Key problems of the Law and Practice of Refugee Protection in Korea

1. Introduction

The Korea, who ratified international refugee convention in 1992, has recognized only 250 refugees by 2011 June. When the economical growth of Korea and her population as well as the huge number of refugees and refugee-like people to be protected in the world are considered, the above number of recognized refugees is very small. The low number of recognized refugees might have been resulted from misunderstanding of the definition of refugees, lack of due process and high standard of proof in the refugee procedures. In addition, the rights of refugees, asylum-seekers and humanitarian status holders have been ill guaranteed. Absence of periodic judicial reviews and possibility of indefinite detention make immigration detention of asylum-seekers violate prevention of arbitrary detention provided in International Convention on Civil and Political Rights and the Constitutional Law of Korea. To overcome the problems, civil society made various efforts including designing an independent draft bill on refugee determination procedure and social treatment of refugees.

2. Problem with the terminology of refugee

It is said that the conception of refugee has a long history dated from the Hebrew Bible era or more. But we imported the conception I guess from Japan after modernization, disconnected from its original context and started using the improperly translated terminology named '難民.'

Literally speaking, 難民 means people in difficulty. In the term, 難民, difficult situation asylum seekers are facing is being focused, while in the term, refugee, humanitarian protection needs is connoted. I believe the mistranslation makes it difficult to gain an adequate conception of refugee and the misconception makes it difficult to render proper protection to asylum seekers. I have talked to refugee lawyers and activists from Japan and Hong Kong. And I found them also very much dissatisfied with the translation, 難民.

I briefly talked about the definition of refugee. So, whoever fulfills the criteria contained in the definition of the convention is a refugee. Recognition of his refugee status does not make him a refugee but declares him to be a refugee. This is a grand principle of refugee law.
3. Problems of the Refugee Recognition Procedure in Korea

(1) Refugee application

Asylum seekers can apply for refugee to immigration office after entry into Korea. What if he is not allowed to enter?

(2) Application for Temporal landing for refugee application

Only if he is on board ship or airplane, he can apply for temporal landing for refugee application. Then what if he is not allowed to enter legally at the airport after getting off ship or airplane and landing on Korean territory physically? According to the immigration control act, neither he can apply for temporal landing nor apply for refugee. There is a gap in legislation in terms of refugee application.

In spring 2008, an asylum-seeker from middle-east was stuck in this gap like tom hanks in the movie called ‘Terminal’. He waited for about a month in a waiting room at the airport. I remember that while he stayed there, he has been fed by immigration officers with chicken burgers three times a day for almost one month.

When refugee application is submitted, Immigration officers start interviewing the asylum-seekers and the Ministry of Justice makes decision based on the report submitted by interviewer.

(3) Administrative appeal

If the application is refused, she may appeal to the Ministry of Justice against the decision of refusal within 14 days after she got notified of the decision. Refugee recognition committee reviews the application for appeal. If her application for appeal is also rejected, exit order is issued to her.

(4) lawsuits

But she can suspend and extend the exit order when she files a lawsuit to the courts. But the litigation should be filed within 90 days after she is informed of the second decision of
refusal for the objection like any other administrative litigation.

Through this refugee recognition procedure, how many refugees have been recognized by Korean government?

4. How many Refugees have been recognized?

The numbers of refugee applicants and recognized refugees by years

<table>
<thead>
<tr>
<th>Total</th>
<th>94–01</th>
<th>02</th>
<th>03</th>
<th>04</th>
<th>05</th>
<th>06</th>
<th>07</th>
<th>08</th>
<th>09</th>
<th>10</th>
<th>11.6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Refugee applicants</td>
<td>2,492</td>
<td>133</td>
<td>34</td>
<td>84</td>
<td>148</td>
<td>410</td>
<td>278</td>
<td>717</td>
<td>364</td>
<td>324</td>
<td>423</td>
</tr>
<tr>
<td>Recognized refugees</td>
<td>175</td>
<td>1</td>
<td>1</td>
<td>12</td>
<td>18</td>
<td>9</td>
<td>11</td>
<td>13</td>
<td>36</td>
<td>74</td>
<td>47</td>
</tr>
</tbody>
</table>

250 is not the number of refugees who were recognized in June 2011 but the accumulated number of refugees from 1992 to 2011. The first recognized refugee came from Ethiopia in 2001, almost 10 years after Korea had signed the convention.

When the population and economic growth of Korea are considered, we do not seem to fulfill our responsibility in terms of refugee protection. Government may respond to me that the problem is not the low recognition number but the low number of authentic refugee claims, saying that we are fulfilling our responsibility.

Is that the case?

5. How well Korean Government protect Refugee?

(1) 3 Main Problems

How Korean government has done their legal responsibility to protect refugees? But before going further, I want to ask what the responsibility with regard to the protection for refugee under the refugee convention is. The responsibility can be divided into two parts.

The one is that she has a responsibility to recognize refugees, namely she has to run a
good refugee recognition system in pursuance to the purpose and objective of the refugee convention.

The other is that she has a responsibility to secure social treatment or human rights for refugees and asylum-seekers at least to the extent of what the refugee convention guarantees. Then how well Korean government protect refugee?

I believe even if there has been some improvements, Korean government has not been fulfilling her responsibilities in terms of running a refugee recognition system as well as securing proper social treatment to refugees. I would like to raise 3 main problems

(A) Lack of due process

First, there is still a problem with lack of due process when it comes to the responsibility of running a good refugee recognition procedure.

(B) Problems with the social treatment for refugees and asylum-seekers

There are two problems in terms of social treatment. One is about livelihood of asylum-seekers. The other is about detention of refugees.

As for the unsecured livelihood of refugees, Korean government does not provide refugee applicants with housing or subsidies. During prolonged refugee procedure, the only legitimate way for him to sustain himself is to be granted a work permit. But it is very difficult to get work permit. Korean Government has not granted work permit to refugee applicant. But after recent revision of immigration control act, immigration office started to give work permit to refugee applicants in a very restricted manner. Refugee applicants who want to get work permit have to submit an employment contract with his would be employer to immigration office. And only refugee applicants whose cases are pending in immigration office for more than 1 year without the first decision are entitled to apply for the work permit.

We can say that this kind of social treatment to refuge applicants is de facto violation of

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non-refoulement\textsuperscript{2}. Since very minimum standard of living is not secured in a prolonged refugee procedure, refugee applicant is forced to go back to the county of origin at the risk of being persecuted.

(C) immigration detention.

What is ridiculous is that the Ministry of Justice named the detention center as “protection facility.” But people who are in the protection facility do not enjoy freedom of movement. The only chance for them to move out of their small prison–like cells is for physical exercise in playground which is only allowed for several minutes a day. We civil society have strongly opposed to the naming for long time and Korean office of UNHCR also recommended not to use the word protection to indicate detention. But they keep using the name in immigration control act as well as in practice. We assume that the reason why the ministry of justice names it protection facility is to avoid all the relevant regulations and legislations which are supposed to be applied to detention. So in some way treatment for detainees is worse than one for prisoners. So it is very deceptive for Korean government to call detention center protection facility.

As of May 2010, there are 13 asylum-seekers in detention centers. Like any other countries, we also have detained asylum-seekers in spite of Act 31 of refugee convention which provides that the States shall not impose penalties on refugees for their illegal entry or presence.

We can classify detained asylum-seekers into 2 main categories. First, the Ministry of Justice keeps asylum-seekers detained when they have applied for refugees after they had been detained until they are deported to their countries of origin or recognized as refugees. Many of detained refugees fall under this category. Second category is asylum-seekers who are caught for working without work permit.

The most problematic issue is that even if the immigration detention order is issued by the head of immigration office, not by judge, immigration control act opens possibility for asylum seekers to be detained indefinitely without periodic judicial review\textsuperscript{3}.

\textsuperscript{2} UNHCR, Human Rights and Refugee Protection (Self Study Module 5 Vol. II), p 60
\textsuperscript{3} Korean Bar Association, Human rights friendly reform of legislation on immigration Control and detention, pp. 114–115
In this detention center, there has been a refugee who was detained for almost 3 years without judicial review on legitimacy of his detention. This is obviously arbitrary detention banned by international convention on civil and political rights (there is a provision of immigration control act saying that if it is impossible to immediately repatriate a person who is subject to a deportation order, the head of office or the head of the detention center may detain him until the repatriation is possible).