

Tom Lantos Human Rights Commission

Hearing

on

South Korea's Refugee Policy in the Yoon Administration:

A New Openness to International Standards?

June 24, 2022- 9:30 a.m. – 11:30 a.m. EDT

Virtual, via Cisco WebEx

Statement of Jong-Chul Kim

Senior Researcher

Advocates for Public Interest Law

South Korea ratified the Convention Relating to the Status of Refugees in 1992; in 2013, it became the first country in Asia to enact a refugee law. And yet, during the last 30 years, the government has failed to uphold its promises of refugee protection. The most significant problem is that the government is generally unwilling to recognize refugees. This country—with a population of over 50 million and ranked as the 10th most economically powerful nation in the world in terms of gross domestic product per capita—has recognized a total of 1,156 refugees from 1992 to 2021. Korea's refugee recognition rate was 0.4% in 2020 and 1% in 2021.¹

In Korea, the country of origin most commonly seen among asylum seekers is China. However, Chinese asylum seekers almost never receive refugee status here. From 2017 to 2021, a total of 5,225 Chinese nationals sought asylum in Korea. Only three were recognized as refugees. In 2019, 60 Chinese nationals including 31 children came to Jeju Island and applied for refugee status because of religious persecution. Based on the country-of-origin information, their past experiences, and the changes in circumstance after they applied, I believe there is a reasonable chance they will be persecuted upon returning to China. But the Korean government rejected every one of them. At this point, some are disputing the non-recognition in court; others submitted new applications. Sadly, the likelihood of any of them receiving refugee recognition in Korea is virtually zero.

To note, the number of asylum seekers in Korea has been increasing over the years. There were 1,011 applications for refugee status in 2011, and this rose to an all-time high of 16,173 in 2018. In response, Korea's Ministry of Justice implemented a policy of withholding visas from certain asylum seekers in order to deter applications. For example, if an individual entered the country with a 90-day visa and overstayed by even a single day before applying for refugee status, that individual can no longer receive the visa for refugee status applicants. This immigration status is required for employment, which is effectively the only means of survival during the over four

¹ Of the 72 refugees recognized in 2021, 40 acquired the status through family reunification.

years that applicants must generally wait to receive the final outcome. Some of the Chinese asylum seekers I mentioned earlier were denied the visa for this reason.

While one's application is under review, the chances of actual deportation to the country of origin are low. But in reality, many asylum seekers live under the threat of de facto deportation. This is because many are deprived of their means of survival during the lengthy refugee status determination process. According to the Refugee Act and relevant norms, for the first six months, refugee status applicants can receive assistance for living expenses and reside in a reception center. After that, they can receive work permits and seek employment. Nevertheless, in 2021, because of budget shortfalls, only 43 individuals were able to receive the financial assistance for an average of 3.7 months, and only 22 were able to stay in a reception center, with an average duration of 160 days. Given this backdrop, employment is really the only means of survival for most asylum seekers. And yet, as mentioned before, some asylum seekers are unable to get the visa required for a work permit, meaning they have no legal way to survive. When immigration officials find an asylum seeker working without the visa, that individual is placed in a prison-like immigration detention facility. To make matters worse, the relevant immigration law allows for indefinite detention without any periodic judicial review.

Moreover, while the Refugee Convention provides that nationals and recognized refugees should be given the same treatment in terms of social welfare, the Korean government has been reluctant to implement the provision. For example, it has rejected attempts to register the disabilities of recognized refugees although such registration is necessary for receiving relevant services, and more recently, excluded recognized refugees from public housing. A more fundamental issue is that most recognized refugees cannot meet the income threshold for permanent residency. To become a permanent resident in Korea, one must earn an income greater than the previous year's gross national income per capita, which for 2021 was \$35,168. Most recognized refugees cannot satisfy this requirement.

Since 2015, Korea has been resettling about 30 refugees each year, but it recently resettled 391 Afghan nationals last August, right before the Taliban took over Kabul.² These are people who worked for Korean government institutions that were dispatched for reconstruction projects and would have experienced persecution and torture if they remained. Thus, the Korean government made an apt decision in providing timely rescue. However, throughout the process, the government has referred to these Afghan nationals as "special contributors" rather than "refugees," reflecting its desire to sidestep the hate that parts of the population hold against refugees. Such hatred spiked in 2018 when 500 Yemeni asylum seekers came to Jeju Island and has been gaining muscle since. There is even a court opinion from 2021 describing refugees as latent criminals.

² The United States (US) military actively supported Afghan refugees heading to Korea by providing rental buses and negotiated with the Taliban to secure their safe arrival at the airport. Moreover, through discussions with the representatives of the Korean military forces stationed in Afghanistan, US Central Command guaranteed that the Korean military's transport aircraft would be able to enter the Kabul Airport swiftly.

Regardless of its political leanings, the Korean government has been failing in terms of refugee protection.³ Nothing has changed with refugee policies with the arrival of Yoon's administration, so it is unclear whether it will be better or worse than before in terms of refugee protection. That said, there were two recent and symbolic events that reveal how the new administration views refugees. The first involved three Myanmar nationals who had been active in the pro-democracy movement and applied for refugee status upon arriving at an airport in Korea. Even though they should have been protected *prima facie*, the Ministry of Justice refused their entry and refused to process their applications. These Myanmar nationals were eventually allowed into Korea on June 16 after litigating the issue, but had to struggle in the airport for almost a month.

The second involved an prior announcement of the regulation revision concerning the treatment of migrant detainees. On May 25, the Ministry of Justice revealed its plan to introduce more restrictive equipment for immigration detention, such as ankle cuffs, restraint beds, and restraint chairs by the revising the relevant regulation instead of the law. What makes this move more striking is that the prior announcement was what followed a recent incident where CCTV footage revealed a detained asylum seeker being subjected to harsh treatment amounting to torture. The detainee, while placed in solitary confinement was forced to stay on his stomach for a prolonged period with his hands and legs tied with a rope behind his back and with his head trapped in restraint helmet.

To truly fulfill its commitment towards refugee protection, Korea must at least make the following changes to its laws and policies:

- First, the government must create an independent system for refugee status determination, separate from the administration of immigration control, that is more professional, transparent, and efficient—thereby raising its refugee recognition rate to a level comparable to that of other OECD members.
- Second, it must get rid of restrictions on visas for asylum seekers and guarantee their survival through means such as financial assistance and work permits, in compliance with the spirit of the Refugee Act.
- Third, it must guarantee the rights of recognized refugees, especially for social welfare, at the level specified in the Refugee Convention. For employment, housing, and education, the same level of services provided to the recent Afghan “special contributors” needs to be provided to all recognized refugees. Additionally, the income requirement for permanent residency should be abolished to allow more refugees to acquire the status.
- Fourth, it must amend the Immigration Control Act, which allows for the indefinite detention of asylum seekers and even migrant children. Moreover, it must ensure more humane treatment of migrant detainees, especially by regulating the misuse of detention equipment.

³ Even the failure relating to Chinese asylum seekers is probably less about the previous administration's fears of risking relations with China, and more about how China is one of the geographically closest countries and the source of the most asylum seekers, and how more refugee status recognition might encourage even greater numbers to come to Korea.

- Fifth, it must actively address hatred against refugees and other migrants through activities such as awareness-raising campaigns, rather than being swayed by such sentiments.