



**Joint Submission to the Human Rights Council  
at the 42<sup>nd</sup> Session of the  
Universal Periodic Review**

Fourth Cycle

**THE REPUBLIC OF KOREA**

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**Submitted by**

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## I. Introduction

1. Duroo- Association for Public Interest law (hereinafter 'Duroo'), GongGam Human Rights Law Foundation (hereinafter 'GongGam'), Dr. Chulhyo Kim and Nationality For All (hereinafter 'NFA') make this joint submission to the Universal Periodic Review (UPR). Given the expertise of the submitters, this submission focuses on the right to nationality and human rights challenges pertaining to statelessness in the Republic of Korea (hereinafter 'ROK').
2. **Duroo**<sup>1</sup> is foundation cooperation established within Jipyong LLC, one of the major law firms in the ROK. Duroo has carried out human rights projects actively and has vast experiences with helping the *pro bono* works of lawyers systematically, in addition to its own attorneys and staff. Duroo has participated in various projects and brought successful strategic litigation, leading to changes in law and policies, including those for migrant children, immigration detention, and refugee status determination procedure in the ROK.
3. **GongGam**<sup>2</sup> is the first non-profit public interest lawyer group in the ROK. Established in 2004, GongGam works extensively on the issues of women, persons with disabilities, migrants and refugees, poverty and welfare, precarious labor, LGBTIQA, business and human rights, children, disaster and human rights, international human rights & public interest law education and promotion of *pro bono*. As of 2022, GongGam has 10 lawyers and 3 activists are working to protect the rights of minorities.
4. **Dr. Chulhyo Kim** is a lecturer and research fellow at Jeonbuk National University. He received MA in human rights from the University of Essex and PhD in sociology from the University of Sydney. His research interests are statelessness, universal birth registration, citizenship, migrant rights and social movements.
5. **NFA**<sup>3</sup> is a not-for-profit organization that aims to promote the right to nationality and address statelessness through research, advocacy, and capacity building in the Asia Pacific region. NFA was formed from the work undertaken by the Statelessness Network Asia Pacific (SNAP)<sup>4</sup> over four years to build a regional civil society

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<sup>1</sup> See more: <http://duroo.org/>

<sup>2</sup> See more: <https://www.kpil.org/thri/about-us/eng/>

<sup>3</sup> See more: <https://nationalityforall.org/>

<sup>4</sup> See more: <https://namati.org/network/organization/statelessness-network-asia-pacific/>

movement on addressing statelessness in the region.

6. This submission focuses on the issue of universal birth registration, arrival of stateless persons in the ROK and lack of reliable statistics relating to stateless person in the ROK.

## **II. Previous UPR of the Republic of Korea under the Third Cycle**

7. During the third UPR cycle, the ROK received 218 recommendations from 95 states, accepting 121 and taking note of 97 of them. Out of these, 7 are directly relevant to the matters relating to statelessness. This submission focuses on the said recommendations along with other issues related to statelessness.<sup>5</sup>
8. During the 2017 review, Peru, Iran, Kyrgyzstan and Turkey recommended the ROK to *adopt a universal system for birth registration, which includes children of refugees, asylum seekers and stateless persons regardless of the status of their parents.* (Recommendation 132.120, 132.118, 132.119 and 132.121 respectively). Sierra Leone recommended the ROK to *"national birth registration system for foreign nationals to ensure the births of their children are registered"* (Recommendation 132.123) and Botswana recommended the ROK to *"establish a national birth registration system to register all births in Korea irrespective of the nationality of parents"* (Recommendation 132.124). Similarly, Kazakhstan recommended the ROK to *"consider establishing a system which guarantees all children, regardless of the parents' nationality and status, the right to birth registration"* (Recommendation 132.122).
9. The ROK supported only 1 recommendation related to statelessness that was recommended by Kazakhstan and noted 6 others.

## **III. International obligations of Republic of Korea**

10. The ROK as a member of the United Nations is obligated by the Charter of the United Nations to promote *"universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion"*. Furthermore, the right to a nationality is included in Article 15 of the Universal Declaration on Human Rights.

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<sup>5</sup> Hereinafter, the number and the recommending state refer to UN Doc. A/HRC/37/11 of 27 November 2017

11. The ROK has acceded to 7 of the 9 core human rights treaties, of which it has signed 4, including the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter "CEDAW"), International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter "CERD"), Convention on the Right of the Child (hereinafter "CRC") and Convention on the Rights of Persons with Disabilities (hereinafter "CRPD"). Of the 7 core treaties ratified, many guarantee the right to a nationality for all on a non-discriminatory basis. These include, Article 24(2) and 24(3) of the International Covenant on Civil and Political Rights (hereinafter "ICCPR"); Articles. 2(2) of the International Covenant on Economic, Social and Cultural Rights (hereinafter "ICESCR"); Articles 2, 3, 7 and 8 of the CRC; Article 9 of CEDAW; Article 5(d)(iii) of CERD and Article 18 of the CRPD.
12. Of particular significance is Article 7 of CRC, which provides for every child's right to be registered immediately after birth and to acquire a nationality- protecting all children from statelessness. The ROK is also obligated to guarantee all rights enshrined in ICESCR without discrimination of any kind, including on the basis of "*race, colour...national or social origin...birth or other status*".
13. Furthermore, in its concluding observation of 2019, Committee on Right of Child urged the ROK " to ensure that birth registration, including online, is universal and available to all children regardless of their parents' legal status or origins"<sup>6</sup> and "To remove all barriers, both legislative and practical, to ensure that all asylum-seeking, refugee and migrant children, including unaccompanied children and those with disabilities, have access to birth registration, childcare, education and related services, mental and physical health-care services, health insurance, financial and housing support, leisure, protection and support services in case of abuse on an equal basis with children who are nationals of the Republic of Korea"<sup>7</sup>
14. Lastly, the Committee on the Elimination of all Forms of Discrimination Against Women in its Concluding Observation noted that "The absence of a universal, compulsory birth registration system in the State party, which puts children of undocumented migrant women, in particular undocumented unmarried migrant women, at risk of statelessness..."<sup>8</sup> and recommended the ROK to " adopt and implement the laws and

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<sup>6</sup> Concluding observations on the combined fifth and sixth periodic reports of the Republic of Korea, CRC/C/KOR/CO/5-6 of 24 October 2019, para 22(a).

<sup>7</sup> Ibid, Para 43 (c)

<sup>8</sup> Concluding observations on the eighth periodic report of the Republic of Korea , [CEDAW/C/KOR/8 of 14 March 2018](#), Para 34 (a)

procedures necessary for the registration of children born to foreign parents, including compulsory birth registration by hospitals and health-care professionals".<sup>9</sup>

15. In addition to the human rights treaties, the ROK acceded to the 1954 Convention relating to the Status of Stateless Persons in August 1962 but is not a party to the 1961 Convention on the Reduction of Statelessness.
16. The ROK has not made any reservations to CEDAW or CRC, which contain important protections against gender discrimination in nationality law (CEDAW Article 9) , the right of a child on the prevention of childhood statelessness (CRC Articles 7 and 8).
17. Article 6(1) of the Constitution of the ROK states that '*treaties duly concluded and promulgated under the constitution and the generally recognized rules of international law shall have the same effects as the domestic laws of the ROK*'. As such, these treaties impose a strict human rights regime on the ROK whereby the state has accepted obligations to ensure gender equality and non-discrimination and to safeguard against statelessness.
18. Many of the challenges and gaps highlighted in this submission reflect the ROK's failure to respect, promote, protect and fulfil fundamental human rights, as enshrined in the various treaties to which it is a party to, as well as the persistent failure to implement the recommendations made to the ROK under the previous UPR and by various UN Treaty Bodies.

#### **IV. Statelessness in Republic of Korea**

19. In the ROK, the immigration statistics show that there are two types of stateless people. The first are the stateless persons whose statelessness were previously determined by another state and arrived in the ROK with 'travel document' and 'foreigner entry permit'. The other is the '*in situ*' stateless persons who were rendered stateless in the ROK. However, the term 'stateless persons' used in the immigration statistics is not produced in accordance with the definition of stateless persons as provided by the 1954 convention.<sup>10</sup> Thus there is no reliable data on the actual number of the stateless persons in the ROK, which has been dealt in detail in the latter sections of this submission.

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<sup>9</sup> Ibid, para 34 (e)

<sup>10</sup> Chulhyo Kim and Seori Choi, *Mapping Statelessness in the Republic of Korea*, UNHCR, available at <https://www.refworld.org/docid/61dc11a34.html>, pp. 58-9. (The report provided in an annex).

20. There are stateless people whose domicile in the ROK is legal (in the case of people whose naturalization permission has been revoked due to disguised marriage but have not recovered their original nationality, or children of North Korean defectors born abroad, such as in China). However, they are staying under a visa which does not recognize their statelessness status, so they are not protected under the 1954 Convention. Questions can thus be raised at the proper implementation of the 1954 Statelessness Convention.
21. Various laws, such as the Immigration Act, 2014 and the Nationality Act, 2008 will need to be amended to guarantee the status and rights of stateless persons as stipulated in the 1954 Convention. The most urgent task is the introduction of a 'Statelessness Determination Procedure'. To protect the rights and legal status of persons under the 1954 Convention, a procedure for recognizing statelessness by the Contracting State is of utmost importance.
22. Till date, no legislative attempt has been made although a report on the statelessness determination procedure was presented by the UNHCR Korea and civil society in 2021<sup>11</sup>.
23. According to the official statistics of the ROK government, the number of stateless persons among foreigners (registered foreigners) for the past 10 years is estimated to be around 100 each year. However, there is no concrete statistics available as there is no stateless determination procedure in the ROK. Similarly, the UNHCR reported that there are 204 stateless persons in ROK in 2021.
24. As a measure to implement the 1954 Convention, the ROK should promptly introduce the statelessness determination procedure and join the 1961 Convention.

## **V. National Law**

25. Since the signing of the 1952 convention in 1962, the ROK has made no effort to implement the provisions of the 1954 convention into their domestic legislation. There are no legal provisions under the domestic law regarding the definition, recognition, and reduction of stateless persons.

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<sup>11</sup> UNHCR, *Republic of Korea: Comparative Study on Statelessness Determination Procedures*, available at <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=61e00d084> (In Korean). The executive summary of the report is available in English at: <https://www.refworld.org/docid/61e00c414.html>

26. Article 6(2) of the Constitution of the ROK provides that 'the status of aliens shall be guaranteed as prescribed by international laws and treaties'. Hence, the 1954 Convention is already considered as a part of the ROK's legislation in accordance with the constitution. However, the lack of definition of statelessness in the domestic law poses a major barrier to implement the related rules or the management of related statistics on statelessness.<sup>12</sup>
27. Further, the Nationality Act of the ROK provides for several ways to attain the ROK nationality. Article 2(1) of the act stipulates that 'a person who was born in ROK, if both of the parents are unknown or have no nationality' shall be a national of ROK at birth. Similarly, Article 2(2) provides that 'an abandoned child found in the ROK shall be recognized as born in the ROK', thus eligible for the ROK nationality.
28. The Nationality Act also provides other ways to attain the ROK nationality. Foreigners, including stateless persons, may attain the ROK nationality by 'naturalization' (Article 4) or 'reinstatement of nationality' (Article 9) if they are a former the ROK national. As per Article 20, the 'persons with undetermined nationality' may obtain the ROK nationality through the 'determination of nationality' procedure. However, this procedure only determines if the person is a national of the ROK or not and does not determine their statelessness status. Hence, rendering a person stateless if they are determined not to be a non-ROK national.<sup>13</sup>
29. Additionally, the ROK adopts *jus sanguinis* principle of nationality, thus the children of refugees workers born in the ROK cannot acquire the ROK nationality automatically. Since, ROK is not a state party to the 1961 convention the international obligation for the reduction of statelessness is not implemented in the territory of the ROK. Consequently, many refugee children born in the ROK are at a risk of being stateless.<sup>14</sup>

## **VI. Key Issues, challenges and recommendations**

### **Issue 1: Universal birth registration**

1. The current birth registration system in the ROK requires parents with Korean

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<sup>12</sup> See. Para. 44-49 of this submission.

<sup>13</sup> Chulhyo Kim and Seori Choi, Op. Cit. p. 19.

<sup>14</sup> Ibid, p 51.

nationalities to report the birth of their child. As a result of the amendment of the Act on the Registration of Family Relationship in 2016, the prosecutors or the heads of local governments may report the birth where parents fail to file a report within a specified period. The government claims that it has made efforts to ensure universal birth registration by having a monetary penalty provision under the Act. However, the Act does not provide for any monitoring mechanism to check the parents' compliance with their birth registration obligations.

2. In 2022, the government proposed the Amendment bill to mandate all healthcare providers to notify births of children to the national institution and, the bill is still pending in the National Assembly. Moreover, even if the bill is successfully passed, the birth notification system does not apply to undocumented migrant children of parents without alien registration numbers, or medical benefits management numbers under the Framework Act (2012) on the Social Security.
3. Since the current birth registration system excludes children without the ROK nationalities, migrant children born in the ROK face greater restrictions on exercising their right to register the births. First of all, refugees, humanitarian status holders, and refugee applicants find it difficult or impossible to report their children's birth to a governmental agency of their home country. Also, children of undocumented migrants face practical barriers to registering their births in the embassies of their parents' country. Because the Korean government routinely request sending countries to make efforts to reduce the number of undocumented migrants, embassies of such countries often place obstacles to the undocumented migrants in reporting their children's birth, such as confirming their documented status first or demanding to return to their country for birth registration. Cases of requiring excessive fees for undocumented migrants have also been reported.
4. As such, the government of the ROK is effectively blocking all registration of these children's birth, by denying them alien registration and also by hindering birth registration at the embassies of their parent's home country. In addition, there are more than 30 countries without their embassies in the ROK making it practically impossible for the parents to register the birth of their child in their home country.
5. To date, even the acknowledgement of unregistered migrant children are non-existent. Since the universal birth registration is not possible without the acknowledgement of the existence of unregistered migrant children. A proper system needs to be established

that include the registration of the birth of the unregistered migrant children as well.

6. The ROK government has claimed that it would introduce the birth registration system for non-Korean children born in the ROK. Recently, it was announced that the Ministry of Justice would manage the birth registration of migrant children, and share the relevant information with the Korea Immigration Service, raising concerns over the absence of a “firewall” for undocumented migrants.<sup>15</sup>

## **Issue 2: Types of stateless persons in the ROK**

7. Two groups of stateless persons who have arrived in the ROK are of particular concern: 1) ethnic Chinese who had resided in the Democratic People’s Republic of Korea (hereinafter “DPRK”), 2) ethnic Koreans who resided in Japan claiming *Joseon* nationality.
8. According to recent news reports, at least 30 former DPRK residents of Chinese descent are stranded in the ROK and are stateless.<sup>16</sup> When DPRK residents “escape” from DPRK and seek protection and resettlement assistance in the ROK, they are required to go through the intelligence agency’s “joint investigations” and nationality recognition process as determined by the ROK laws.<sup>17</sup> If the persons are identified as having lived in DPRK without acquiring other nationality, they are automatically recognized as ROK national in accordance with Article 3 of the Constitution and the Supreme Court decision<sup>18</sup> (2011Du24675). Otherwise, they are expected to return to their home country as their nationality is identified. However, if the Chinese government refuses to recognize them as Chinese nationals as they have failed to maintain family registration, their nationality becomes undetermined. Since there is no statelessness determination process in the ROK, they are 'stateless', but remain stranded.
9. The former DPRK residents who are allegedly ethnic Chinese remain in the ROK as temporary visa holders without due protection for stateless persons. Having no access to the statelessness determination process in the ROK, some of them applied for the determination of refugee status with no success.

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<sup>15</sup> The Korea Herald, “Advocates welcome plan for birth registration system for Korea-born foreign children”, 18 Feb 2021, available at <http://www.koreaherald.com/view.php?ud=20210218000769>

<sup>16</sup> JTBC News. 2021. “Stateless ‘North Korean residents with Chinese ethnicity’, the first ever ‘refugee-status’ determination next month.” JTBC News, 22 July 2021 available at [https://news.jtbc.joins.com/article/article.aspx?news\\_id=NB12017193](https://news.jtbc.joins.com/article/article.aspx?news_id=NB12017193) (In Korean).

<sup>17</sup> Act on the Protection and Settlement Support Residents Escaped from North Korea and Nationality Act.

<sup>18</sup> Supreme Court of Korea, held in 2016. 1. 28. 2011Du24675, available at [https://www.law.go.kr/%ED%8C%90%EB%A1%80/\(2011%EB%91%9024675\)](https://www.law.go.kr/%ED%8C%90%EB%A1%80/(2011%EB%91%9024675)) (in Korean).

10. The children born to the former DPRK residents of Chinese descent in the ROK are at the risk of statelessness. The Nationality Act of the ROK provides that the children born to stateless persons in the ROK are eligible for the ROK nationality. However, as their parents cannot be recognized as stateless persons due to the lack of statelessness determination process, the children have no access to the ROK nationality either.
11. According to the official statistic of the Japanese government, there were 29,559 ethnic Korean residents of *Joseon* nationality as of 2018. These ethnic Koreans had voluntarily or forcibly migrated to Japan during the colonial period; and they remained in Japan after the Second World War. When Korea was divided into two countries in 1948 (the ROK and the DPRK), they refused to select either nationality but claimed that they would maintain the old one, *Joseon*. With no legal status of the *Joseon* nationality, they are now stateless.
12. The ROK government's policy on ethnic Koreans of *Joseon* identity has been problematic especially when they seek to visit the ROK. In 2010, the Ministry of Justice of the ROK announced that the *Joseon* people in Japan are ROK nationals. Accordingly, the Korean government issued temporary travel documents, which was designed for nationals, for those who wanted to visit ROK. For those who wanted to stay longer than 90 days, however, the government required the *Joseon* people in the ROK to acquire ROK passports, which faced the resistance of those who wanted to maintain their identity as *Joseon* people rather than ROK nationals.<sup>19</sup>
13. In 2010, the ROK government discontinued the issuance of travel documents for the *Joseon* people who wanted to visit the ROK. Then, the ethnic Koreans of *Joseon* identity challenged the ROK government and as they filed lawsuits against the government, the Ministry of Foreign Affairs claimed the *Joseon* people are "stateless" not ROK nationals, which contradicts the previous announcement of the Ministry of Justice. The High Court accepted the Ministry's claim and confirmed the *Joseon* people are "stateless" and not entitled to the travel documents for nationals.<sup>20</sup>
14. The ethnic Koreans in Japan who maintain *Joseon* identity remain stateless, having very limited access to entry into the ROK territory.

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<sup>19</sup> Chulhyo Kim and Seori Choi, Op cit. pp.35-7.

<sup>20</sup> Ibid. pp.38-9.

15. According to the Immigration Statistics 2020, 75 foreigners of 'other'<sup>21</sup> nationality, most of who are stateless, are of 'illegal' or undocumented visa status. As the ROK laws provide no personal status, gainful employment, or welfare services to undocumented migrants, the stateless persons of 'illegal foreigner' status are deprived of the rights stated in the 1954 Convention.

### **Issue 3: Unavailability of reliable statistics**

16. The immigration statistics of the ROK is the only official source of data on the stateless population. According to the immigration statistics, at least 231 stateless persons stay in the ROK as of December 2020. 55 are categorised as 'short-term' visa holders who are expected to stay in the ROK no longer than 90 days, while 176 are 'long-term' visa holders.<sup>22</sup>

17. While the immigration statistics of the ROK is considered to be relatively reliable, the data of stateless-population is in question mainly due to two reasons: 1) the absence of official definition of the 'statelessness' category in the immigration statistics, 2) the inconsistent practice of immigration authorities in handling nationality-record related data.

18. As the ROK laws stipulate no official definition of 'statelessness' or the statelessness determination procedures, there is no legal ground to recognize someone as 'stateless' in the immigration statistics. Although the government of the ROK does not provide details of the data, it can be assumed that the 'stateless' data of the immigration statistics records two types of stateless person: 1) the stateless persons whose statelessness status were previously determined by another State and arrived in the ROK with the travel document and foreigner entry permit (visa), 2) the stateless persons who were rendered stateless in the ROK. While the first group may be recorded in arrival-departure data and accordingly foreign-resident data, there is no legal ground for the second group to be recorded in the immigration statistics because of the lack of stateless determination process in the laws.

19. The inconsistent practice of handling statelessness data is obvious when the ROK's immigration authority's publications of the immigration statistics are scrutinised. While

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<sup>21</sup> The Immigration Statistics of 2020 of ROK has not categorized people as undermined nationalities or stateless. It is rather put under the 'other' category.

<sup>22</sup> Chulhyo Kim and Seori Choi, Op cit p.74.

the *Immigration Statistics* of year 2019<sup>23</sup> presents the subcategories of ‘statelessness’, ‘unregistered state’ and ‘unknown’ under ‘Others’ category nationality of foreign residents, the *Immigration Statistics* of 2020<sup>24</sup> shows only the ‘Others’ category.

20. It is highly likely that some of the immigration statistics of stateless persons are produced on the basis of arbitrary categorization of stateless or non-stateless persons, since there is no clear set of guidelines about how to record the nationality of undetermined nationality or statelessness. Immigration officials in charge of ‘foreigner registration’ have allegedly made arbitrary categorizations for the nationality of foreigners in some peculiar circumstances. According to a testimony of refugee family, a child born to the parents of refugee or asylum-seekers in the ROK, who had access to birth registration neither at the consulate authority of their parent’s nationality nor the ROK’s government agency, was recorded as the nationality of his/her parent’s nationality by an immigration official in charge of foreign registration. Although the child is either stateless or of undetermined nationality, the ROK’s immigration official arbitrarily categorized him/her as non-stateless. This case implies the possibility that the statelessness was not appropriately counted.
21. As the statelessness data of the ROK’s immigration statistics is not reliable, a systematic scrutiny is required to follow the legislation of statelessness definition and statelessness determination process.

## **VII. Recommendations**

22. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to the Republic of Korea:
- I. Introduce the universal birth registration system that guarantees every child born within the jurisdiction of the ROK to be officially registered, regardless of their own or their parents’ nationality, race, religion, or legal or social status.
  - II. Ensure a proper firewall in recording the birth registration of children of undocumented migrants through a neutral body, such as the National Court Administration, to prevent the Korea Immigration Service from accessing the related information.

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<sup>23</sup> Korea Immigration Service. 2020. *Korea Immigration Service Statistics 2019*. Korea Immigration Service of Ministry of Justice, attached excel file 15.

<sup>24</sup> Korea Immigration Service. 2021. *Korea Immigration Service Statistics 2020*. Korea Immigration Service of Ministry of Justice, attached excel file Chapter 2\_I\_1.

- III. Develop and introduce a legislative statelessness determination procedure, ensuring that the procedure is fair, effective and accessible to all persons in the ROK regardless of their legal status. The procedure should comply with international standards of due process and follow the procedural safeguards outlined in UNHCR's Handbook on Protection of Stateless Persons.
- IV. Ratify and fully implement the 1961 Convention on the Reduction of Statelessness.
- V. Develop a legislation for the implementation of the 1954 convention defining statelessness;
- VI. Take concrete steps to improve the recording of statelessness, namely by harmonising quantitative data on stateless persons and ensuring that the statistical categories cover the entire stateless population in the ROK, including children at risk of becoming stateless.
- VII. Legalize all undocumented stateless persons and grant full access to gainful employment.
- VIII. Ensure the right to gainful employment and social welfare of the stateless persons in the ROK