from the Refugee Assistance Centre. UNHCR offers its support for the development of regulations for the Refugee Assistance Centre.

UNHCR recommends that eligible persons be informed that the use of the Refugee Assistance Centre is voluntary and that it does not affect their refugee status application. UNHCR recommends that families be allowed to stay together in the Refugee Assistance Centre.<sup>74</sup> UNHCR recommends that personal information be treated with confidentiality at all times.

### **Article 31 (Operation and Management of Refugee Assistance Center)**

- (1) The Minister of Justice may request immigration officers to operate and manage the Refugee Assistance Center.
- (2) The Refugee Assistance Center may keep facilities for residence, meals, education, medical services, exercises and counseling for the basic livelihood, health care and social integration of users of the Center.
- (3) The Head of the Refugee Assistance Center shall prepare for and implement administrative rules and user instructions in order to safeguard safety and public order of the Refugee Assistance Center.
- (4) Details necessary for the operation and management of the Refugee Assistance Center not determined by paragraphs 1 to 3 shall be determined by the Minister of Justice.

#### **UNHCR Comment on Article 31:**

UNHCR recommends ensuring that all persons who will be involved in the operation and management of the Refugee Assistance Centre be trained and appropriately sensitized to refugee related issues according to the principle of ‘do no harm’.<sup>75</sup> UNHCR offers its technical expertise in terms of skill-sharing or development of manuals for staff working in this centre.

<sup>73</sup> UN High Commissioner for Refugees, *UNHCR Manual on a Community Based Approach in UNHCR Operations*, March 2008, available at: <http://www.unhcr.org/refworld/docid/47da54722.html>, page 12.

<sup>74</sup> UN High Commissioner for Refugees, *Conclusion on Reception of Asylum-Seekers in the Context of Individual Asylum Systems*, No. 93 (LIII) - 2002, available in UN High Commissioner for Refugees, *Conclusions Adopted by the Executive Committee on the International Protection of Refugees*, December 2009, 1975 – 2009 (Conclusion No. 1 – 109), available at: <http://www.unhcr.org/refworld/docid/4b28b1f2.html>, page 144, paragraph(b)(iv).

<sup>75</sup> UN High Commissioner for Refugees, *UNHCR Manual on Security of Persons of Concern*, November 2011, First Edition, available at: <http://www.unhcr.org/refworld/docid/4f6313032.html>, page 336.

UNHCR welcomes the facilities listed under Article 31(2) of the Decree and recommends removal of the discretion from this provision, as all mentioned facilities are necessary for the adequate operation and management of the Refugee Assistance Centre. UNHCR hopes that the meals offered at the Refugee Assistance Centre will give residents the opportunity to select food in accordance with their dietary requirements and in respect of religious or other preferences.

As for education in the Refugee Assistance Centre, UNHCR does not recommend the provision of education in separate facilities, as this contributes to marginalization. If necessary, separate schooling should only take place for a limited period of time, and attendance at regular schools should be the norm, as this assists integration.<sup>76</sup> UNHCR recommends that refugee status applicants are also provided with secondary education, if possible.

Counselling facilities should be granted the appropriate level of privacy. UNHCR also encourages the government of the Republic of Korea to adopt legislation that provides for psychological care and counselling free of charge for survivors of torture and others suffering from severe trauma. UNHCR also recommends that prayer facilities be provided to respect the unhindered exercise of religion.

Article 31(3) stipulates administrative rules and user instructions in order to safeguard safety and public order. Should these affect freedom of movement, UNHCR recommends that such restrictions conform to international law, meaning that they must be necessary to protect a legitimate interest, including public security, public order, or public health.<sup>77</sup>

UNHCR seeks clarification as to when and where the details mentioned in Article 31(4) will be provided. UNHCR recommends they be determined within a specified time period and be announced accordingly.

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<sup>76</sup> See for example: UNHCR Executive Committee Conclusions No. 47, paragraph (o), No. 102, paragraph (o), No. 104, paragraph (n), available in UN High Commissioner for Refugees, *Conclusions Adopted by the Executive Committee on the International Protection of Refugees*, December 2009, 1975 – 2009 (Conclusion No. 1 – 109), available at: <http://www.unhcr.org/refworld/docid/4b28b1f2.html>; UN High Commissioner for Refugees, *Being a refugee: How refugees and asylum-seekers experience life in Central Europe*, 3 January 2012, available at: <http://www.unhcr.org/refworld/docid/4f02fa252.html>, page 29; UN High Commissioner for Refugees, *UNHCR Agenda for the Integration of Refugees in Central Europe*, April 2009, available at: <http://www.unhcr.org/refworld/docid/4bfe72542.html>, page 9; and UN High Commissioner for Refugees, *The Benefits of Belonging: Local integration options and opportunities for host countries, communities and refugees*, 29 July 2011, available at: <http://www.unhcr.org/refworld/docid/4e56170b2.html>, page 22.

<sup>77</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html>, Article 12, paragraphs (1) and (3). See also Article 26 of the 1951 Refugee Convention.

### **Article 32 (Delegation to Private Organisations)**

The Minister of Justice may delegate tasks on meals, education, medical services and others to a foundation or organisation with expertise and credibility.

#### **UNHCR Comment on Article 32:**

UNHCR recommends ensuring that service providers, to whom certain work may be delegated, are properly trained regarding refugees and on how to best deliver services according to the principle of ‘do no harm’.<sup>78</sup> The criteria that a service provider needs to fulfil are not listed in the article. Service providers should be carefully selected, not only based on cost-effectiveness, but on giving priority to those interested and preferably experienced in relation to working with refugees.

### **Article 33 (Delegation of Authority)**

- (1) The Minister of Justice may delegate the following authorities to the Chief of Office, Branch Head or Center Director of offices that keep RSD officers.
1. Issuance of a certificate of receipt pursuant to Article 5 (5) of the Act
  2. Determination on whether to refer an application to refugee status determination procedures and the notification of determination pursuant to Article 6 (3) of the Act, Articles 4 and 5 (1) of the Decree
  3. Permission for entry pursuant to Article 6 (3) of the Act
  4. Omission of part of the determination procedure pursuant to Article 8 (5) of the Act
  5. Termination of refugee status determination procedure pursuant to Article 8 (6) of the Act
  6. Request for cooperation to chiefs of relevant administrative agencies or related organisations pursuant to Article 11 (1) of the Act (excluding matters on application for appeal pursuant to Article 21 of the Act)
  7. Recognition of refugee status and issuance of the Certificate of Refugee Recognition pursuant to Article 18 (1) of the Act
  8. Denial of refugee status and issuance of Notice of Denial pursuant to Article 18 (2) of the Act
  9. Notification pursuant to Article 18 (5) of the Act
  10. Denial of refugee status pursuant to Article 19 of the Act
  11. Medical examination pursuant to Article 42 of the Act and Article 27 (1) of the Decree
  12. Provision of information relating to medical service support programs pursuant to Article 42 of the Act and Article 27 (2) of the Decree
  13. Permission to stay on humanitarian grounds pursuant to Article 13 of the Decree
- (2) The Minister of Justice may delegate the following authorities to the Chief of Office and Branch Head.

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<sup>78</sup> UN High Commissioner for Refugees, *UNHCR Manual on Security of Persons of Concern*, November 2011, First Edition, available at: <http://www.unhcr.org/refworld/docid/4f6313032.html>, page 336.

1. Permission for entry pursuant to Article 37 of the Act
2. Permission to engage in wage-earning employment pursuant to Articles 39 and 40 (2) of the Act, and Article 25 of the Decree

The Minister of Justice may delegate the authority to the Head of the Refugee Assistance Center over determination of persons who will be eligible to use the Refugee Assistance Center and suspension of use thereof.

**UNHCR Comment on Article 33:**

UNHCR recommends that Article 2 of the Decree be added into Article 33(1) to ensure that qualified RSD officers are based at ports of entry to carry out the tasks specified in Article 2. Without the specific inclusion of Article 2 in Article 33(1), it is not guaranteed that procedures at ports of entry under Article 2 will be conducted by qualified RSD officers. These comments on Article 33 should be read together with the comments made in relation to Article 2 above.

**Article 34 (Processing of Sensitive Information and Personal Identification Number)**

The Minister of Justice, Chief of Office and Head of the Refugee Assistance Center, when unavoidable to perform tasks in accordance with the Act and the Decree, may process data containing information relating to thought, belief and/or health pursuant to Article 23 of the Personal Information Protection Act, genetic information and/or criminal record pursuant to the subparagraphs 1 and 2 of Article 18 of the Decree of the same Act, and passport number and/or alien registration number pursuant to Articles 19-1, 19-2 and 19-4 of the same Decree.

**Article 35 (Forms)**

Forms prescribed in the Act and the Decree shall be determined by the Ordinance of the Ministry of Justice.

**Addenda**

**Article 1 (enforcement Date)**

This Decree shall enter into force on 1 July 2013.

**Article 2 (Applicability)**

This Decree applies to refugee status applicants submitted on or after the enforcement of the Act.

**UNHCR Comment on Article 2:**

Article 2 of the Addenda remains of concern to UNHCR because it limits the scope of applicability of the Refugee Act, the Decree and the Regulations to refugee status applications submitted on or after 1 July 2013, the enforcement date. The literal application of this provision creates two separate groups of refugee status applicants: applicants whose applications are submitted prior to the enforcement date and those whose applications were made on or after the enforcement date. This would mean that refugee status applicants are not treated equally without discrimination under domestic law. Furthermore, a literal application of this provision could lead to inconsistencies and uncertainty in the implementation of the law. UNHCR therefore recommends that Addenda Article 2 be amended such that the Refugee Act, the Decree and the Regulations are applicable to all refugee status applicants regardless of the date of their application, thereby allowing equal treatment of all refugee status applicants under the domestic legal framework.

**Article 3 (Revision of Other Acts)**

(1) The Enforcement Decree of the Emergency Aid and Support Act shall be partially amended as below.

Subparagraph 3 of Article 1-2 shall change to “3. Persons recognised as a refugee under Refugee Act”

(2) The Enforcement Decree of the Immigration Control Act shall be partially amended as below.

“Recognition of Refugee Status”, the title of Chapter 7. 2., shall change to “Issuance of Refugee Travel Document, etc.”

Article 88-2 through Article 88-4, Article 88-9 (1) and Article 88-9 (4) shall be deleted.

Article 88-9(2) shall become Article 88-9 (1), and for “has decided to permit sojourn in the Republic of Korea under Article 76-8 (2) of the Act” substitute “has decided to permit sojourn in the Republic of Korea pursuant to subparagraph 3 of Article 2 of the Refugee Act”.

Article 88-9(3) shall become Article 88-9(2), and for “notified under paragraph (2), he/she shall imprint a stamp for granting status of sojourn, for permitting the change of status of sojourn, and for permitting the extension of sojourn period on the passport of the foreigner permitted to sojourn under paragraph (1)” substitute “notified under paragraph (1), he/she shall imprint a stamp for granting status of sojourn, for permitting the change of status of sojourn, and for permitting the extension of sojourn period on the passport of the foreigner permitted to sojourn under subparagraph 3 of Article 2 of the Refugee Act”.

(3) Subparagraph 3 of Article 104 (2) 2 of the Elementary and Secondary Education Act shall be newly enacted as below.

3. Persons whom the Minister of Justice may recommend to the Minister of Education, Science and Technology acknowledging the need for educational support among recognised refugees pursuant to subparagraph 2 of Article 2 of the Refugee Act and their children.

(4) Subparagraph 12 of Article 6 (2) of the Enforcement Decree of Act on the Development of Workplace Skills of Workers shall be newly enacted as below.

12. Persons whom the Minister of Justice may recommend to the Minister of Employment and Labour acknowledging the need for vocational training among recognised refugees pursuant to subparagraph 2 of Article 2 of the Refugee Act.

**UNHCR Additional Comment 1:**

Regarding reception and integration, UNHCR notes that the Decree does not contain further details to supplement Article 30(2) of the Refugee Act, which states that central and municipal governments “shall” carry out specific activities concerning the treatment of refugees. These activities include the establishment and implementation of policies, preparation and amendment of relevant Acts and regulations, support to other departments and other necessary measures concerning the treatment of refugees. It will therefore be essential for various central government departments, including those responsible for education, work, and health, to coordinate in relation to the provision of the treatment of refugees that is required. In addition, the key role of municipal government actors in ensuring implementation and access at the local level cannot be ignored. Cooperation with municipal government actors will also be essential.

**UNHCR Additional Comment 2:**

Regarding durable solutions for recognized and resettled refugees, UNHCR recommends that careful consideration be given to the nature of status granted to resettlement refugees and recognized refugees, so that the Republic of Korea fulfils its obligations under Article 34 of the 1951 Refugee Convention, which requires the facilitation, and every effort to expedite, the naturalization of refugees. Naturalization is a key durable solution for persons in need of international protection. Proposed amendments to the Republic of Korea’s Nationality Act require permanent residence as a prerequisite for general naturalization of foreigners in the Republic of Korea. Recognized refugees are not included in the Immigration Control Act’s definition of persons eligible for permanent residence. Therefore, the proposed amendments appear to create an additional hurdle to refugees attaining naturalization. These proposed amendments are also of concern with regards to humanitarian status holders, who often, like refugees, cannot return to their home country and are thus also in need of a durable solution.<sup>79</sup>

<sup>79</sup> Please refer to: UN High Commissioner for Refugees, *UNHCR’s Comments on the Proposed Amendments to the Nationality Act and the Immigration Control Act of the Republic of Korea*, 29 October 2012, available at: <http://www.unhcr.org/refworld/docid/509924e62.html>.



### **Part 3: Specific Comments on Particular Provisions of the Draft Regulations**

#### **Article 1. (Purpose)**

Article 1 (Purpose) These Regulations aim at stipulating matters delegated by the Refugee Act and the Presidential Decree as well as matters necessary for the enforcement thereof.

#### **Article 2 (Methods and Procedures for Refugee Status Application, etc.)**

(1) Refugee status application form submitted in accordance with Article 5 (1) of the Refugee Act (hereinafter “the Act”) should bear personal information, reason of application, mailing address, contact information, etc.

(2) The Chief of an Immigration Office (hereinafter “Office Chief”), Head of an Immigration Branch Office (hereinafter “Office Head”) or Director of an Immigration Processing Center (hereinafter “Center Director”) may provide an interpreter during the registration process when a person wishing to submit refugee status application form pursuant to Article 5 (1) of the Act cannot fully express him/herself in Korean.

#### **UNHCR Comment on Article 2:**

Article 2(2) is of concern to UNHCR as it appears to make the provision of an interpreter discretionary. Due to the essential requirement of clear communication in asylum cases, UNHCR recommends that interpreting services must be made available to all asylum-seekers the moment communication begins.

#### **Article 3 (Methods for Notice of Relevant Information on Refugee Status Application, etc.)**

(1) The placement of document and notice pursuant to Article 7 (1) of the Act shall be in more than two languages including Korean and English and be in plain view.

(2) The Minister of Justice under Article 7 (1) determines the list of documents to be placed, contents and location of the notice.

#### **Article 4 (Fee to Access and Copy Relevant Documents)**

(1) Fees to access and copy relevant documents are as follows:

1. Access: 500 KRW each
2. Copying: 50 KRW per page

(2) The Office Chief, Office Head and Center Director (hereinafter “Office Chief et al.”) may give an exemption of the fees pursuant to paragraph 1 if necessary in consideration of humanitarian reasons and others.

(3) The fee under paragraph 1 shall be paid in revenue stamps.

### **Article 5 (Procedures for Reissuance of Certificate of Refugee Recognition)**

(1) A person wishing to be re-issued with Certificate of Refugee Recognition pursuant to Article 12 of the Decree must submit Application for Reissuance of Certificate of Refugee Status Recognition to the Office Chief or Office Head with attachment of document explaining the reasons and a photo.

(2) When the Office Chief or Office Head reissues the Certificate of Refugee Recognition pursuant to Article 12 of the Decree, he/she shall specify the reasons on the Reissuance Registration Log.

#### **UNHCR Comment on Article 5:**

Please refer to UNHCR's comments on Article 12 of the Decree.

### **Article 6 (Operation of the Refugee Committee)**

(1) The Chairperson of the Refugee Committee represents the Refugee Committee and handles matters concerning its operation.

(2) When the Chairperson cannot perform his/her duty due to unavoidable circumstances, a member of the Committee appointed by the Minister of Justice becomes the acting Chairperson.

### **Article 7 (Allowances)**

The Minister of Justice may pay allowances and other necessary expenses to members and participants of the Committee meetings pursuant to Article 19 (2) of the Decree unless in cases where government officials attend or present at the Committee meeting in line with his/her official duty.

### **Article 8 (Operational Rules)**

Matters regarding the operation of the Committee other than those specified in these Regulations shall be determined by the Chairperson of the Committee in accordance with the decision of the Committee.

#### **UNHCR Comment on Article 8:**

UNHCR seeks clarification as to where the matters regarding the operation of the Committee will be recorded.

#### **Article 9 (Recommendation Procedures for Educational Expense Support)**

- (1) A recognised refugee or his/her child wishing to be recommended in accordance with Article 20 (2) of the Decree should submit the Application for Recommendation of Educational Expense Support to the Office Chief or Office Head.
- (2) The Office Chief or Office Head shall transfer the application pursuant to paragraph 1 to the Minister of Justice without delay attaching his/her opinion.
- (3) When the Minister of Justice makes a decision to recommend the person in accordance with Article 20 (2) of the Decree, he/she shall issue a letter of recommendation to the applicant and notify the decision to the Minister of Education, Science and Technology.

#### **Article 10 (Recommendation Procedures for Vocational Training)**

- (1) A recognised refugee wishing to be recommended in accordance with Article 22 (1) of the Decree should submit the Application for Recommendation of Vocational Training to the Office Chief or Office Head.
- (2) The Office Chief or Office Head shall transfer the application pursuant to paragraph 1 to the Minister of Justice without delay attaching his/her opinion.
- (3) When the Minister of Justice makes a decision to recommend the person in accordance with Article 22 (1) of the Decree, he/she shall issue a letter of recommendation to the applicant and notify the decision to the Minister of Employment and Labour.

#### **Article 11 (Procedure for Living Expense Support, etc.)**

- (1) A refugee status applicant who wishing to receive living and other expenses pursuant to Article 40 (1) of the Act should submit the Application for Assistance for Living Expenses, etc to the Office Chief or Office Head.
- (2) The Office Chief or the Office Head shall transfer the application without delay to the Minister of Justice attaching his/her opinion.
- (3) When the Minister of Justice receives the application pursuant to paragraph 2, he/she shall review the application without delay and notify the decision to the applicant.

#### **Article 12 (Procedure on the Use of Refugee Assistance Center)**

- (1) Recognised refugees and others wishing to use the Refugee Assistance Center pursuant to Article 30 (1) of the Decree shall submit the Application for Refugee Assistance Facility to the Office Chief, Office Head or Head of the Refugee Assistance Center.
- (2) When he Office Chief, Office Head or Head of the Refugee Assistance Center receives the application, he/she shall transfer the application to the Minister of Justice attaching his/her opinion.
- (3) When the Minister of Justice makes a decision on persons to use the Refugee Assistance Center pursuant to Article 30 (1) of the Decree, he/she shall notify the decision to the applicant.

**UNHCR Comment on Article 12:**

UNHCR seeks clarification as to the timeframe within which a decision under Article 12(3) will be made.

**Article 13 (Relevant Forms)**

- (1) All forms used in the Act, the Decree and the Regulations are annexed hereto.
- (2) The Office Chief et al. may prepare and place the relevant registration logs among the forms in paragraph 1 pursuant to the Procedures on Handling Information and Technology.

**Addenda**

**Article 1 (Enforcement Date)**

These Regulations shall enter into force on 1 July 2013.

**Article 2 (Applicability)**

These Regulations apply to refugee status applications submitted on or after the enforcement of the Regulation.

**UNHCR Comment on Article 2:**

Please refer to UNHCR's comments on Addenda Article 2 of the Decree.

**Article 3 (Revision of Other Regulations)**

Parts of the Enforcement Regulations of the Immigration Control Act are revised as follows:

“Recognition, Etc. of Refugees”, the title of Chapter6-2, shall change to “Issuance of Refugee Travel Documents, Etc.”

Section 1 of Chapter6-2 shall be deleted.

Article 67-13 shall be deleted.

In Article 78(3), “Article 76-8(3)” shall be deleted.

In Article 78(4) and (5), “Article76-2, 76-3 and 76-8(2)” shall be deleted.

In Article 78(5), “Article76-2, 76-3 and 76-8(2), (3)” shall be deleted.

**Annexes**

Form 1. Ministry of Justice Application for Recognition of Refugee Status (in Korean)

Form 2. Ministry of Justice Application for Recognition of Refugee Status (in English)

- Form 3. Receipt of Refugee Status Application (in Korean and English)
- Form 4. Summons (in Korean and English)
- Form 5. Log on the Issuance of Summons (in Korean)
- Form 6. Refugee Interview Report (in Korean)
- Form 7. Application for Perusal and/or Copying (in Korean and English)
- Form 8. Certificate of Refugee Status Recognition (in Korean and English)
- Form 9. Non-Recognition of Refugee Status (in Korean and English)
- Form 10. Application for Reissuance of Certificate of Refugee Status Recognition (in Korean and English)
- Form 11. Log on the Issuance of Certificate of Refugee Status Recognition (in Korean)
- Form 12. Notice on Extension of Review Period of Refugee Status Recognition (in Korean and English)
- Form 13. Application for Appeal (in Korean and English)
- Form 14. Disapproval Notice on Appeal (in Korean and English)
- Form 15. Notice on Extension of Review Period of Appeal (in Korean and English)
- Form 16. Notice on the Cancellation/Withdrawal of Refugee Status Recognition (in Korean and English)
- Form 17. Application for Recommendation of Educational Expense Support (in Korean and English)
- Form 18. Recommendation of Education Expense Support (in Korean)
- Form 19. Application for Recommendation of Vocational Training (in Korean and English)
- Form 20. Recommendation of Educational Expense Support (in Korean)
- Form 21. Application for Assistance for Living Expenses, etc. (in Korean and English)
- Form 22. Application for Refugee Assistance Facility (in Korean and English)

### ***Key Recommendations***

UNHCR wishes to recommend to the authorities of the Republic of Korea that:

- the Refugee Act, Presidential Decree and Regulations are made applicable to all refugee status applications regardless of the date of application.
- the principle of *non-refoulement* in Article 33 of the 1951 Refugee Convention is respected in a manner that every asylum-seeker is admitted to the territory and has his or her asylum claim processed.
- the role of border officials, in relation to claims for refugee status, is limited to the referral of claims to the designated RSD authority.
- all claims to refugee status are referred to one single designated RSD authority responsible for dealing with claims to refugee status in their entirety through the RSD procedure.
- only fully qualified RSD officials interview and make decisions on refugee status applications.
- all refugee status applicants are provided with the opportunity for review of a negative decision.
- interpreters be fully trained and supervised and provided for all communications with refugee status applicants.
- all refugee status applicants are treated equally when it comes to basic services and assistance. They should all be provided with living assistance, permission to work, free primary education and emergency medical care.
- there is coordination with relevant central and municipal government authorities on treatment and the provision of support to recognized refugees, humanitarian status holders and refugee status applicants.
- criteria that are hard to determine should be avoided for the selection of refugees for resettlement.
- clear criteria be provided for the granting of humanitarian status and that humanitarian status holders have access to the same rights and entitlements as recognized refugees, and in particular the right to work.

**UNHCR Representation in the Republic of Korea**  
**Seoul, 26 March 2013**