
Korea's Refugee Act: A Critical Evaluation under International Law

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On December 29, 2011, the National Assembly of the Republic of Korea passed the Law on the Status and Treatment of Refugees, which went into effect on July 1, 2013. The law was the culmination of years of effort by the government, NGOs, UNHCR and the lawmakers. It has been widely praised by civil society groups in Korea. However, there has been little critical analysis of its provisions whether it will truly be a successful legislation. This research critically evaluates whether the new law is likely to promote Korean compliance with international legal standards, namely, the 1951 Refugee Convention and major human rights treaties. It finds that while the law represents a significant improvement over current practices, it possesses problematic provisions related to detention, refugee determination, economic and social rights of asylum-seekers, and the treatment of recognized refugees. This essay will conclude by highlighting four outstanding implementation questions that could impact compliance with international standards.

Keywords

Refugee Act, 1951 Refugee Convention, UNHCR, Refugee Rights, Asylum-Seekers

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DOI: <http://dx.doi.org/10.14330/jeail.2013.6.2.07>

1. Introduction

After years of intense discussion and consultations between lawmakers, the government, local civil society organizations and the local office of the United Nations High Commissioner on Refugees (“UNHCR”), the National Assembly of the Republic of Korea¹ passed the Law on the Status and Treatment of Refugees (hereinafter Refugee Act) during the final legislative session of 2011.² The Refugee Act, which finally went into effect on July 1, 2013, will give Korea the first separate refugee law in Asia. Many hope that it will usher in a more welcoming era for refugees in Korea.³

Although the Refugee Act has been generally praised by observers, there has been little critical analysis of its provisions or consideration of whether it will truly be successful in bringing Korea into compliance with its obligations under international refugee law and international human rights law. This essay will attempt to fill this gap by taking a closer examination of the provisions of the law, and assessing whether the law will lead to the effective fulfillment of Korea’s international legal duties. This paper is divided into seven parts including short Introduction and Conclusion. After reviewing a brief history of the development of refugee policy in Korea in Part two, Part three will provide an overview of the new law that highlights positive advances over prior Korean practice. Part four will then discuss the improvements of the new law over prior practice. Part five consists of an evaluation of the Refugee Act’s compliance with international norms in four key areas, while Part six will discuss the major unanswered questions that remain to be addressed once the act enters into force.

2. A Brief History of Korean Refugee Policy

In 1992, Korea ratified both the United Nations Convention relating to the Status of

¹ The Republic of Korea will be referred to as ‘Korea’ for the sake of brevity.

² Law No. 11298 (proclaimed Feb. 10, 2012, enforced July 1, 2013).

³ Chul Hyo Kim, *A Step Forward to Refugee Protection? South Korea’s New Refugee Act*, 2 OXFORD MONITOR OF FORCED MIGRATION 8 (2012).