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## A Step Forward to Refugee Protection? South Korea's New Refugee Act

*By Chulhyo Kim*

A new law on refugees was introduced in South Korea in December 2011. The Act on the Status and Treatment of Refugees, etc. (Refugee Act) is celebrated as the first law dedicated to the status and entitlements of refugees and asylum seekers among East Asian countries. The new Refugee Act is generally welcomed by both the international community and local civil society groups. However, many of the original proposals of civil society groups and parliamentarians to protect the economic and social rights of refugees and asylum seekers were diluted during the political negotiations prior to the adoption of the bill. Instead, new provisions for a simplified hearing (fast track) process were added at the insistence of the South Korean government (Ministry of Justice). Korean civil society groups and lawyers have already begun to seek amendments to the law.

South Korea has a twenty-year long history of providing a legal framework for refugee protection, with its roots in the country's ratification of the Refugee Convention in 1992. According to the Constitution of South Korea, '[t]reaties duly concluded and promulgated under the Constitution...shall have the same effect as the domestic laws' (Art. 6[1]) and '[t]he status of aliens shall be guaranteed as prescribed by international law and treaties' (Art. 6[2]). Logically, the Refugee Convention should apply automatically to refugees in South Korea without new legislation. However, the reality of South Korean legal practice is that no government policy or programme can be implemented without legislation of domestic acts and decrees that authorise the allocation and execution of the budget and human resources of government agencies. In 1993, the government of South Korea first legislated for the basic process for refugee status determination (RSD) by introducing eight new articles in the already existing Immigration Control Act. However, the State Party's basic obligations under the Convention, like the provision of social services, were never coded as domestic law; thus, there was no implementation.

The South Korean government first granted refugee status in 2001. Since then, the number of refugees arriving in the country increased very rapidly. The accumulated number of refugee status applicants (asylum seekers) reached 4,186 by February 2012, and among them, 271 people (6.5%) were granted refugee status. The majority of them came from Asian countries like Pakistan, Nepal, China, Myanmar and Sri Lanka, but there are still many refugees from African countries like Uganda, Nigeria and Ivory Coast (Korea Immigration Service 2012).

Korean civil society also became increasingly concerned about refugee issues. In 1999, the first refugee NGO was established, and now almost ten groups including lawyers and medical experts are working actively to support refugees and asylum seekers, and to monitor the government's policy and activities. In 2006, they initiated a discussion for the introduction of a separate, new piece of legislation for refugee protection, and actually prepared a draft bill, which was later taken up by a parliamentary group.

The South Korean government's response to such changes was very slow. It added the provisions on the status of, and the social assistance to, refugees through two new articles in the Immigration Control Act only in 2008. These provisions grant refugees and long-standing asylum seekers work

permits and other social services. Whether a refugee may be granted such benefits, however, depends on the discretionary power of the Minister of Justice, rather than being automatic rights as outlined in the Refugee Convention. In 2010, asylum seekers were guaranteed the right of *non-refoulement* during the RSD process by a new clause on the prohibition of deportation during the process.

The RSD process under the Immigration Control Act had often been criticised for failing to meet minimum international standards (Cheong 2010). The Act limited access to RSD to ‘a foreigner in the Republic of Korea’; this has been interpreted in a way that denies access to RSD to those who claim asylum either at or before reaching an immigration checkpoint. Although the Act provided that the government may grant ‘temporary landing permission’ under the discretion of the Minister of Justice, official immigration data show there was no single case as such. The number of asylum seekers who have been turned down at the airport before passing immigration control is not known. This limited access to the RSD process can also be interpreted as an expression that the South Korean government does not invite the resettlement of refugees who are outside its territory. Moreover, the rights of applicants during the RSD process were poorly defined; thus, several related legal rights have often been denied in practice, such as the right of asylum seekers to be assisted by legal representative during the interviews, and the right to review the interview reports after the interview.

The provisions of social services to refugees were also problematic. Asylum seekers who were waiting for the RSD result for longer than one year might be granted a work permit, but again, this would have been at the discretion of Minister of Justice. This provision was criticised as ‘downgrading the State Party’s responsibility to protect the rights of refugees’ under the Refugee Convention, and making it ‘a mere matter of discretion of a government official’ (Chung 2009). The administrative processes under the subsidiary regulations of the Act effectively required almost impossible conditions to be met: the employment contract had to be acquired from employers before work permit was granted by government officials. In practice, no employer would give an employment contract without government permission. Since no subsidy for subsistence is provided to asylum seekers, they often face serious problems of survival and/or resort to ‘illegal’ employment (Kim *et al.* 2010).

The new Refugee Act addresses many such problems of the previous law. It provides that the refugee status application may be made ‘at ports of entry or the border prior to undergoing the immigration procedure’ (Art. 6). It also provides that refugee resettlement may be allowed in consideration with humanitarian concerns and international cooperation (Art. 24). The Refugee Act also comprehensively defines the rights of RSD applicants during the procedure of RSD. For instance, it enshrines the right to legal assistance (Art. 12); the right to be accompanied by a reliable companion during the interview (Art. 13); the right to the provision of appropriate interpretation (Art. 14); the right to review the validity of written record of interviews (Art. 15); the right to read and copy the interview record (Art. 16); and the right to have the applicant’s information remain confidential (Art. 17). The Act also limits the detention of RSD applicants for the verification of identification to only the obvious cases of destroying documents ‘to conceal one’s identity’ or forging documents ‘to receive refugee recognition more easily’ and for a maximum of twenty days (Art. 20). The Act also provides that refugees are entitled to the economic and social rights as accorded in the Refugee Convention: social security (Art. 31), basic livelihood (Art. 32), primary and secondary education (Art. 33), and family reunification (Art. 37). However, social adjustment

training including Korean language training may be provided at the discretion of the Minister of Justice (Art. 34).

Although the legal framework for the protection of refugee status holders has been significantly improved, many proposals for the protection of asylum seekers, which were made by parliamentarians and civil society groups through the original draft bill, were not found in the final version of the law. The Ministry of Justice, the governmental body in charge of refugee affairs, was strongly against recognising its legal obligations to provide refugee status applicants with a living allowance, housing facilities with ensured freedom of movement, elementary and secondary education of minor refugee applicants and Korean language training (Lee 2012). Instead, such social services to RSD applicants were watered down to become matters of discretionary provision at the decision of the Minister of Justice (Art. 40, 41 and 43). This was the result of negotiations between those who proposed these provisions and the Ministry of Justice. The Act even allows the government to rule on the limitations of such social services for a certain group of refugee status applicants such as those in the appeal or re-application process and those who have stayed longer than one year in Korea (Art. 44). Work permits for those who are in the RSD procedure longer than six months and medical aid for all applicants still remains dependant on the discretionary power of the Minister of Justice (Art. 40[2] and Art. 42). The original draft bill also guaranteed the same entitlement of social services to humanitarian status holders, who were not determined to be refugees but whose circumstances meant their return would carry a reasonable ground of possible violation of their freedom or liberty. The adopted Refugee Act, however, does not allow any social service except discretionary work permits (Art. 39) to these individuals.

The most controversial provision is the article on the simplified hearing process (fast track) that allows the Ministry of Justice to skip some parts of the RSD hearing process (Art. 8(5)). Since the submission of the original draft bill in May 2009, there have been several chances to discuss the bill in the National Assembly, including a public hearing in November 2010. However, no discussion or mention of the fast track is found throughout the minutes of parliamentary sessions. It is known that this clause was inserted at the last minute at the insistence of the Ministry of Justice. This clause specifies three conditions under which some parts of hearing process may be skipped: (1) when an applicant submits false documents or statements; (2) when an applicant re-applies without significant changes of case; or (3) when an applicant applies one year after arrival and it is close to the expiry date of their visa. There was an extensive debate over this clause at the last session of the National Assembly before the law was adopted. The Ministry of Justice insisted that ‘normal asylum seekers apply for RSD immediately after arrival’ and therefore that ‘application after one year may be considered as doubtful of abusive usage of the process for the extension of stay’. However, a number of parliamentarians, including the original proposer, and expert groups, including the Korean Bar Association, questioned the possibility of unfair and inappropriate process. In the end, parliamentarians accepted the fast track procedure with the above three conditions, while rejecting another condition originally suggested by the Ministry: (4) when an applicant applies one year after arrival without the reason of serious health condition (National Assembly of the Republic of Korea 2011).

The new Refugee Act is generally welcome by international community and local civil society groups, and certainly considered as a step towards better refugee protection in South Korea. However, Korean civil society groups expressed strong discontent with the watering down of original proposals for social services and, more importantly, with the introduction of the simplified hearing process. The movement for the amendment of the Act is already being discussed even before its

entry into force (Kim 2012). Indeed, UNHCR raised a rather fundamental question on the status of refugees in South Korea in relation to the stable residence of refugees. The current law only grants a renewable three-year visa to a recognised refugee by a ministerial ordinance; it is questionable whether this will be changed under the new Refugee Act. This may be a fundamental problem for ensuring the full practice of refugees' legal rights; thus UNHCR suggests that permanent residence should be considered for recognised refugees (UNHCR Representation to the Republic of Korea 2009).

South Korea's new Refugee Act will enter into force in July 2013. Although the Ministry of Justice generally welcomes the new Act, it has been very reluctant to fully appreciate the initiatives for refugee protection, as seen throughout the parliamentary debates over the bill (e.g. National Assembly of the Republic of Korea, 2010). The Ministry of Justice is now in charge of preparing subsidiary decrees and regulations as well as policies for the implementation of the Act. Thus, the real upgrade of refugee protection in South Korea in line with the fancy name of 'the first separate refugee legislation in Asia' now relies on the sincere efforts of the Ministry of Justice of Korea.

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