



NGO Submission

Universal Periodic Review (UPR)
on the Republic of Korea

14th Session (October 2012)

23 April 2012

Advocates for Public Interest Law (APIL)

www.apil.or.kr

Introduction

1. This stakeholder's report is submitted by Advocates for Public Interest Law, a non-profit public interest lawyers' organization founded in 2011 focusing on advocating vulnerable migrants and monitoring human rights violations of Korean companies overseas. The human rights concerns in this submission relate to the following areas: *the rights of refugees and asylum seekers, principle of non-refoulement, immigration detention, stateless, human trafficking, and business and human rights*. Each section conveys recommendations to the Korean Government.

I. The Rights of Refugees and Asylum Seekers

Substantially Low Rate of Refugee Recognition

2. Refugee recognition rate is substantially low¹; as of January 2012 the number of refugees who have been recognized since 1992 when Korea ratified the Refugee Convention is 268 among total 4,011 applicants and the rate of refugee recognition in 2010 is 11.1%.²

Lack of Social Assistance

3. Neither the minimum social security benefits nor right to work is given to the refugee applicants during their refugee recognition procedure.³ The work permit is only given if the first instance refugee application procedure is still ongoing after one year passed from the moment the person applied after the relevant law is amended in 2010. However, the fact that the applicants have to submit the contract with the employer when they apply for the work permit prevents the applicants from obtaining the lawful work permit since an employer would be reluctant to hire the applicants unless they have legitimate legal status relating to work⁴.

Concerns about Refugee Reception Center

4. Ministry of Justice is constructing refugee reception center which can hold more than 100 people in Young-Jong Island around the Incheon Airport. The size of the center can lead the center to deteriorate into a slum; the fact that the location of the center is far from the city can make it inappropriate for refugees and asylum-seekers to be socially integrated.

¹ Executive branch and judicial branch have tendencies to reject to recognize the applicant as the refugee not on the basis of the definition of the refugee in the Refugee Convention but on the irrelevant factors such as late application, economic motivation on entry to Korea, departure with valid passport, absence of the persecution to the other family members.

² According to UNHCR, the average refugee recognition rate was 38% in 2009. (UNHCR Statistical Yearbook 2009, p.38, accessible at <http://www.unhcr.org/4ce531e09.html>).

³ Usually, it takes two to three years to go through the initial refugee recognition procedure. Refugee applicants are subject to arrest and detention when they are found to be working even though they have no option to survive while their refugee recognition is processed.

⁴ Even under the new Refugee Act which will be enforced in July of 2013, both work permit and subsidies would be given only under the discretion.

Concerns about Refugee Act

5. The new Refugee Act provides a summary procedure which allows the immigration officers to omit one or more elements of refugee status determination (RSD) procedures.⁵ However, refugee applicants often have problem with sustaining perfect consistency in their statements due to their psychosocial vulnerability. Also, it is not uncommon for the applicants to submit their application later than one year because of the low accessibility to the refugee application procedure.

Low Accessibility to the Refugee Application Procedure

6. Refugee application documents are only available either in Korean or in English. The refugee applications have occasionally been refused to be received. A refugee who expressed his intention to seek asylum to the police has been forcibly transported to the airport for *de facto* deportation.

Refugee Application at the Airport

7. Refugee application at the airport is not allowed to be rendered at the moment under the relevant law. Even when the new Refugee Act is enforced, immigration officers can reject the applicant to access to the RSD procedure under their discretion when the refugee application is made at the airport.

8. An asylum-seeker from Ethiopia was detained in the airport transit room whose condition was inhumane even after the manifestation of intention to seek asylum in Korea was made upon arrival. No substantial interview was conducted by refugee officers regarding his claim on refugee; however, he was eventually removed from Korea to his country of origin after two months and seventeen days of detention at the airport despite that he was known to be a *de facto* stateless. As a result, he has been detained in detention center in Bangkok, which was a transit country for more than six months.⁶

The UPR mechanism should urge the Korean government to

9. Ensure that the refugee assessment is done according to the elements in the Refugee Convention rather than irrelevant factors and actively acknowledge the refugees so that the level of protection meets international standard.

10. Provide adequate social assistance to refugee applicants so that they can enjoy their rights to maintain decent life while their refugee recognition procedure is on the process by either work permit or subsidies.

11. Operate the refugee reception center as an open facility so that the freedom of movement of the residents is not restricted; make selective rather than mandatory.

⁵ A summary procedure applies i) when the applicant is found to lie; ii) when the applicant re-applies without the important changes in the cases; or iii) when a foreigner who stays more than one year in Korea applies for RSD process imminent expiration of the stay.

⁶ He was recently resettled in a safe county after he had been recognized as refugee by UNHCR in Thailand.

12. Revise the Refugee Act to ensure the full and comprehensive interviews to the applicants regardless of their length of stay and the additional concern should be given to their vulnerability during the assessment.

13. Train its immigration officers and the officers at immigration detention facilities, to respect international human rights norms and standards

14. Ensure that the refugee application can be accepted at the airport.

II. Principle of *Non-Refoulement*

Forced Deportation of the Vulnerable

15. Asylum-seekers and torture claimants are subject to forced deportation. An Uzbek asylum-seeker was forcibly returned to his country of origin less than four hours after he was noticed the rejection of his refugee application even though the asylum-seeker had 14 days to appeal against the decision.

Absence of Domestic Mechanism to Ensure *Non-Refoulement*

16. Besides the refugee recognition procedure, there exists no domestic procedure to assess the dangers that a person could face upon his/her return to one's country of origin. Therefore, people might be returned to places where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

17. Upon being issued a deportation order, an Iranian went on a thirty-day hunger strike asserting that he could not go back home because he could be sentenced to death under Iranian law and face other various discriminations due to his conversion to Christianity. He was a failed asylum-seeker and no domestic procedure was left for him, so he filed the complaint to cancel the deportation order based on principle of *non-refoulement* under various international obligations. However, the immigration officers executed the deportation order right after filing the case without any assessment on his claim, regarding whether he would be subject to be such treatments.

Enforced Disappearance Caused by *Non-Refoulement*

18. An asylum-seeker was disappeared after he was handed over to the officers who flew from Uzbekistan to take him back to his country of origin which is notorious for systematic torture of detainees.⁷ His whereabouts was unknown to his family for one month after his deportation.

The UPR mechanism should urge the Korean government to:

19. Stop deporting asylum-seekers whose refugee recognition procedure is not yet completed to places of high risk of persecution.

⁷ Human Rights Watch, *No One Left to Witness – Torture, the Failure of Habeas Corpus, and the Silencing of Lawyers in Uzbekistan*, December 2011, <http://www.hrw.org/sites/default/files/reports/uzbekistan1211webwcover.pdf>

20. Reaffirm the absolute obligation of not to return a person to places where he or she is at risk of being subjected to torture, other cruel, inhuman or degrading treatment.
21. Provide assessment procedure before deporting a person besides refugee recognition process to examine all the relevant factors, including a consistent pattern of gross or flagrant violations of human rights in the country in question.
22. Sign the International Convention for the Protection of All Persons from Enforced Disappearance.⁸

III. Immigration Detention

Arbitrariness of Immigration Detention

23. Since the Immigration Control Act lacks a time limit provision of the length of the detention, indefinite detention of asylum-seekers and refugees is possible without periodic judicial review.
24. A refugee from Iran has been detained in the immigration detention center for more than three years while he was waiting for the result of refugee application.

Detention of Vulnerable Individuals

25. Vulnerable individuals including refugees, children, survivors of torture and trauma, trafficking victims and stateless persons are placed in immigration detention without any alternatives to detention.
26. Even though the refusal of refugee application is declared illegal and revoked by the court decisions, asylum-seekers can remain detained in the immigration detention center until the decision is finalized.⁹
27. Minors are subject to prolonged detention; furthermore, refugee minors in detention are not adequately protected, asylum-seekers' access to the information on refugee procedures is restricted and alternatives to detention for refugee applicants are practically unavailable. Additional protection on vulnerable classes such as women, children, and victims of trafficking for immigration detention does not exist.

Detention at the Airport Transit Zone

28. Inadmissible persons to Korean territory including asylum-seekers are detained in the transit zone for an unspecified, unforeseeable length of time, without legal basis nor judicial

⁸ Korean government has made the pledges and commitments to sign the International Convention for the Protection of All Persons from Enforced Disappearance via voluntary pledges and commitments on human rights in accordance with General Assembly resolution 60/251.

⁹ Despite of various efforts were made to release the refugee, including collecting petitions for release of the refugee, filing a civil complaint to the Minister of Justice, filing an urgent action to UN Working Group on Arbitrary Detention, appeal against the detention, no means has been effective to release the refugee from the detention center since the immigration authority who enjoys full discretion whether to release detainees insists its position not to release the refugee arguing their decision is legitimate under Korean law.

intervention. Ministry of Justice consistently denies their responsibility on arbitrary detention occurred in transit zone relying on legal fiction that the airport transit zone is not Korean territory in a legal sense.

29. Conditions of the detention in the transit zone were not compatible with human dignity; and neither access to legal assistance nor social assistance is available in the transit zone. For example, a refugee applicant in transit zone was only fed with chicken burgers three times a day as daily meals; he slept on rowed chairs for more than two months with unwashed linen.

The UPR mechanism should urge the Korean government to:

30. Provide the time limits on the length of the detention and the independent and periodic judicial review with regard to legality and necessity of the detention.

31. Ensure that the detention is used as a measure of last resort and provide alternatives to detention to the vulnerable individuals.

32. Monitor the airport transit zone with regard to arbitrary detention as well the condition of the detention; ensure that the adequate legal and social assistance is provided to the people in the transit zone.

IV. Stateless

No Domestic Legislation to Identify Stateless

33. Despite Korea's obligations under the Convention Relating to the Status of Stateless Persons in 1962, there is currently no dedicated and accessible procedure in Korea to which individuals can apply for recognition of their statelessness.

34. Divorced Chinese women become stateless when their marriages are canceled. Chinese women are required to waive their Chinese nationality for international marriage with Korean man. However, their Korean nationality acquired is canceled if their marriage was found to be false, which makes them stateless.

The UPR mechanism should urge the Korean government to:

35. Implement an accessible procedure to identify stateless persons on its territory in accordance to the Convention Relating to the Status of Stateless Persons in 1962.

V. Human Trafficking

Victims of Migrant Women with Entertainment Visa

36. Women who have entered Republic of Korea (ROK) with E-6 Entertainment Visa have been forced or manipulated into the sex industry including bars and clubs near US military persons and are subjected to prostitution or other forms of sexual exploitation. In most of cases, with the passive investigation of police, the traffickers are not prosecuted because it is difficult to prove coercion or sexual exploitation which is requisite to constitute a crime under the current legislations. Also, the act does not fall into human trafficking punishable in the

relevant law as long as the consent of victim exists in the process of trafficking.¹⁰ The ROK government proposed revision of the Criminal Code last year, but it is insufficient for regulating the current trafficking crimes in reality which is occurring with varied means in the ROK.

Victims of Trafficking for Forced Labor on Board Fishing Vessels

37. Indonesian crews working aboard Korean fishing vessels in New Zealand waters were subject to human trafficking. Manning agents forced the workers to pay extortionate fees which can result in crippling financial consequences to the families. Thus they can be rendered powerless and subject to future exploitation.¹¹ In many cases in Korean fishing vessels abroad, unreasonable deductions are made or the wages not be paid at all.

The UPR mechanism should urge the Korean government to:

38. Ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and take the necessary steps to adequately define and criminalize trafficking in accordance with the Protocol.

39. Legislate independent Human Trafficking law to establish a legal framework to prevent and punish trafficking in persons, but also to assist and protect victims of trafficking in accordance with the Protocol relating to trafficking in persons.

40. Ratify ILO Convention on Work in Fishing Convention (2007) and ILO Fundamental Conventions on Forced Labor including Forced Labor Convention (No. 29) and Abolition of Forced Labor Convention (No. 105)¹²

41. Investigate human rights violations as well as labor abuses occurred in Korean fishing vessels and take every measure to remedy the damages.

VI. Business and Human Rights

State-Run Corporation Involvement in Forced Child Labor

¹⁰ The lack of effective protection for the victims from the traffickers and their unstable legal status makes it more difficult for the victims to cooperate with police during the investigation and litigation.

¹¹ Indonesian crews were in slum-like conditions with a lack of adequate food and water and were forced to work excessively long shift, sometimes even 53 hours. They experienced physical and verbal abuse and even sexual abuse.

¹² Korean government has made the pledges and commitments to continue to consider the ratification of the ILO Fundamental Conventions via voluntary pledges and commitments on human rights in accordance with General Assembly resolution 60/251.

42. Global KOMSCO-Daewoo¹³, a partnership between Daewoo International and the Korea Minting & Security Printing Corp¹⁴, a State-run corporation, has been operating a cotton pulp production plant in Uzbekistan which is notorious for its use of forced child labor. Cotton pulp, which is used in making paper monies, checks, gift certificates, and bank security forms, as well as high-precision chemical products such as LCD, is produced in the plant. Though there has been high criticism from the international society regarding the use of forced child labor in harvest of the cotton, the corporation has not taken any action to avoid complicity in the forced labor.

Malfunction of NCP

43. National Contact Point (NCP), established under OECD Guidelines for Multinational Enterprises, is placed under Ministry of Knowledge Economy, which mainly deals with the investment policy, and solely consists of high level government officers with unions and civil societies excluded. Since the establishment of the NCP, there has been only one recommendation given. There has even been a case in which no action was taken for three years after a complaint was filed.

Low Accessibility/Availability of Information on NCP

44. Information regarding NCP is hard to find on Korean websites; moreover, useful information can be hardly obtained through online. The only available Korean document was the translation of OECD Guidelines on the official webpage of NCP, which is in the webpage of Ministry of Knowledge Economy.

Lack of Monitoring Body Concerning Human Rights Violations by Korean Companies

45. Although there have been numerous occasions regarding Korean companies' human rights abuse oversea, there has been no comprehensive framework regulating and mitigating the human rights violations of companies abroad: National Human Rights Commission has been passive in dealing with these issues related to Korean companies' human rights abuse oversea; National Contact Point has not been very effective.

The UPR mechanism should urge the Korean government to:

¹³ This joint enterprise consists of a 65% stake by KOMSCO and a 35% stake by Daewoo.

¹⁴ Korea Minting and Security Printing & ID Card Operating Corporation (KOMSCO), established with full investment from the National Treasure under special law in the year of 1951, is the sole currency manufacturer in the Republic of Korea. It operates under the direct control of the government. Its major function is to manufacture the banknote, coin, national bond, various securities issued by the government, currency safety bond issued by the Bank of Korea, postage stamps, special government certificates and other special printed items. It also manufactures the papers needed for the printing of the above items, and other special paper. (<http://english.komsco.com/komsco/history.asp>).

46. Investigate source of the cotton used in the plant of Global KOMSCO-Daewoo whether the forced child labor is involved.
47. Reorganize NCP structure so that participation of the stakeholders in NCP including unions, employers and interested civil societies can be ensured and independent decisions can be made apart from governments' investment policy.
48. Even before reorganizing NCP, set up an independent webpage to provide enough information and promote NCP's existence.
49. Set up independent and effective mechanism monitoring human rights violations by Korean multinational corporations oversea.