

## EAST ASIAN OBSERVER

### Refugee's Rights to HIV/AIDS Healthcare in Korea under the UNAIDS Guidelines

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*HIV/AIDS is an important global issue in human rights and health. The United Nations Refugee Convention clearly addresses to guarantee healthcare rights to refugees at the same level as those provided to citizens. In Korea, the number of refugee applicants has surged since the enactment of the Refugee Act in 2012. Regarding human dignity and human rights, however, there are serious concerns that Korea's healthcare laws and policies would not fully protect the right of foreigners who are suffering from financial hardship. This paper proposes the ways to improve healthcare equity by comparing the UNAIDS Guidelines to Korean policies on HIV-positive refugee applicants.*

#### Keywords

Refugees, HIV/AIDS, Healthcare, Korea, UNAIDS Guideline 6, Global Health Security, WHO

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## 1. Introduction

Maria Hoffman<sup>1</sup> is a 36-year-old married woman who entered Korea with her husband and applied for refugee status. While undergoing a medical check-up during the refugee application process, she was confirmed HIV-positive, and the test center reported the results to the local public health center. The public health center referred Maria to a local non-governmental organization (“NGO”), because Korea’s National Health Insurance System does not cover refugee applicants. When Maria wanted medical services, she should visit the NGO and then a local public medical center for treatment with a nurse. In case of HIV/AIDS, after a two-day and one-night inpatient stay, three outpatient treatment sessions would be available to her until she is readmitted to the hospital. Maria also needed gynecological treatment, but she was reluctant to visit the hospital because she had heard that refugee applicants were charged 10 percent of the treatment costs incurred at medical institutions. She was also informed that NGOs have difficulty in funding foreign workers’ healthcare services at the end of the year because they ran out of money. Although the nurse at the NGO told that the organization would cover her costs even if she could not afford the 10 percent of the total cost, and that they expected to receive charitable donations that year so that the treatments would not be interrupted. Maria felt burdened by receiving the medical services because she was financially strained. An experienced NGO nurse stated:

I have never seen any of the visitors to my office as refugee applicants [become] recognized refugee, but after they are not approved, most of them went back to their home except some who stayed with illegal residence. I understand their situation and Korea’s government policy, but, rather than imposing burdensome costs on financially challenged refugees and illegal immigrants, necessary HIV/AIDS treatment and adequate general medical care should be offered to them similar to the medical and human rights practices of developed countries.<sup>2</sup>

During the 1980s, HIV diagnoses were equivalent to death sentences. Currently, however, medical progress allows us to preserve life through antiretroviral treatments. As HIV/AIDS, along with tuberculosis and malaria, is a threat to global health

<sup>1</sup> Maria Hoffman (pseudo name) is a refugee applicant with HIV-positive who entered Korea from South Africa. She had personal interview with a NGO nurse on September 1, 2017.

<sup>2</sup> Personal interview on September 1, 2017.

security and the Global Fund supports a response to it. Global health security includes strong public health and emergency response systems comprised of research, prevention, and response to biological threats, which aim to prevent infectious diseases from spreading across borders. It must be directed and pursued at every level, from the individual to both international and domestic community for improving its performance. Right to health is fundamental to human existence. It is stipulated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (hereinafter Covenant or “ICCPR”), although the scope of coverage varies depending on national constitutions, healthcare laws, and types of health insurance.

Articles 2 and 11 of the Covenant recognize that every individual in a Contracting State, including refugees, has a right to basic medical care, including sufficient food, clothing, and housing. In 1992, Korea ratified the United Nations Convention Relating to the Status of Refugees (hereinafter Refugee Convention).<sup>3</sup> However, it was not until 2005 that the National Human Rights Commission of Korea began studying HIV/AIDS patients to improve treatment of refugees. The Refugee Act was enacted in 2012 through the efforts of civil society, legislators, and the UN High Commissioner for Refugee (“UNHCR”), which was implemented in 2013. As some provisions on the treatment of refugees were partially removed during its enactment, however, subsequent problems have arisen regarding the actual benefits.<sup>4</sup>

Since the mid-1990s, some developed countries have tried to ensure human rights without discrimination. They regarded HIV/AIDS patients as those with disabilities. In addition, a special international organization of the UNHCR and the Joint United Nations Programme on HIV/AIDS (“UNAIDS”) was established in 1996. In 2002, the UNAIDS developed an indicator to identify improvements to countries’ HIV/AIDS-related policies and used it to monitor such policies with the National Commitments and Policy Instrument.<sup>5</sup> In Korea, the rate of adolescents among people living with HIV/AIDS reported annually increased from 27.9 percent

<sup>3</sup> Convention relating to the Status of Refugees (Adopted on July 28, 1951, entered into force on April 22, 1954), available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx> (last visited on Oct. 30, 2017).

<sup>4</sup> A. Wolman, *Korea’s Refugee Act: A Critical Evaluation under International Law*, 6 J. EAST ASIA & INT’L L. 479-95 (2013).

<sup>5</sup> NCPI has reported to UNAIDS every two years since 2003 and was changed to the National Composite NCPI has reported to UNAIDS every two years since 2003 and was changed to the National Composite Policy Index (2012). Policy Index (2012).

in 2011 to 38.6 percent in 2015.<sup>6</sup> Meanwhile, the rate of foreigners among new HIV infected people increased from 7.4 percent in 2011 to 11.6 percent in 2015.<sup>7</sup> However, because the annual statistics of HIV/AIDS issued by the Korea Centers for Disease Control and Prevention (“KCDC”) only count individuals covered by the National Health Insurance System, there are no official figures on refugee applicants or illegal immigrants.

The goal of this study is to elucidate the improvements to Korea’s law and policy by analyzing the international norms related to HIV/AIDS, particularly the UNAIDS Guideline 6, and the material content of medical support through the example of refugee applicants in Korea.

## 2. International Standards on HIV/AIDS

### A. Establishment of the UN Guidelines

The Office of the High Commissioner for Human Rights (“OHCHR”) and the UNAIDS issued an international guideline on HIV/AIDS and human rights in 1998, which reflected international human rights policy principles and standards for an HIV/AIDS response.<sup>8</sup> In 2000, the Committee on Economic, Social and Cultural Rights stressed that HIV/AIDS-related education and access to treatment should guarantee the right to health. Since then, all of the UN Member States have adopted the Declaration of Commitment on HIV/AIDS (June of 2001) to strengthen their human rights bases in response to HIV/AIDS.<sup>9</sup> In addition, the UNHCR adopted the resolutions to ensure access to essential medicines for infectious diseases with high levels of vulnerability, which particularly identified 10 core HIV/AIDS protections.<sup>10</sup>

After adopting the Millennium Development Goals, the UN set 17 Sustainable Development Goals (“SDGs”) to be achieved by 2030. In particular, Target 3.4 of SDG Goal 3 is to monitor the incidence of HIV-positive individuals in the population

<sup>6</sup> KCDC, Annual Report on the Notified HIV/AIDS in Korea (Aug. 2016), available at [http://cdc.go.kr/CDC/info/CdcKrInfo0128.jsp?menuIds=HOME001-MNU1130-MNU1156-MNU1426-MNU1448&fid=3444&q\\_type=&q\\_value=&cid=70430&pageNum=](http://cdc.go.kr/CDC/info/CdcKrInfo0128.jsp?menuIds=HOME001-MNU1130-MNU1156-MNU1426-MNU1448&fid=3444&q_type=&q_value=&cid=70430&pageNum=) (last visited on Oct. 30, 2017).

<sup>7</sup> *Id.* at 8.

<sup>8</sup> INTERNATIONAL GUIDELINES ON HIV/AIDS AND HUMAN RIGHTS: 2006 CONSOLIDATED VERSION (2006), available at <http://www.ohchr.org/Documents/Publications/HIVAIDSGuidelinesen.pdf> (last visited on Oct. 30, 2017).

<sup>9</sup> *Id.* at 5.

<sup>10</sup> UNHCR, 10 Key points on HIV/AIDS and the protection of refugees, IDPs and other persons of concern, available at <http://www.unhcr.org/458938362.pdf> (last visited on Oct. 30, 2017).

per 1,000 by gender, age, and major population group in order to end the HIV/AIDS epidemic by 2030.<sup>11</sup> The UN General Assembly also adopted a resolution (A/RES/70/266) in 2016 in order to end the HIV/AIDS epidemic by 2030. Here, the Fast Track 90-90-90 goals were set, in which, by 2020, 90 percent of all infected individuals would know their HIV/AIDS status through HIV/AIDS testing that effective treatment reaches 90 percent of all infections. Member states should accelerate their efforts to provide access to treatment for infected persons.<sup>12</sup>

### ***B. Highlights of the UNAIDS Guideline 6***

There are 12 UNAIDS Guidelines: Guidelines 1 to 5 cover national HIV/AIDS response systems and legislation reflecting human rights; Guideline 6 concerns provision of access to medical care; Guidelines 7 to 11 reinforce support systems at the community level; and Guideline 12 addresses international cooperation. In particular, Guideline 6 establishes legislation to provide HIV-related products, services, and information to ensure that qualitative preventive measures, services, information, and affordable and effective medicines are accessible.<sup>13</sup>

Revised Guideline 6 reinforces the necessary prevention, treatment, care, and support elements, particularly in the context of effective responses to HIV/AIDS. Comprehensive care, nursing, and support include high-quality nutrition; social, emotional and spiritual aid; family, community and home-based care; HIV/AIDS prevention tools such as condoms, lubricants and supplies for cleaning hypodermic needles; antiretroviral treatment to prevent vertical infection; post-exposure prophylaxis; and safe and effective disinfectants and vaccines. Furthermore, based on human rights principles, goods, services, and information should be available and acceptable.<sup>14</sup> Moreover, there are 26 recommendations on the implementation of revised Guideline 6 that require universal physical attainability, affordability, and access. The core content comprises comprehensive testing, treatment, and counseling for all HIV-infected persons.<sup>15</sup>

<sup>11</sup> UN, *Transforming our world: the 2030 agenda for sustainable development: Resolution adopted by the General Assembly on 25 September 2015*, available at <https://sustainabledevelopment.un.org/post2015/transformingourworld> (last visited on Oct. 30, 2017).

<sup>12</sup> Political Declaration on HIV and AIDS: On the Fast-Track to Accelerate the Fight against HIV and to End the AIDS Epidemic by 2030, G.A. Res. 70/266, U.N. Doc. A/RES/70/266, available at [http://www.unaids.org/sites/default/files/media\\_asset/2016-political-declaration-HIV-AIDS\\_en.pdf](http://www.unaids.org/sites/default/files/media_asset/2016-political-declaration-HIV-AIDS_en.pdf) (last visited on Oct. 30, 2017).

<sup>13</sup> United Nations. HIV/AIDS and Human Rights; Revised Guideline 6 (2003), available at [http://data.unaids.org/publications/irc-pub02/jc905-guideline6\\_en.pdf](http://data.unaids.org/publications/irc-pub02/jc905-guideline6_en.pdf) (last visited on Oct. 30, 2017).

<sup>14</sup> *Id.* at 14.

<sup>15</sup> *Supra* note 6, at 15-21.

### *C. Humanitarian Emergencies and HIV*

In 2003, the number of HIV-infected people worldwide during a humanitarian emergency was estimated as 1.6 million, 81 percent of whom would be concentrated in Sub-Saharan Africa.<sup>16</sup> These infected people would be vulnerable for reduced treatments and restrictive policies; 1.0 million people with HIV/AIDS might be living without access to antiretroviral therapy.<sup>17</sup> Most refugees should undergo mandated HIV/AIDS testing at the refugee application level. Generally, acceptance decisions would be made following the test results.

According to the studies on refugee policy and health, however, the longer the refugee application process is, the more psychological stress and deeper depression the refugee status applicants will suffer.<sup>18</sup> The risk of infectious diseases of these people was increasing during the application process because they tended to live in groups, had insufficient access to medical care, received limited educational information, and had poor hygiene.<sup>19</sup> Regarding HIV/AIDS treatment in humanitarian emergencies, especially, the mortality rate due to malnutrition during the first six months was two to six times higher than those HIV infected in non-emergency regions.<sup>20</sup>

## **3. HIV/AIDS Financial Support in Korea**

### *A. HIV/AIDS and Refugee Norms*

The HIV infection in Korea was first confirmed in 1985. Two years later, the Prevention of Acquired Immunodeficiency Act was enacted to manage and prevent HIV/AIDS.<sup>21</sup> With the establishment of the HIV/AIDS-related NGOs in 1993, the guideline of the law and policy on this question began emphasizing on public education. In 2003, the

<sup>16</sup> UNAIDS 2015 Information Note: HIV in Humanitarian Emergencies, available at <http://www.unhcr.org/566961609.pdf> (last visited on Oct. 30, 2017).

<sup>17</sup> *Id.* at 2.

<sup>18</sup> A. Killedar & P. Harris, *Australia's Refugee Policies and Their Health Impact: A Review of the Evidence and Recommendations for the Australian Government*, AUSTR. & N.Z.J. PUB. HEALTH 335-7 (2017), available at <https://www.ncbi.nlm.nih.gov/pubmed/28370847> (last visited on Oct. 30, 2017).

<sup>19</sup> N. Divkolaye & F. Burkie, *The Enduring Health Challenges of Afghan Immigrants and Refugees in Iran: A Systematic Review*, in PLOS Current Disasters, July 21, 2017, available at <http://currents.plos.org/disasters/article/the-enduring-health-challenges-of-afghan-immigrants-and-refugees-in-iran-a-systematic-review> (last visited on Oct. 30, 2017).

<sup>20</sup> *Supra* note 16, at 3.

<sup>21</sup> Prevention of Acquired Immunodeficiency Act of 1988 (Law No. 12471).

HIV/AIDS & Tuberculosis Control Department was established in the KCDC. It has been conducting the counseling projects on infectious diseases since 2005.<sup>22</sup>

In 2008, the Korean government implemented a policy ensuring the human rights of HIV-infected individuals by amending the HIV/AIDS prevention measures. This policy improved the way of isolation and discrimination by transforming it into the protection of HIV-infected persons and their human rights in line with international trends and awareness of improvement activities.<sup>23</sup>

Article 1 of the Refugee Convention addresses the requirements to be refugees based on the nature of a person's stay.<sup>24</sup> The Refugee Convention grants certain basic rights to refugee applicants to stay lawfully in the territory of application; they will not be repatriated to the former habitual country before the end of the application process. Korea began receiving applications for refugee status in July of 1994.<sup>25</sup> In 2008, the Immigrant Control Act was amended to provide for the establishment of refugee support facilities, through which the general treatment of refugee applicants was improved.<sup>26</sup> In addition, Korea enacted the Refugee Act in 2012 in order to implement the regulations of the Refugee Convention.<sup>27</sup>

## ***B. Domestic Refugee Application and Accreditation Status***

By the end of 2016, Korea had granted 672 refugee statuses and 1,156 humanitarian stay permit among 22,792 applicants for refugee status.<sup>28</sup> It was not until December of 2015 that resettlement of refugees was introduced. Then, the Korean government allowed 22 people in four families from Myanmar to resettle in Korea after an open hearing in order to take some responsibility for global humanitarian assistance. Resettled refugees can obtain not only refugee recognition status for the legitimate stay, but also support programs in the Korean language, basic laws, and field experience for six to 12 months at the Help Center for Foreigners. However, most of the refugee applications were submitted in their legal stay after they entered into

<sup>22</sup> Prevention of Acquired Immunodeficiency Syndrome Act, available at <http://www.law.go.kr/lsSc.do?menuId=0&subMenu=2&query=%ED%9B%84%EC%B2%9C%EC%84%B1%EB%A9%B4%EC%97%AD#undefined> (last visited on Oct. 30, 2017).

<sup>23</sup> Amendment to the Prevention of Acquired Immunodeficiency Act of 2008 (Law No. 20987).

<sup>24</sup> Refugees Convention art 1(A)(1).

<sup>25</sup> Amendment to the Immigrant Control Act of 1993 (Law No. 4592).

<sup>26</sup> *Id.* arts. 76-9.

<sup>27</sup> Refugee Act (Law No. 11298).

<sup>28</sup> Korea Immigration Service under the Ministry of Justice, Annual Report of Policies on Foreigners (June 2016), available at [http://www.moj.go.kr/HP/COM/bbs\\_03/ListShowData.do?strNbodCd=noti0096&strWrtNo=130&strAnsNo=A&strNbodCd=noti0703&strFilePath=moj/&strRtnURL=MOJ\\_40402000&strOrgGbnCd=104000&strThisPage=1&strNbodCdGbn=](http://www.moj.go.kr/HP/COM/bbs_03/ListShowData.do?strNbodCd=noti0096&strWrtNo=130&strAnsNo=A&strNbodCd=noti0703&strFilePath=moj/&strRtnURL=MOJ_40402000&strOrgGbnCd=104000&strThisPage=1&strNbodCdGbn=) (last visited on Oct. 30, 2017).

Korea.<sup>29</sup>

The number of refugee applicants did not reach 1,000 annually until 2010. After the Refugee Act was enacted in 2012, however, the number increased to 1,143 (2012), 1,574 (2013), 2,896 (2014), 5,711 (2015), and 7,542(2016), respectively. Of the 672 individuals identified as refugees, 414 (61.6%) were identified after 2012; of the 1,156 persons identified as humanitarian stay permit, 956 (82.7%) were identified after 2012.<sup>30</sup> (Table 1) Of the total number of approved refugee applications, 19,072 (83.5%) was male and 3,765 (16.5%) was female.<sup>31</sup> However, the rate of refugee approved among applicants was 7.2 percent as of the end of 2015.

Table 1: Annual Outcomes of Refugee Application after 2012<sup>32</sup>

Year	Number of applicants	Approved	Humanitarian stay permit	Not approved	Withdrawn	In process
1994–2009	2,492	171	85	1,409	494	0
2010	423	45	35	168	62	0
2011	1,011	42	20	277	90	0
2012	1,143	60	31	558	187	1
2013	1,574	57	6	523	331	0
2014	2,896	94	539	1,745	363	370
2015	5,711	105	194	3,976	280	1,487
2016	7,542	98	246	5,050	731	5,003
<b>Total</b>	<b>22,792</b>	<b>672</b>	<b>1,156</b>	<b>13,706</b>	<b>2,538</b>	<b>6,861</b>

Under Article 18 of the Refugee Act, refugee status shall be decided within six months from the date of the first recognition of refugee application. Once recognized as a refugee, the Help Center for Foreigners would provide basic living and social integration programs, such as accommodations and medical services.<sup>33</sup>

### *C. Medical Support for Refugees*

All Korean residents are covered by the National Health Insurance System, except for about 2.8 percent of the population, who are under Medical Aid. Foreigners

<sup>29</sup> *Supra* note 6, at 93.

<sup>30</sup> *Supra* note 28, at 90-1.

<sup>31</sup> *Id.* at 94.

<sup>32</sup> *Supra* note 6, at 91. Compiled by the author.

<sup>33</sup> Refugee Act arts. 30, 31 & 32.



staying in Korea for more than 90 days are entitled to apply for this health insurance. As the recognized refugees, resettlement refugees, and humanitarian entrants are treated as good as the citizenry in terms of public relief, labor laws, and social security,<sup>34</sup> they shall be provided medical assistance under the National Health Insurance System or Medical Aid.<sup>35</sup>

Regarding Medical Aid for refugee applicants, the Refugee Act stipulates that when the Minister of Justice considers it necessary to protect the health of a refugee applicant, the applicant may obtain a medical examination that is within the range of the budget or obtain financial support for health screening and other medical costs.<sup>36</sup> In practice, refugees obtain medical assistance with limitation until the application is either approved or rejected. Table 2 shows the medical expenditures from 2014 to 2016 requested by the Ministry of Justice. The number of applicants increased, while the costs of medical care decreased after 2015.

Table 2. Medical Expenditures for Refugees Applicants 2014–2016 (USD)<sup>37</sup>

Aspect of medical expenditure	Year		
	2014	2015	2016
Refugee medical expenses	27,874	26,132	26,132
Number of applicants	2,896	5,711	7,542
Source of financial resources	Treasury	Treasury	Treasury
Governmental agency	Ministry of Justice	Ministry of Justice	Ministry of Justice

Medical subsidies during the refugee application stage are insufficient to cover all the health screening costs, so that more than 100 public and private medical institutions are conducting a project to support underprivileged medical services recipients, such as foreign workers, based on the Act on the Treatment of Foreigners in Korea.<sup>38</sup> The project aims to ensure the minimum quality of life as human beings by providing medical services to refugee applicants as well as illegal immigrants who do not qualify for medical benefits under the National Health Insurance

<sup>34</sup> National Health Insurance Act, art. 109; Immigration Act art. 31.

<sup>35</sup> Refugee Act arts. 30, 31 & 32.

<sup>36</sup> *Id.* art. 42; Enforcement Decree of the Refugee Act, art. 20.

<sup>37</sup> Excerpt of a material replied from the Korea Immigration Service under the Ministry of Justice on request of information disclosure (July 5, 2017). Compiled by the author.

<sup>38</sup> Amendment to the Framework Act on Treatment of Foreigners Residing in the Republic of Korea, art. 5.

System.<sup>39</sup>

The Ministry of Health and Welfare would establish and implement a comprehensive plan with the secured budget in cooperation with medical institutions of each province. The Ministry will provide the financial support for hospitalization and surgery expenses by 90 percent of the total medical expenses incurred from the times of admission to discharge. The remaining 10 percent, capped at KRW 5 million (USD 500,000) per hospitalization, is charged to the patient. As shown at Table 3, recently, more than KRW 3 billion (USD 3,000,000) has recently been spent, despite the budget limit of medical aid is KRW 2 billion (USD 2,000,000). In January 2017, consequently, the Ministry of Health and Welfare increased the patient's co-payment to 20 percent, but, less than three months later, it returned back to 10 percent due to too much financial burdens on the beneficiaries. Considering the numbers of unregistered foreigners and refugee applicants, the financial support for medical aid to refugee applicants may be very small compared to the costs of health expenditures per capita (KRW 3.12 million; USD 2,729)<sup>40</sup> as well as the average expenditures for inpatients and outpatients.<sup>41</sup>

Table 3. Medical Expenditures for Foreign Workers, 2014–2016 (USD)<sup>42</sup>

Type of expenditure	2014	2015	2016
Inpatient	1,598	1,534	1,711
Outpatient	1,965	1,944	2,208
Treatment costs	2,977,452	2,841,481	3,238,450

However, the Division of HIV/AIDS & Tuberculosis Control of the KCDC conducts the hospital-based counseling service for people living with HIV in 20 medical

<sup>39</sup> ROK Ministry of Health and Welfare, 2017 Guide on foreign workers' medical support program, available at [http://www.mohw.go.kr/front\\_new/jb/sjb0406vw.jsp?CONT\\_SEQ=338681&MENU\\_ID=030406&PAR\\_MENU\\_ID=03&page=1](http://www.mohw.go.kr/front_new/jb/sjb0406vw.jsp?CONT_SEQ=338681&MENU_ID=030406&PAR_MENU_ID=03&page=1) (last visited on Oct. 30, 2017).

<sup>40</sup> OECD Health Statistics 2017, Current expenditure of health per capita (USD), available at <http://www.oecd.org/els/health-systems/health-data.htm> (last visited on Oct. 30, 2017).

<sup>41</sup> It was increased from KRW690,000/USD 670 (2014) to KRW 800,000/USD 800 (2016), which is one-quarter of Korea's per capita health expenditures. See Republic of Korea: WHO statistical profile, available at <http://www.who.int/gho/countries/kor.pdf?ua=1> (last visited on Oct. 30, 2017).

<sup>42</sup> Excerpt of a selection of material received from the Ministry of Health and Welfare Division of Public Healthcare on request of information disclosure (May 17, 2017). Because details of medical expenses are determined based on the results of medical fee evaluations submitted to the Health Insurance Review and Assessment Service, there is a difference between the timing of actual occurrence of medical fees and that of the medical fee payments. Therefore, expenses for treatments in 2015 can be included in 2016. Compiled by the author.

institutions throughout the country. The Division provides counseling to improve psychological stability, treatment compliance, and management of HIV/AIDS patients and their families.<sup>43</sup>

## 4. The Need for Legislative Amendment

Korea is one of the ten largest share-holding countries who bear the contributions to the UN budget. Considering its responsibilities to advance human rights, Korea should review and improve policy on refugee applicants' medical access.

First, although Korea is a member State of the Refugee Convention and firmly declared to take the responsibility to resolve the HIV/AIDS crisis, its Refugee Act stipulates that medical assistance shall be *discretionally* provided to foreigners within the scope of the budget available during the refugee status application process.<sup>44</sup> As such discretionary provision just partially meets applicants' medical needs, effective treatment cannot be achieved. When the UN was developing the HIV/AIDS Guidelines in 1998, the Secretary-General commented that the UN Human Rights Committee should comprehensively address the public health concerns of the UN Member States especially for the HIV/AIDS patients' human rights and establish national policies reflecting the international framework.<sup>45</sup> Furthermore, revised UNAIDS Guideline 6 aimed to ensure universal availability, access, financial affordability, and a prompt and effective response. Therefore, Korea should fulfill its obligations regarding medical care protection and establish a medical care document on refugee applicants.

Second, some medical support projects for foreign workers would violate the principle of fair treatment, i.e., "treating the same things equally, and treating different things differently." Illegal immigrants are staying in Korea for financial reasons without legal ground, while international and domestic laws protect refugee applicants. However, both may be recognized as 'refugees' and granted humanitarian status together. The most effective countermeasure to HIV/AIDS is to develop strong ties between law and policy to increase people's access to HIV/AIDS

<sup>43</sup> The budget for hospital-based counseling service for people living with HIV is about KRW 1.2 billion annually. However, most of this money is spent on labor costs.

<sup>44</sup> Refugee Act art. 42. [Emphasis added]

<sup>45</sup> *Supra* note 8, at 9. See also Human rights and unilateral coercive measures, C.H.R. res. 1995/45, ESCOR Supp. (No. 4) at 143, U.N. Doc. E/CN.4/1995/45 (1995), available at <http://hrlibrary.umn.edu/UN/Resolutions95.html> (last visited on Oct. 30, 2017).

prevention, treatment, and counseling.<sup>46</sup> From the perspective of the international human rights law, refugee applicants should be treated as potentially approved, not as illegal immigrants. The laws should be thus revised to appropriately treat them following their statuses.

Third, the current HIV-positive test performed during health screenings at the refugee recognition stage is not voluntary. This mandatory test would violate the UNAIDS Guidelines and the 10 UNHCR safeguards. Therefore, HIV/AIDS testing for the refugee application should be carried out after a full explanation and consent of the applicant. Additionally, the Korean government should eliminate all barriers to refugee applicants' rights to seek fair treatment, counseling, and information by providing free translated leaflets and comprehensive care. Refugees are regarded as high-risk individuals for certain diseases, so that treating diseases should be guaranteed without restrictions.

In some other countries, refugees are given medical treatment as a special protection or provided with medical care similar to that of the country's citizens. *E.g.*, Canada ratified the Refugee Convention in 1951 and the Interim Federal Health Programme ("IFHP") was initiated in 1957 to provide medical care to refugees and refugee applicants.<sup>47</sup> IFHP is a federal provisional payment system for the healthcare costs of refugee applicants who are unable to obtain the public health insurance administered by the provinces or territories.<sup>48</sup> It provides additional benefits to refugee applicants over those offered to Canadians because it provides additional financial support of medicinal, dental, ophthalmologic, and disability needs.

In the US, the Immigration and Nationality Act governs refugee status, most of which concerns resettled refugees.<sup>49</sup> Social security numbers may be issued to them on that day when they arrive in the US territory. Medical assistance will be also available to them through the Refugee Medical Assistance program, which is fully funded by the federal government for the first eight months.<sup>50</sup> Legislation,

<sup>46</sup> M. Torres, et al., *Monitoring HIV-Related Laws and Policies: Lessons for AIDS and Global Health in Agenda 2030*, 21 AIDS BEHAVIOR 551-61 (2017), available at <https://www.ncbi.nlm.nih.gov/pubmed/28084561> (last visited on Oct. 30, 2017).

<sup>47</sup> Government of Canada, Health care – refugee, Mar. 31, 2017, available at <http://www.cic.gc.ca/english/refugees/outside/arriving-healthcare.asp> (last visited on Oct. 30, 2017).

<sup>48</sup> A. Evans et al., *The Cost and Impact of the Interim Federal Health Program Cuts on Child Refugees in Canada*, PLOS ONE, May 8, 2014, available at <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0096902> (last visited on Oct. 30, 2017).

<sup>49</sup> US Immigration and Nationality Act of 2013, available at <https://www.uscis.gov/laws/immigration-and-nationality-act> (last visited on Oct. 30, 2017).

<sup>50</sup> Refugee Medical Assistance (June 1, 2016), available at [http://hcopub.dhs.state.mn.us/hcpmstd/03\\_45\\_10.htm](http://hcopub.dhs.state.mn.us/hcpmstd/03_45_10.htm) (last visited on Oct. 30, 2017).

regulation, and policy have been developed in accordance with the President's Emergency Plan for AIDS Relief,<sup>51</sup> which was enacted in 2008 to remove barriers to the important health policy reforms aiming to create a generation without HIV/AIDS.<sup>52</sup> The US Agency for International Development would take the task to improve the health policy of the countries to which the US provides financial aid.<sup>53</sup>

In Sweden, if illegal immigrants are HIV-positive, they are provided with HIV testing and treatment free of charge, which is the same as that for Swedish citizens.<sup>54</sup>

## 5. Conclusion

Korea is proud of many humanitarian achievements as an advanced human rights country. It is also fast improving the HIV/AIDS laws and policies. However, global health security can be maintained only when every country's national health security policy complies with international standards. Because the UN is conducting the SDGs in cooperation with developed and developing countries together from 2016 to 2030, the UN Member States should be obliged to improve and implement policies reflecting international trends. As shown at the Middle East Respiratory Syndrome (MERS) case recently occurred as a global public health crisis, the fears of the emergence of new infectious diseases continue around the world. It is thus critically important for the global society to implement the international agreements to protect people from HIV/AIDS. For the no-HIV/AIDS world, the UN General Assembly adopted three general political statements on HIV/AIDS which have been reaffirmed by the UNAIDS. In addition, every country is working together for the achievement of the SDGs. The UN Member States should thus prioritize the healthcare services regardless of nationalities, particularly for those in vulnerable situations. It is the best way to respect 'basic health' as a fundamental human right.

<sup>51</sup> President's Emergency Plan for AIDS Relief (PEPFAR) Office, *available at* <https://www.hhs.gov/about/agencies/oga/about-oga/what-we-do/policy-and-program-coordination/pepfar> (last visited on Oct. 30, 2017).

<sup>52</sup> Refugee Medical Assistance (RMA), *available at* [http://hcopub.dhs.state.mn.us/hcpmstd/03\\_45\\_10.htm](http://hcopub.dhs.state.mn.us/hcpmstd/03_45_10.htm). For details, see L. Verani et al., *Monitoring HIV and AIDS Related Policy Reforms: A Road Map to Strengthen Policy Monitoring and Implementation in PEPFAR Partner Countries*, PLOS ONE, Feb. 25, 2016, *available at* <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0146720> (all last visited on Oct. 30, 2017).

<sup>53</sup> *Id.* at 9-11.

<sup>54</sup> UNAIDS Country factsheets: Sweden 2016 (NCPI 2014), at 4-7 & 12-7, *available at* <http://www.unaids.org/en/regionscountries/countries/sweden> (last visited on Oct. 30, 2017). The right to health is an access to treatment for all people and to stop deportations of HIV-positive immigrants to countries where they would have no access to HIV/AIDS treatment.

Korea should strengthen its current policies and programs for refugee applicants, ensuring their access to healthcare. The whole community should comprehensively involve in the HIV/AIDS prevention and treatment in accordance with the UNAIDS Guidelines. In Korea, the counter-HIV/AIDS laws are well implemented and the relevant NGOs are actively working. However, healthcare support is just annually provided within the budgetary scope rather than through the National Health Insurance System or Medical Aid. Providing comprehensive healthcare to refugees and immigrants, including HIV testing and HIV/AIDS treatment, would prevent public health crisis in the world and further reduce global health threats. Thus, it should be recognized that comprehensive healthcare helps to protect basic rights of refugees by ensuring adequate and equitable access to health care. In addition, in order to relieve refugee applicants' home countries or host countries of the financial burden of medical support, the UN or Global Fund should consider the prevention and treatment of HIV/AIDS from a viewpoint of global health security.