

**Submission by the United Nations High Commissioner for Refugees
for the Office of the High Commissioner for Human Rights' Compilation Report
- Universal Periodic Review:**

REPUBLIC OF KOREA

I. BACKGROUND INFORMATION AND CURRENT CONDITIONS

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

As of December 2011, the Republic of Korea was home to a total of 260 refugees, 144 humanitarian status holders and 179 stateless persons, although the actual number of stateless persons is likely to be higher. In 2011, a total of 1,011 new asylum applications were registered, a large increase compared to the previous year, when 423 asylum applications had been lodged. As of the end of 2011, there remained 1,022 pending asylum cases. The Government has received asylum claims from 61 different nationalities, with the largest numbers coming from Pakistan, Nepal and China. The refugee population is concentrated in urban areas.

The asylum system in the Republic of Korea has been in place since 1994 and the first refugee was recognized in 2001. First instance refugee status determination (RSD) takes place at the Seoul Immigration Office within the Ministry of Justice. Negative decisions can be appealed to the Refugee Recognition Council, with possible further reviews at the judicial level by the Seoul Administration Court, the Seoul High Court and the Supreme Court.

The Immigration Control Act (ICA), last amended in May 2010, is the national legislation which is currently governing matters of asylum and refugee status determination, along with its Enforcement Decree and Regulations. The ICA contains only a limited number of provisions related to refugees and asylum-seekers, and many areas of asylum were left unregulated. Recognized refugees have the right to work and are entitled to benefit from basic social welfare services provided by the Government, including access to the national medical insurance programme, the medical aid programme and daycare subsidies for children under six. Humanitarian status holders and asylum-seekers whose first instance RSD decision has been pending for one year or longer may apply for a work permit. However, due to some administrative requirements, this authorization is often difficult to obtain. Since 2011, primary

and secondary school education (up to middle school) is free and available to all children, regardless of their parents' legal status in the ROK.

On 29 December 2011, the National Assembly passed a new Refugee Act. It will enter into force on 1 July 2013 and will replace the aforementioned provisions of the ICA and regulate asylum matters in a more detailed and comprehensive manner.

II. ACHIEVEMENTS

A. Refugee Bill

The adoption of an independent domestic legislation on 29 December 2011 is a significant step in the development of the asylum system in the Republic of Korea. The Refugee Act provides a comprehensive legal basis for the Republic of Korea's domestic asylum system and establishes asylum procedures, procedural safeguards and reception conditions. Notable improvements are the framework for RSD procedures at points of entries, procedural rights, such as the right to legal aid and interpretation services, the right to be interviewed by an eligibility officer of the same gender, and the right to read and copy relevant materials, such as submitted documentary evidence or interview records. Importantly, the legal status of asylum-seekers has been extended to also include the appeal of the first and second negative administrative decisions to the national courts.

The new Refugee Act provides the opportunity to grant work permits to humanitarian status holders and also foresees the possibility of asylum-seekers being granted the right to work six months after the submission of the asylum application. The reduction of the waiting period from one year to six months is a clear improvement. Humanitarian status holders would also benefit from easier access to work permits.

The treatment of recognized refugees will be fully aligned to that of ROK nationals for social security benefits, basic livelihood assistance and primary and secondary education.

B. Access to asylum

Since early 2011, the Seoul Immigration Office (SIO) has been handling all first instance asylum applications. The centralized asylum system, though a disadvantage for individuals outside of Seoul, provided an opportunity to improve access to asylum through specially trained registration and RSD.

Information on the asylum procedure is now available in multiple languages at certain locations, with the important exception of airport facilities or transit zones.

C. Quality and Fairness of the RSD Procedure

The above-mentioned 2010 centralization of RSD procedures at the Seoul Immigration Office, and a delegation of decision-making power from the Korea Immigration Service (KIS) headquarters to the SIO, has positively supported the process of specialization and development of expertise in assessing asylum claims. The quality of the interview, the assessment of asylum claims and the reasoning of RSD decisions have gradually improved in the past years.

D. Reception centre

A reception centre, which is currently in construction and scheduled to be completed by summer 2013, is planned to house a variety of services for asylum-seekers and refugees. While detailed plans have not yet been made available, it is expected that it may provide short-term accommodation to asylum-seekers, information and some training services.

E. Right to Education for Children

In December 2010, pursuant to a presidential decree, free primary and secondary education (up to middle school) has been made available for all children, irrespective of the legal status of the parents. This includes also refugees, asylum-seekers, and humanitarian status holders.

III. CHALLENGES, CONSTRAINTS AND RECOMMENDATIONS

Issue 1: Missing regulations in the Refugee Bill

Despite these significant improvements, some areas of concern remain. Many provisions within the Refugee Act are worded vaguely or discretionarily, deferring authority to a presidential decree yet to be drafted. Accelerated procedures are, for example, introduced through the new law, but its parameters have been left unregulated. Similarly, new airport procedures are worded vaguely and their exact impact on the overall asylum process remains unclear. Reception conditions, though included in principle, are subject to the discretion of the Minister of Justice, without any clear guarantee of access to food, housing and livelihood assistance.

Recommendation:

Ensure that relevant by-laws and implementation policies of the new Refugee Act further strengthen the protection and assistance of asylum-seekers and refugees.

Issue 2: Obstacles in the access to asylum

Access to asylum is largely provided, but access to the territory and to the RSD procedures continues to be a problem at points of entry and, to a lesser extent, at detention centres. Currently, no clear procedures exist on whether and how asylum claims can be lodged at international air and sea ports. An existing provision in the ICA on temporary landing permits is utilized only in exceptional cases and there is a fear that persons who are unable to secure their entry into the territory on a regular visa scheme cannot effectively seek international protection in the Republic of Korea.

At immigration detention centres, asylum procedures are in place, but UNHCR has received repeated reports by individuals who were not able, or only following outside intervention, to file their asylum request with the relevant authorities.

Recommendation:

Ensure unhindered access to the territory and to the asylum system, in particular at ports of entry and immigration detention centres.

Issue 3: Remaining gaps in the RSD procedure

Adequate human resources remain of primary concern. Over a considerable period, only three refugee status determination officers were covering the entire caseload in the ROK. For a longer period in recent months, this number went even as low as two. This precarious situation is further compounded by the absence of any additional support for Country of Origin (COI) research.

Of additional concern is the availability and quality of interpretation services. For most languages other than English, no professionally trained interpreters are available and even where they do exist, the allowances paid do not match the generally going salary scales.

Asylum interviews are not recorded electronically. Written transcripts are produced in Korean language only, therefore excluding the applicant from reviewing it at the end of the interview and making it very difficult to challenge negative credibility findings – often the result of poor communication and translation.¹

The first and second administrative asylum instances do not provide any detailed reasoning for negative decisions and asylum-seekers have no or very limited access to their files. Appeals to the higher level instances are therefore necessarily general in nature, and regularly fail to address the grounds of the negative findings.

Recommendation:

Continue the ongoing efforts in improving the quality and procedural fairness of the asylum determination process, in particular by providing adequate human and financial resources, ensure quality interpretation and recording of interviews.

Issue 4: Lack of livelihood assistance

The Government of Korea does not provide any livelihood support to asylum-seekers during the asylum process. Only if a first level decision has not been made after one year from the date of application, are asylum-seekers eligible to apply for a work permit. In order to obtain the work permit, asylum-seekers need to fulfill a number of other criteria, including holding a valid work contract with an employer, which – due to the particular nature of the administrative process – has to be concluded prior to the asylum-seeker being legally able to work in the country. Humanitarian status holders are granted a right to apply for work permits automatically, but still need to comply with the same requirements as asylum-seekers, i.e. obtaining a work contract before being granted the right to work.

According to the 2010 MOJ Survey, out of total 376 respondents, 41% cited the difficulties in obtaining a work permit as the major hindrance in accessing employment. 32% of the humanitarian status holders and 63.8% of the asylum-seekers were not aware of the possibility to apply for a work permit. Only 16.1% answered that they had been informed about the right to apply for a work permit through immigration offices, while about 40% had received the information through other asylum-seekers or refugees.

¹ According to the ‘2010 Survey on the Situations and Treatment of Refugees in the Republic of Korea’ conducted by the Ministry of Justice (hereinafter, the ‘2010 MOJ Survey’), English was used in most of the interviews with respondents from various countries who spoke a total of 63 different languages as their mother tongues (see page 50).

In the same survey, 14.3% of humanitarian status holders specifically mentioned employers' refusal to provide employment contract as the failure to be granted a work permit. Other reasons given were lack of awareness (15.2%) or understanding (5.8%), or lack of an Alien Registration Card (28.2%).

Asylum-seekers whose cases are pending at the court lose their "refugee applicant" status altogether and are therefore not eligible to apply for a work permit. While asylum-seekers have a right to appeal negative decisions before the national courts, they are practically prevented from exercising it, as they have no legal means to sustain themselves during the appeal phase, which often lasts several years.

Many asylum-seekers and humanitarian status holders are forced to work in the informal sector. This exposes them to the risk of being exploited, arrested by immigration officials for working illegally, or subjected to large fines. Additionally, when they do find work, the irregular employment situation exposes them to the risk of discrimination at the workplace, specifically in terms of wages and workers' compensation.

Asylum-seekers who were arrested while carrying out work in an irregular manner are sometimes detained or released only after paying significant fines. Detained asylum-seekers are not released until the final determination on their asylum claim is made, sometimes taking years. Even those who successfully challenged a negative decision at a lower court are not necessarily released from detention, while the Ministry of Justice appeals to the next instances. Immigration detention is outside of any judicial control mechanisms, and prolonged and indefinite detention has been and continues to be a serious concern.

Recommendation:

Provide adequate reception conditions, in particular access to the labour market or, where appropriate, direct livelihood assistance, housing and health care for asylum-seekers and humanitarian status holders.

Issue 5: School enrollment

The decision to grant enrollment lies with the school principal and there is no clear criteria on admission requirements, which can lead to arbitrary and discriminatory decision.

Recommendation:

Ensure effective access to education for all children.

Issue 6: Birth Registration

Currently, the Republic of Korea does not have a system that allows for universal birth registration. The national family registry and birth reporting system is entirely geared towards Korean nationals. Foreigners cannot register the birth of their children in Korea. Their only option is to register the birth of their children with their diplomatic representations. This is, for obvious reasons, difficult or impossible for most asylum-seekers and refugees, thereby excluding their children from obtaining a legal status at birth.

According to the 2010 MOJ Survey, of the 41 respondents with children born in the Republic of Korea, ten stated they had reported the child's birth to their respective embassies; 13 said they had informed the Seoul Immigration Office; 14 only had a birth notifications issued by a hospital; and four reported they had no documentation for their child at all.

The "registration" of a child with the Korean immigration authorities has no legal significance beyond a right to remain in Korea.

Recommendation:

In order to respect every child's right to be registered at registration at birth, the current family registration system needs to be amended and a proper procedure needs to be established for birth registration of foreigners, including children of asylum-seekers, humanitarian status holders and refugees born in the Republic of Korea.

Issue 7: Statelessness

The Republic of Korea is a party to the 1954 Convention relating to the Status of Stateless Persons (1954 Convention) but has not yet acceded to the 1961 Convention on the Reduction of Statelessness (1961 Convention).

As at December 2011, 179 persons were recorded as being stateless in the Republic of Korea. No formal statelessness determination system exists and the actual number of stateless persons is likely to be higher. No specific legislation has been adopted to transpose the provisions contained in the 1954 Convention into national law.

The 1961 Convention establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth. Stateless persons are often discriminated against in their enjoyment of fundamental rights. An increase in the number of States Parties to these conventions is essential to strengthening international efforts to prevent and reduce statelessness. The Republic of Korea's nationality law is generally in compliance with the international standards contained in the 1961 Convention. One gap in the nationality law however relates to the lack of a full safeguard for children born to in the Republic of Korea who would otherwise be stateless. At present, although there is a safeguard against statelessness for children born in the Republic of Korea whose parents are unknown or stateless, no safeguard exists for children born in the country whose parents are both foreigners and unable to confer their nationality upon their children.

Recommendations:

- Establish a statelessness determination procedure and ensure full access to the rights contained in the 1954 Convention by those found to be stateless.
- Accede to 1961 Convention.
- Amend the nationality law to ensure that all children born in the territory of the Republic of Korea acquire Korean nationality if they would otherwise be stateless.

Issue 8: Local Integration

In 2010 and 2011 the three recognized refugees were the first who succeeded to get naturalized. Refugees are required, like all other foreigners, to have completed five consecutive years of legal

residence before becoming eligible for naturalization. The period during the asylum process, or humanitarian status holder status, does not count towards the five years of residence status.

The Government has established and is operating various assistance and training programmes for 'multicultural families.' However, multiculturalism is conceptualized narrowly, as the Support for Multicultural Families Act defines a multicultural family as one where at least one parent has acquired Korean nationality by birth. Families in which both parents are foreigners are therefore excluded from a variety of programmes officially labeled as benefiting multicultural families, including most special language, vocational, and cultural training programmes provided by various ministries.

Recommendation:

Promote the local integration of refugees, asylum-seekers, and humanitarian status holders by extending multicultural programmes to them.

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