



Shouldering Responsibility

Reviewing South Korea's
Refugee Status Determination
procedures seven years after
the implementation of the
Refugee Act

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NANCEN Refugee Rights Center is a South Korean non-governmental organisation striving to create a society in which refugees can lead a human life based on the dignity and inalienable rights of every human being. It is committed to identifying and seeking solutions to problems in refugee laws and practices in South Korea.

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Executive summary

The implementation of the Refugee Act in 2013 established a clear legal process for assessing refugee applications in South Korea and demonstrated the Government's commitment to "shouldering greater responsibility in the arena of global refugee policy".¹

Rights Exposure and NANCEN Refugee Rights Center (NANCEN) undertook the current research to review how effective South Korea's Refugee Status Determination procedures set up under the Refugee Act are in ensuring the protection of refugees. The primary sources of information for this research is data provided by the Ministry of Justice and qualitative interviews with 10 refugee applicants, which were conducted by NANCEN in Seoul between July 2019 and April 2020.

Recognition rates

Between 2014 and 2019, the percentage of applicants granted some form of protection was 10%, with a mere 2% receiving grants of refugee status. These recognition rates include appeals and are much lower than those generally seen in other countries. For example, in 2018, the 28 European Union (EU) countries granted some form of protection to 37% of applicants at the initial decision and an additional 38% were granted on appeal.²

A comparison of recognition rates for just the five countries from which most refugee applications in South Korea come (China, Kazakhstan, Pakistan, Russia and Egypt) still shows a significant disparity. For example, in 2019, the UK³ granted 27% of applicants from these five countries some form of protection at the initial determination and a further 30% of those who made appeals were also given protective status.

In addition, 60 out of 79 grants of refugee status made in 2019 were for resettlement or family reunion. This means that just 19 individuals were recognised as refugees based on an assessment of the merits of their claim by the Ministry of Justice. Furthermore, South Korea's total grant rate of 10% (2014-19) does not include:

- **Non-referrals at pre-assessment screening.** Applications made at a port of entry must go through a screening process to decide whether they can be referred into the Refugee Status Determination procedures. This screening is not a substantive consideration of an applicant's reasons for seeking protection, but there are indications that officials are making decisions on the merits of an individual's claim without providing the applicant with a proper opportunity to make their case. In 2019, around 90% of those who were screened at ports were refused with just 13 cases being allowed to enter the Refugee Status Determination procedures.

¹ Korea Immigration Service, *Refugee Status Determination Procedures in Korea: Handbook for Recognized Refugees, Humanitarian Status Holders, and Refugee Status Applicants*, April 2015, p4.

² See Eurostat newsrelease: [https://ec.europa.eu/eurostat/documents/2995521/9747530/3-25042019-BP-EN.pdf/22635b8a-4b9c-4ba9-a5c8-934ca02de496#:~:text=In%202018%2C%20almost%20582%20000,final%20decisions%20following%20an%20appeal.](https://ec.europa.eu/eurostat/documents/2995521/9747530/3-25042019-BP-EN.pdf/22635b8a-4b9c-4ba9-a5c8-934ca02de496#:~:text=In%202018%2C%20almost%20582%20000,final%20decisions%20following%20an%20appeal.,), accessed 17 June 2020.

³ The UK is used as a comparator as it, like South Korea, is an OECD member country, which also received refugee applications from all these countries. See: <https://www.gov.uk/government/statistical-data-sets/asylum-and-resettlement-datasets#asylum-applications-decisions-and-resettlement>, accessed 19 April 2020.

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- **Withdrawn applications.** In 2019, 4,139 applications were categorised as “withdrawn”, but nearly two-thirds of these cases were cancelled by the Ministry of Justice. While an application can be terminated if the applicant “fails to appear at least three consecutive times” for an interview, one interviewee had his application cancelled without even having received notification of their interview. This raises the concern that cases are being dismissed before the merits of an application have been considered.

The fact that 75% of applicants who were granted protection in 2019 received humanitarian status rather than refugee status is also significant as those with humanitarian status are only given a visa for up to one year and receive the same extremely limited support that was available to them when they were refugee applicants.

Policy and practice issues in the initial determination procedure

Resourcing and delays in deciding refugee applications

In 2019, there were 65 officials employed to review refugee applications at the initial decision stage. This is not sufficient to keep pace with the number of applications, which is currently over 15,000 a year. This has resulted in a significant backlog with 22,321 people awaiting an initial decision at the end of 2019. Applicants had to wait over a year on average in 2019 to receive a decision on their application, despite the Refugee Act stating that decisions must be made within six months.

Prejudicial behaviour by officials

Interviewees reported that Immigration officers displayed prejudiced and hostile attitudes towards applicants; did not examine the merits of their case; prevented them from providing evidence to support their application; and even falsified the interview transcript. This behaviour is incompatible with a fair determination procedure and is likely to lead to many individuals with well-founded fears of persecution not being recognised as such.

Professionalism of interpreters

The role of an interpreter is to translate exactly what is being said without additions or omissions. However, several interviewees provided examples of interpreters intervening in the process to decide what should or should not be translated. Interviewees also raised concerns regarding the professional standards of some interpreters' work. Inappropriate behaviour and/or translation errors are likely to lead to key information being excluded or misrepresented at the interview and this in turn could result in flawed decisions.

Access to information and submitting evidence

There is no legal aid available to pay for professional advice and therefore most applicants are entirely dependent on officials for information on how the process works. However, interviewees indicate that many officials do not explain even the basics of the procedures, let alone assist applicants to ensure they make their case for protection as well as they can. There is also a lack of information about how to submit evidence, as well as inconsistencies among officials regarding what evidence is permissible and in what format.

Issues in the appeals process

Appeal recognition rates are extremely low, with just 50 individuals being granted refugee status between 2016 and 2019 out of 13,452 appeals (a recognition rate of 0.4%). In 2019, there were just three successful appeals out of 3,478 applications.

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The appeals process suffers from chronic under-resourcing. The Refugee Committee, which is responsible for reviewing appeals, is made up of just 15 people and in 2019, it reviewed 580 appeals on average at each meeting. It is difficult to have confidence in an appeal procedure in which just over a dozen people are responsible for reviewing the details of hundreds of cases in a single day.

The research also found that applicants have little understanding of how the appeals process works, as reflected in the fact that more than one interviewee tried to re-submit the same documents they had provided for the initial determination for appeal on the same day that they received their refusal. Even if applicants were better informed about what was required of them, it is still difficult to appeal a decision when the refusal letters often provide no concrete details as to why a claim was rejected beyond stating that the applicant did not have a well-founded fear of persecution.

Meeting living expenses during the determination process

Interviewees described how they were unable to access support and struggled to meet their subsistence needs. While refugee applicants can apply for support with living expenses and access to residential accommodation, just 542 applicants received living expenses and only 84 people were housed in Government accommodation in 2019, even though these facilities were only operating at 51% of their capacity. Given that there were over 15,000 applications in 2019, this suggests that most refugee applicants are either not aware of their entitlement to apply for support or do not know how to do so.

Refugee applicants also face additional costs the longer their case remains unresolved as they have to pay KRW 60,000 (US\$50) each time they need to extend their visa. In 2019, there were 4,974 applicants who had to extend their visa more than three times because the Government had not made a decision on their case.

Recommendations

Seven years on from the enforcement of the Refugee Act, there are implementation issues which are putting the safety and well-being of refugees at risk. In this context, we urge the Government of South Korea to consider the following recommendations:

- The Ministry of Justice should set up a review, in conjunction with the UNHCR and relevant civil society organisations, to identify policy and practice issues, which are contributing to poor quality decisions and an extremely low recognition rate for refugee applicants in both the initial determination and appeals procedures. This review should include an appraisal of training procedures and measures in place to ensure that particularly vulnerable applicants (minors, unaccompanied children, survivors of torture or sexual violence, those with disabilities, etc.) are supported to present their claims to the best of their ability.
- The budgets for both the initial and appeal determination procedures must be significantly increased and additional staff employed in both stages of the process to ensure that good quality and timely decisions are made on all applications.

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- The merits of an individual's case should not be reviewed in a pre-assessment screening. This should only be used to establish straight forward facts, which mean that the individual should not enter the Refugee Status Determination procedures.
- Officials who display prejudiced or hostile attitudes to refugee applicants or act in a way that is incompatible with the provisions of the Refugee Act should be provided with the necessary training and/or disciplined, as appropriate.
- Measures should be taken to ensure that all interpreters working in the Refugee Status Determination procedures conform to the highest professional standards, both in terms of their personal conduct and the quality of their work.
- Clear guidance and training must be provided to Refugee Status Determination officers to ensure that refusal letters provide specific and detailed reasons for concluding that the refugee applicant is not at risk of persecution or other forms of serious harm, including appropriate reference to country of origin information.
- Refugee applicants need to be provided with better quality advice and assistance at all stages of the determination process (e.g. how to make an application/appeal, what information is required from them, what evidence should be submitted and in what format, how to access living expenses, etc.). This should be provided by both Immigration officers and qualified civil society organisations.
- There should be greater access to free legal advice for refugee applicants at both the initial determination and appeal stages.
- All refugee applicants should be provided with copies of the recording of their interview immediately on request.
- Immigration Officers must ensure that applicants have received an invitation to attend an interview before concluding that a failure to attend is an act of non-compliance.
- The eligibility criteria for accessing living expenses and accommodation support should be clear and publicly available. The level of support provided to meet living expenses should be increased and those qualifying should have their living expenses backdated to the date when they made their application for support.
- Visa extensions, which are required because a decision has not been taken on a claim within six months should be provided free of charge.
- The criteria for granting humanitarian status should be clearly defined and made publicly available. Those granted humanitarian status should be provided with the same rights and entitlements as refugees.

Introduction

The Republic of Korea (South Korea) ratified the 1951 Refugee Convention and the 1967 Protocol relating to the Status of Refugees (the Refugee Protocol) in 1992. However, it was only with the enactment of the Refugee Act (Law No.11298) on 10 February 2012 and implementation the year after on 1 July 2013 that a clear legal process was established for processing refugee applications.

Rights Exposure and NANCEN Refugee Rights Center (NANCEN) have undertaken the current research to review how effective the procedures set up under the Refugee Act are in ensuring human rights protection for refugees and to consider what challenges the system faces seven years after its introduction.

Information was gathered for this report through a literature review, information requests submitted to the Ministry of Justice, and semi-structured interviews with 10 individuals who had applied for asylum in South Korea. The qualitative interviews were conducted by NANCEN in Seoul between July 2019 and April 2020 with people whose cases were still active between 2017 and 2020 and had approached NANCEN for assistance. Six of the interviewees were men and four were women and their countries of origin were Burundi, China, Egypt, Pakistan, Rwanda and Yemen. To protect the interviewees and their families in the country of origin, the names of interviewees have been changed.

Overview of the Refugee Status Determination procedures⁴

The Ministry of Justice is the governmental department responsible for the Refugee Status Determination procedures. Its Refugee Division was set up in 2013 to implement refugee policies and officers from the Korea Immigration Service (also under the Ministry of Justice) administer the process.

Those seeking refugee status must make a written application to the Ministry of Justice and all applicants are interviewed by Korean Immigration Service officers prior to a decision being made on their case. Those granted refugee or humanitarian status are entitled to stay in South Korea (see below for the differences in the terms of the stay under each status). Those refused protection have 30 days in which they can appeal the decision and are permitted to remain in South Korea until the appeal procedure is concluded.

Those seeking refugee status can apply at ports of entry as well as Immigration Offices, Immigration Branch Offices and Immigration Detention Centers. Those applying at ports of entry must go through an additional screening process before they are allowed to enter South Korea and submit their official application (see Appendix 1 for a flow diagram of the refugee determination process).

An applicant for refugee protection who has had their initial application and/or appeal refused, or who was screened at the port of entry and not given permission to enter the country to make a substantive claim for protection, can also seek a judicial review of that decision.

⁴ For further details see: Korea Immigration Service, *Refugee Status Determination Procedures in Korea: Handbook for Recognized Refugees, Humanitarian Status Holders, and Refugee Status Applicants*, April 2015.

Recent trends in refugee applications and recognition rates

Between 1994 and 2019, 64,358 people applied for refugee status in South Korea. The top five countries of nationality were China (6,840), Kazakhstan (6,542), Pakistan (6,178), Russia (5,813) and Egypt (4,228). During this period, a total of 29,270 decisions were made on refugee applications, of which 1,022 individuals were granted refugee status (3% of all decisions) and 2,216 were given humanitarian status (8% of all decisions).⁵ This means that since South Korea ratified the UN Refugee Convention in 1992, it has granted some form of protection to just 11% of all those that applied for refugee status.⁶

Looking at the data since the passage of the Refugee Act, it can be seen that 57,716 applications (89% of all applications made since 1994) were made between 2014 and 2019. The percentage of applicants granted some form of protection between 2014-19 was 10%, with just 2% receiving grants of refugee status, slightly lower than that recorded for the whole 1994-2019 period (see Appendix 2 for details of the determination statistics as provided by the Ministry of Justice).

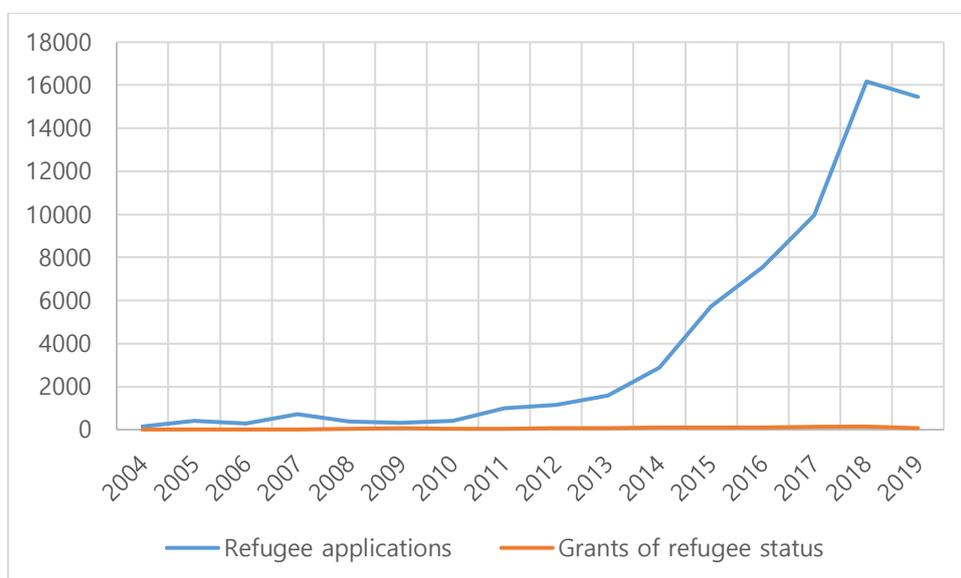


Figure 1: Refugee applications and grants of refugee status, 2004-2019⁷

These recognition rates are significantly lower than those generally seen in other countries. For example, in 2018, the 28 European Union (EU) countries took a total of 581,955 first instance decisions on asylum applications, which resulted in grants of some form of protection to 217,400 applicants – a recognition rate of 37%. Furthermore, of those granted some form of protection, more than half (56%) received full refugee status.⁸

⁵ Information provided to NANCEN by the Ministry of Justice on 27 March 2020 and 20 May 2020.

⁶ These recognition rates do not include applications which were either cancelled by the Ministry of Justice or withdrawn by the applicant or those who were not allowed to enter the Refugee Status Determination procedures after going through a pre-assessment screening at the port of entry. If these statistics were also included, the recognition rate would be even lower.

⁷ Information provided to NANCEN by the Ministry of Justice on 14 June 2012, 31 May 2013, 24 June 2015, 5 Feb 2017, 7 March 2018, 7 March 2019 and 27 March 2020.

⁸ See Eurostat newsrelease: <https://ec.europa.eu/eurostat/documents/2995521/9747530/3-25042019-BP-EN.pdf/22635b8a-4b9c-4ba9-a5c8-934ca02de496#:~:text=In%202018%2C%20almost%20582%20000,final%20decisions%20following%20an%20appeal.,> accessed 17 June 2020.

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Moreover, the South Korean recognition statistics include those who have been recognized on appeal or judicial review, while the statistics for the EU 28 cited above only refer to the initial determination. If successful appeal statistics were included for other countries their overall recognition rate would increase significantly. For example, in 2018, the EU 28 granted a further 115,955 individuals some form of protective status on appeal. This is equivalent to a 38% recognition rate on appeal.⁹

Some of this disparity in recognition rates could be explained by the type of applications that South Korea is receiving. Refugee applicants from some nationalities will be at greater risk than others due to conditions in the countries of origin and certain groups of nationals will have higher risk profiles than others despite the fact that they are from the same country.

However, even if we just compare recognition rates for the five countries, from which most refugee applications in South Korea have come since 1994 (China, Kazakhstan, Pakistan, Russia and Egypt), we still find that a significant disparity remains. For example, in 2019, the UK granted 27% of applicants from these five countries some form of protection at the initial determination and a further 30% of those who made appeals were also given protective status.¹⁰

Another issue is the Ministry of Justice’s increased use of humanitarian status since the passage of the Refugee Act (see Figure 2). More than three-quarters (2,039 out of 2,680 or 76%) of those granted some form of protection in South Korea between 2014 and 2019 were granted humanitarian status rather than refugee status.

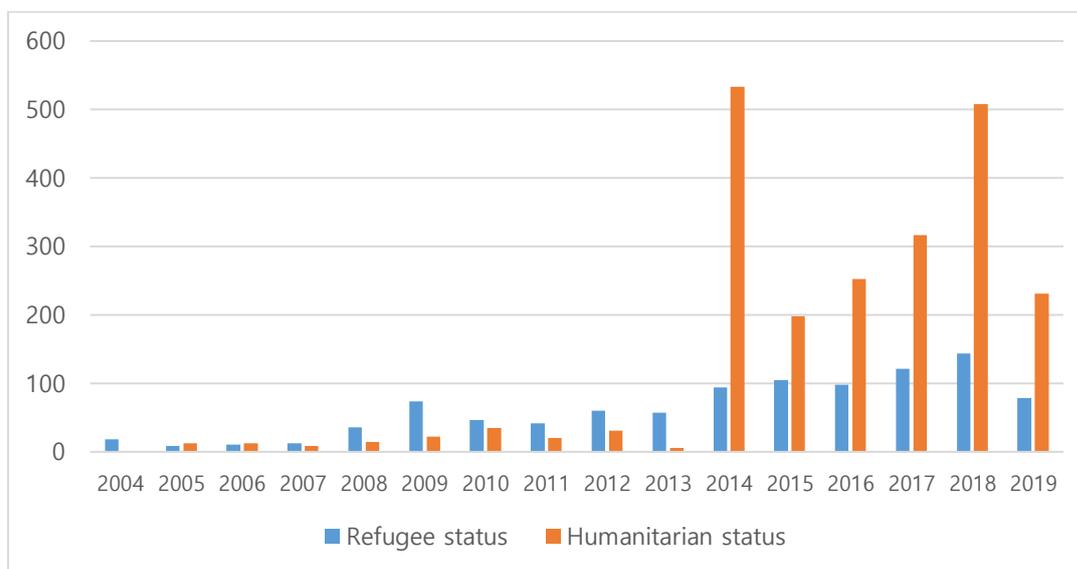


Figure 2: Number of applicants granted refugee status and humanitarian status, 2004-2019¹¹

⁹ See Eurostat newsrelease: <https://ec.europa.eu/eurostat/documents/2995521/9747530/3-25042019-BP-EN.pdf/22635b8a-4b9c-4ba9-a5c8-934ca02de496#:~:text=In%202018%2C%20almost%20582%200000,final%20decisions%20following%20an%20appeal.>, accessed 17 June 2020.

¹⁰ The UK is used as a comparator as it is another OECD country with a roughly comparable GDP and population size, and which also receives applications for refugee status from all these countries. For full data, see: <https://www.gov.uk/government/statistical-data-sets/asylum-and-resettlement-datasets#asylum-applications-decisions-and-resettlement>, accessed 19 April 2020.

¹¹ Information provided to NANCEN by the Ministry of Justice on 14 June 2012, 31 May 2013, 24 June 2015, 5 Feb 2017, 7 March

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This is significant because the entitlements for people granted humanitarian status are very different to those provided to refugees. Refugees are given an F-2 visa which gives them permission to stay and work in Korea for up to three years, after which time they can apply for permanent residence status. Those recognised as refugees can access social security, medical services and primary and secondary education on the same basis as Korean citizens. They also receive social integration education (e.g. Korean language classes) and can bring their spouse and minor children to live with them in South Korea (Articles 30-37 of the Refugee Act).

By contrast, those granted humanitarian status are given a G-1 miscellaneous visa for up to one year and receive the same extremely limited support that was available to them when they were refugee applicants. While they are allowed to work, the temporary nature of humanitarian status makes it extremely difficult for them to get jobs, as potential employers will be reluctant to hire and invest time in someone who could be forced to leave South Korea after a year or even earlier if the South Korean government considers that the situation in their country of origin has improved and it is safe for them to return home. Consequently, those provided with humanitarian status often struggle to survive and cannot feel secure or start rebuilding their lives in South Korea.

As Figure 3 below illustrates, the applicants who are being granted humanitarian status are primarily from Syria and Yemen. In 2019, 195 Yeminites were awarded humanitarian status and only four were given refugee status. This suggests that the Ministry of Justice is using humanitarian status to provide temporary protection to nationals of particular countries when many of the applicants are likely to qualify for refugee status. Such a policy will negatively impact on the ability of these people to integrate and contribute economically and socially, to the detriment of the refugees affected and South Korean society in general.

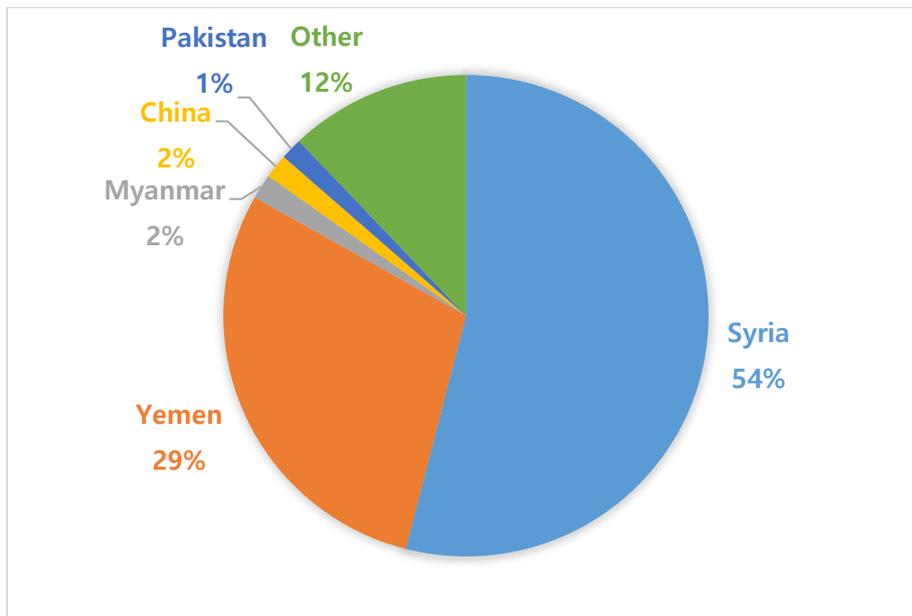


Figure 3: Number of applicants granted humanitarian status by nationality, 1994-2019¹²

2018, 7 March 2019, 27 March 2020 and 20 May 2020.

¹² Information provided to NANCEN by the Ministry of Justice on 27 March 2020.

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The Ministry of Justice statistics on the reasons applicants are seeking refugee protection include the five criteria recognised in the 1951 Convention, namely that the applicant fears persecution based on either their race, religion, nationality, membership of a social group or political opinion.

However, the Ministry of Justice also includes “Family Reunion” and “Other” (e.g. civil war) categories, as Korea Immigration Service officials, upon re-evaluation, can amend the applicant’s reason for seeking refugee protection after the interview. The use of the “Other” category has increased every year since 2013 and, in 2019, nearly half of all applications (48%) were categorised under either “Family Reunion” or “Other” (see Figure 4).

Year	Total	Political opinion	Religion	Race	Specific social groups	Nationality	Family reunion	Other
2013	1,574	289	369	78	63	2	65	708
2014	2,896	595	903	106	169	7	114	1,002
2015	5,711	1,397	1,311	200	721	7	43	2,032 (civil war 428)
2016	7,542	1,360	1,856	601	1,224	38	297	2,166 (civil war 227)
2017	9,942	1,565	2,927	778	1,101	32	267	3,272 (civil war 179)
2018	16,173	2,428	3,764	1,054	1,588	107	492	6,740
2019	15,452	1,934	3,792	758	1,462	118	378	7,010

Figure 4: Refugee applicants’ reasons for seeking protection as categorised by the Ministry of Justice, 2013-2019¹³

It is unclear why South Korean officials would categorise someone’s application under “Family Reunion”. If the individual is seeking to prove that they are at risk of persecution in their own right then it would make sense to record the grounds on which they claim they are being persecuted, as with all other applications. If they are only seeking entry to South Korea so that they can join a family member who has already been granted status, then this would normally be dealt with under separate immigration procedures and would not be processed as an application for refugee status. Similarly, it is not clear what the purpose and criteria are for reclassifying a claim for refugee status under the category of “Other”. The answers to these questions may provide some insights as to why the Ministry of Justice has made such increased use of humanitarian status since 2013.

It has already been noted that the Ministry of Justice is recognising an extremely small number of applicants as refugees. However, a closer examination of the annual data for 2018 shows that of the 144 applicants that were granted refugee status, 60 were granted for family reunion and a further 26 were resettled refugees. This means that in 2018, just 52 individuals (39 at the initial

¹³ Information provided to NANCEN by the Ministry of Justice on 24 June 2015, 5 Feb 2017, 7 March 2018, 7 March 2019 and 27 March 2020.

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decision and a further 13 on appeal) were recognised as refugees based on an assessment of the merits of their claim by Ministry of Justice officials and nearly two-thirds of the grants (60%) were for family reunion and resettlement. In 2019, the ratio was even worse, with 60 out of 79 grants of refugee status (76%) being made for family reunion or resettlement (see Appendix 2).

The data examined above suggests that there are problems in South Korea's Refugee Status Determination procedures, which are contributing to low recognition rates, particularly in relation to refugee status. Policy and practice issues, which could result in errors in the decision-making process, are examined below with regards to each of the main stages of the Refugee Status Determination process.

Pre-assessment screening at ports of entry

Under Article 6 of the Refugee Act, an application for refugee status can be made at an airport or other port of entry. However, those applying at an airport must go through a screening process to decide whether they should be granted "refugee applicant" status and referred into the Refugee Status Determination procedures. The screening process is not a full review of a person's application, but those considered not to have a valid claim are not allowed to enter the formal Refugee Status Determination procedures and are returned to their home country.

The airport screening is, by definition, not a substantive consideration of an applicant's reasons for seeking protection. However, it appears that officials are making decisions on the merits of an individual's application as part of the pre-assessment process without providing the applicant with a proper opportunity to make their case. Salem, an Egyptian man, described his experience as follows:

"When I arrived at Incheon airport, I told the officer that I wanted to apply for political asylum. [...] The officer took me to a room inside the airport where people who applied for asylum waited. While we were walking, he continuously asked me why I was applying for asylum and why I chose Korea. He told me I should wait in this room and someone will come and interview me about my case. Then they will decide whether I can enter Korea or not.

I had to wait 7-8 days in that room. One day, an officer came and called my name. I got out from the room and started filling out a form. While I was filling out the form, the officer kept asking me questions on every single question in the form. I answered him and because of this, it took about 4-5 hours to finish filling out the form. He told me that this was not an official interview so it was not recorded. He was just curious about what I was doing and why I came here. [...]

The next day the same officer called me for an interview. During the interview, I tried to explain everything in detail, but the Tunisian interpreter stopped me and said, 'No, just provide short answers. The officer doesn't want to know everything. This is not an official interview. You will have time to say everything when you enter Korea.'"¹⁴

The full circumstances and details of an applicant's case cannot be properly assessed during the pre-assessment screening process. If officials make a referral decision based on their initial

¹⁴ NANCEN interview with Salem on 21 August 2019.

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conclusion regarding the strength of a person’s application, there is a very real danger that some individuals will be returned to countries where they are at risk of being persecuted or being subject to other serious harm, in violation of South Korea’s obligations under the 1951 Refugee Convention.

While Salem was eventually allowed to enter the determination procedures, more than half of the applications that were screened at the airports in 2018 were refused. In 2019, around 90% of applications that were screened at airports were refused, with just 13 cases being allowed to enter the Refugee Status Determination procedures (see Figure 5). There is no appeal procedure at the screening stage and the only way to challenge non-referral is to seek a judicial review of the decision. However, as the applicant has just entered the country and has very limited access to information or support, the great majority of those refused entry will not know how they can challenge that decision and will be deported back to their country of origin.

Year	Incheon Airport			Gimhae Airport			Jeju Airport			Ulsan Port/Donghae Airport/Gimpo Airport			Total		
	Applicants (App)	Referrals (Ref)	Non-Referrals (NRef)	App	Ref	NRef	App	Ref	NRef	App	Ref	NRef	App	Ref	NRef
2013	25	15	10	-	-	-	-	-	-	1	0	1	26	15	11
2014	71	26	45	70	26	44	-	-	-	-	-	-	141	52	99
2015	393	284	109	6	2	4	1	1	0	-	-	-	400	287	113
2016	168	57	-	7	0	-	11	4	-	-	-	-	186	61	-
2017	184	20	-	2	0	-	11	1	-	-	-	-	197	21	-
2018	394	173	209	2	0	2	118	68	51	2	0	2	516	241	264
2019	162	12	135	3	1	2	22	-	24 ¹⁵	1	0	1	188	13	162

Figure 5: Referrals and non-referrals at ports of entry, 2013-19¹⁶

Pre-assessment screening should only be used to establish straightforward facts, which mean that the individual should not enter the Refugee Status Determination procedures (e.g. the person has previously been refused and their circumstances have not changed or the individual is actually seeking family reunion rather than making a claim in their own right).

Issues in the initial decision on an application for refugee status

Resourcing and delays in deciding refugee applications

The number of refugee applicants more than doubled between 2016 and 2019, increasing from 7,542 to 15,452. The number of officials employed to review applications was significantly

¹⁵ This number is greater than the number of application (22) because two individuals who had applied for refugee status in 2018 received a decision in 2019.

¹⁶ In some cases, the totals of referrals and non-referrals do not add up. This is due to the fact that the Ministry of Justice provided data for referrals and non-referrals only. Other applicants include those who had their visa status changed or departed South Korea without withdrawing their refugee application. Information provided to NANCEN by the Ministry of Justice on 24 June 2015, 5 Feb 2017, 7 March 2018, 7 March 2019 and 27 March 2020.

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increased in 2019, but it is still not sufficient to keep pace with the number of applications (see Figure 6).

Year	2015	2016	2017	2018	2019
No. of officers	8	32	37	38	65
No. of applicants	5,711	7,542	9,942	16,173	15,452

Figure 6: Number of Korea Immigration Service officers taking decisions on refugee applications, 2015-2019¹⁷

By way of comparison, 485 caseworkers were employed in the UK to take initial decisions on refugee applications in 2018 and in that year the UK received 26,547 applications. This means that there is around one caseworker for every 55 applicants in the UK, compared with one for every 238 applicants in South Korea.

The inadequate number of staff employed by the South Korean government has resulted in a significant backlog of refugee applications with 22,321 people awaiting an initial decision and a further 3,253 in the appeal process at the end of December 2019. Applicants had to wait 12.7 months on average in 2019 to receive a decision on their application, despite the Refugee Act stating that decisions must be made within six months of the application (Article 18.4).¹⁸

Several refugee applicants who were interviewed for this research waited over a year for an initial decision on their application, with one waiting five years before he had his substantive interview. Such long delays in the determination procedures may have significant repercussions on the health and wellbeing of applicants, as they receive little or no support from the South Korean government (see below for further details) and have to live with the constant fear that they will be returned to their country of origin.

Under-resourcing the decision-making process also has important implications for the integrity of the Refugee Status Determination procedures, particularly when there is pressure to increase the number of decisions being made (e.g. to deliver on the Government obligation to take decision within six months). Under-resourcing may impair the quality of decisions in a variety of ways. For example, interviews are too rushed, cases are not examined carefully enough, insufficient time is given to applicants to gather and present their evidence, officers are not provided with adequate training and support, decisions are not adequately quality-controlled by managers, etc.

Prejudicial behaviour by Ministry of Justice officials

Several interviewees reported behaviour by the officials responsible for determining their claim that is incompatible with fair determination procedures and the provisions of the Refugee Act.

In the case of Karim, an Egyptian man, the interviewer did not examine the merits of his case and he was specifically told not to detail the reasons why he needed protection or provide additional evidence. Furthermore, the immigration officer stated that if more information was required, she would contact the Egyptian Embassy in Seoul. Such action would endanger the applicant and members of his family still in Egypt and is expressly prohibited under Article 17.3

¹⁷ Information provided to NANCEN by the Ministry of Justice on 5 Feb 2017, 7 March 2018, 7 March 2019 and 27 March 2020.

¹⁸ This time frame can be extended in “unavoidable circumstances”, but the applicant must be informed that this is the case. Information provided to NANCEN by the Ministry of Justice on 27 March 2020.

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of the Refugee Act, which states that “no information on the application for refugee status shall be provided to the home country of the applicant”. When Karim received a copy of the interview transcript, he also found that the answers that had been recorded were entirely different from what he had stated during the interview:

“The interview took about 20 minutes. The immigration officer asked me general information like my name, birthdate, my family. When I was trying to talk about my case and what I wrote in the application form, the officer told the interpreter to tell me that I don't need to talk about those details and instead to give her short answers to her questions, and if she wants to know anything, she will ask me. I asked her if I can submit the evidence but she said, ‘No, we don't need evidence. If we need to know any information, we will contact the Egyptian government.’

When I got the interview transcript later, all of it was fabricated. It was different from what I had said. For example, there was a question, ‘Did you face any danger in Egypt?’ During the interview, I tried to explain everything that had happened in Egypt but, in the transcript, it was written, “No”. It also had my job as working at a construction site, but I was working at a human rights organisation in Egypt. [...] Also, in the transcript, it says I am here to make money and I will return to Egypt when I save a lot of money. They were not my answers. [...] On the application form, I wrote that I was a human rights defender with membership to a political movement, but the immigration officer didn't ask me any questions about those things.”¹⁹

Tarek, an Egyptian man, faced overtly hostile behaviour from more than one immigration officer and was also prevented from explaining his claim for protection. The interviewing officer repeatedly interrupted him when he was trying to answer a question and refused to give him an opportunity to submit evidence in support of his application:

“The officer I met when I went to the Immigration office to pick up the form was not good. She threw my passport at my face. Despite the ill treatment, I tried to control myself, not to get angry or do something wrong. When I went to Immigration again to submit the form, an officer asked where I was from, so I told her Egypt. She kept staring at me for 15 seconds and she gestured with her hand to say ‘go back’. I didn't do anything but stand in front of her. Then she told me, ‘Sit down. I will call you later’.

I prepared a lot for the interview. I wanted to show the interviewer proof that I was the admin person for the Muslim Brotherhood official website. I had some documents on my mobile phone. But in the investigation room, the officer asked me to turn off my phone. She also asked if I have any other device to record. I said no. Then she told me, ‘Behave yourself and don't talk more than you have to’.

Then, interviewer asked me why I worked in Malaysia before coming to Korea. But when I started to answer the question, she told me ‘Stop’. [...] She also asked me “Are you a member of the Muslim Brotherhood?” I told her, “Yes, I was a member but I left the party.” Then she stopped me. I remember I only talked less than five minutes during the whole interview. At the end of the interview, I asked her if she can give me some time so I can submit my evidence. She told me, ‘Go back to Malaysia. We will not accept any evidence from you.’”²⁰

¹⁹ NANCEN interview with Karim on 11 September 2019.

²⁰ NANCEN interview with Tarek on 25 July 2019.

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The Refugee Act states that officials should “positively help foreigners who inquire about applying for refugee status or express their will to apply therefore” (Article 5.4). However, in the case of Akmal, a Pakistani man, officials sought to prevent him from making an application, both by not providing him with an application form and by telling him that he was an economic migrant (he was eventually recognised as refugee). Akmal also witnessed the hostile attitude of another official towards a refugee applicant when he accompanied his friend on a visit to the immigration office:

“I was held at a detention in South Korea. I was able to file an application only after a lot of arguing with the authorities. It was not easy. They didn't give me an application form. They first told me to go back to my country. After three days of arguing back and forth, they finally gave me the application. [...] They said openly, “We know that you are here for work and to earn money. We don't believe what you said.” [...]

One day, I accompanied my friend to the Immigration office. When you arrive, you pick a number and wait. And when the number is called, you go. My friend sat in the chair, then the officer said, ‘Get up’. Until I tell you to sit, you cannot sit’ [...] If you go with a Korean, the same officer will treat you differently. The officer will be very polite, very gentle. It seems the officers still don't differentiate migrant workers with refugees. They think everyone is here for money.”²¹

The officer in the case of Fahad, a Yemeni man, conducted the interview in an entirely unprofessional way, which is not consistent with trying to get a full and accurate picture of why the applicant is seeking protection in South Korea. He was aggressive, cut the applicant off while they were trying to speak, did not offer him a break when he was visibly distressed and was reluctant to amend the transcript even when there were errors in it.

“The Immigration officer seemed to be only concerned about how he could get an answer to fit into what was expected. When I tried to explain my situation, he told me, ‘Shut up!’ in English. [...] He was very aggressive. When I became emotional because I recalled the very tough time in my life, I got tears in my eyes, but he didn't allow me that time to feel or express this. The interview was almost one and a half hours, there was no break to drink water or go to toilet.

At the end of the interview, when the officer read the paper again, he expressed his anger about the fact that he had to type again. When he was confirming my answers by reading what I said, there were things I didn't say. So I told him, ‘No, I didn't say that’ and he got angrier. He tore up the papers, threw them and shouted at the interpreter.”²²

The behaviour described above, in which Korea Immigration Service officers displayed prejudice and hostile attitudes towards applicants, is incompatible with a fair determination procedure and is extremely likely to lead to many individuals with well-founded fears of persecution not being recognised as such. In Karim's case, it would even appear that the officer falsified the transcript of the interview.

²¹ NANCEN interview with Akmal on 21 October 2019.

²² NANCEN interview with Fahad on 29 August 2019.

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This does not appear to be an isolated case of malpractice. The 2018 NGO Alternative Report to the UN Committee on the Elimination of Racial Discrimination²³ notes that there were more than 100 cases in which a Ministry of Justice official and an interpreter inaccurately recorded information from the interview and refugee applicants were refused protection. The report states that the interview transcripts included identical statements such as “I applied for refugee status in order to make money by working and legally stay in Korea for a long-term” and “I falsely filled out the reasons for applying for refugee status”. When one of these cases was judicially reviewed, it was noted in Court that it would be unusual for an applicant to testify in opposition to their own case for refugee status and the fact that identical answers appear in different cases show that the transcripts are “problematic”.

Professionalism of interpreters and procedures

Under Article 14 of the Refugee Act, applicants are entitled to receive assistance from qualified interpreters. The role of an interpreter is to translate exactly what is being said without additions or omissions. However, several interviewees provided examples of interpreters engaging inappropriately in the interview process and deciding what should or should not be translated. This problem is well illustrated by Salem:

“There were two questions that was mistranslated. I stopped the interpreter and said, ‘No I didn’t say that. You have to ask the officer to rewrite the answer.’ First the interpreter refused to do it. He said, ‘No, everything is recorded so we don’t need to do it.’ But I said, ‘No, I will not sign this paper until the statements are corrected.’” That’s when the interpreter asked the officer to change the answers.

When I was trying to talk about the political situation, the interpreter always told me, ‘I know that, I know that. You don’t have to say it.’ So, I told him, ‘OK. You know it, but the officer doesn’t know. I want the officer to know about it.’ The interpreter didn’t want to interpret everything I said. I felt unsafe. The interpreter should not make decisions on what to translate. He can’t say, ‘Oh I know this so you don’t have to say it.’ They have to be more professional.”²⁴

Tarek’s interpreter also acted in an unprofessional manner, particularly when Tarek was trying to provide more complete responses to the interviewing officer:

“I told the interpreter in Arabic, ‘Please let her [Immigration officer] give me a chance to answer the questions.’ But the interpreter said, ‘I told you repeatedly not to talk or move.’”²⁵

Nada, an Egyptian woman, also highlighted the way in which her interpreter sought to involve himself in the assessment process rather than translate the answers provided:

“The interpreter was trying to categorize which religious group I belonged to. I told him I am a Muslim. Then, he asked if I am either Sunni or Shia. I told him that I didn’t belong to any of these. Then the interpreter said, ‘No, you should belong to either

²³ Republic of Korea NGO Alternative Report to the UN Committee on the Elimination of Racial Discrimination, 97th session, 26 November to 14 December 2018, 2018, p69.

²⁴ NANCEN interview with Salem on 21 August 2019.

²⁵ NANCEN interview with Tarek on 25 July 2019.

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*Sunni or Shia.' I said I am just Muslim. Then he asked a very strange question, 'Do you mean you don't visit the Mecca?' He tried to add his opinion, instead of just interpreting what I said."*²⁶

Interviewees also noted several instances where the quality of the interpretation itself was poor, often resulting in their statements not being recorded accurately:

*"After 6-8 months, I did the interview. It was about three hours long. Later when I appealed, I discovered that there were 3-4 mistakes in the interpretation of the interview."*²⁷ (Raissa, a Rwandan woman)

*"I requested for a native Arabic interpreter [...] because I noticed her Arabic was not good. She was Korean who used more street language rather than official language."*²⁸ (Fahad)

The information highlighted above raises significant concerns regarding the professional standards of some of the interpreters contracted to work in the refugee determination process, particularly in terms of their personal conduct at interviews and the accuracy of their work. Inappropriate behaviour by interpreters and/or translation errors are likely to lead to key information being excluded or misrepresented at the interview and this in turn, could result in flawed decisions.

In addition to the above, one interviewee, Salem, raised concerns about whether interpreters had been properly vetted to ensure the security of applicants and their families:

*"I didn't feel safe when an Egyptian was interpreting during my interview. I feel unsafe because I don't know if this interpreter is also working for the Egyptian government or he holds a different political view. I was worried if he would send my information to the Egyptian Embassy or to Egypt. Especially in the case of political refugees, interpreters should be carefully chosen. Because we are against the Government of our home country, our situation is high risk. All my family are in Egypt. In Egypt, if the Government wants to arrest you, they can take your father, mother or brother instead. They don't have a problem with that. We want to feel safe here and also we don't want our families to be in danger."*²⁹

Barriers to submitting evidence to support applications

The Refugee Act states that the Ministry of Justice should actively collect and utilise materials, which are favourable to an applicant's case (Article 9), but this research identified instances where officials specifically prevented applicants from providing evidence to support their application. In addition, there are procedural issues, which make it difficult for individuals to provide the information required to prove their case. Examples of how officials have blocked applicants who have tried to submit evidence have already been highlighted above, but Fahad's experience of trying to submit new evidence to support his claim further underlines this problem:

²⁶ NANCEN interview with Nada on 11 September 2019.

²⁷ NANCEN interview with Raissa on 6 November 2019.

²⁸ NANCEN interview with Fahad on 29 August 2019.

²⁹ NANCEN interview with Salem on 21 August 2019.

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"When I submitted my second application, my request to submit new evidence was rejected. That time, I got a very important piece of evidence sent by my sister. It was a photo of me and the death penalty certificate issued by the Yemeni authorities. I was in a wheelchair because I had been hospitalised. I had this photo on my phone so I showed it to the officer and requested if she could print it out for me. But she just pushed my phone away."³⁰

The following examples demonstrate the lack of information applicants have about how to submit evidence, as well as the inconsistencies among officials regarding what evidence is permissible and in what format.

"And the interviewing officer told me that I should submit our video evidence in CD. I showed her my USB flash drive but she said they don't accept USB flash drives. They didn't explain to me why."³¹ (Karim)

"The officers didn't tell us that we should submit our media evidence in English. They didn't tell us to translate the evidence so we brought it in Arabic, in original language. That's when they told us that they couldn't take any evidence in Arabic. We went three times to give evidence but they didn't take it. So we couldn't give them anything."³² (Nada)

"Not everyone are getting the same information. Some officers are accepting social media and electronic news but others are not accepting them. Some are accepting only official documents or official court papers. The officer who got my evidence didn't accept any social media news. Only official papers were accepted. He didn't even accept a video from me. The Ministry of Justice should decide what forms of evidence is acceptable – it should not be the interpretation of individual officers."³³ (Salem)

From NANCEN's experience, most refugee applicants are not aware that any evidence submitted must be printed and translated into Korean or English. Any audio-visual evidence must be saved onto a CD - not a USB flash drive – and no other forms are accepted. There are other challenges faced by refugee applicants, as explained by Il Lee, lawyer from Advocates for Public Interest Law (APIL):

"It is very difficult for refugee applicants to submit evidence because they are not provided official guidelines on how to submit evidence. There are also cases where applicants want to submit a media article, photo or video clip, but Immigration officers won't accept it. If the officers feel that the item is not important, then they will say they don't need to submit it or they reject the item because it was not translated into English or Korean. The reason for this reluctance is that there is a burden to be reviewed when an item is submitted for evidence and also officers believe that most of the evidence is false anyway. The current refugee review does not comprehensively review the statements and evidence, but rather focuses solely on discovering a lie.

³⁰ NANCEN interview with Fahad on 29 August 2019.

³¹ NANCEN interview with Karim on 11 September 2019.

³² NANCEN interview with Nada on 11 September 2019.

³³ NANCEN interview with Salem on 21 August 2019.

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Every piece of evidence has to be translated into Korean or English. But if the evidence is received in English, there is a concern that immigration officers will not read it, so applicants try to submit evidence in Korean only. But if you don't have the help of a lawyer, it is difficult to prepare the translation..”³⁴

As well as greater clarity on how evidence should be presented, there also needs to be greater recognition of how challenging this can be for applicants to provide, particularly when they have no money or are in detention. For example, it can be difficult, time consuming and expensive to obtain translations of documents, especially when the translations need to be checked for accuracy, as noted by Karim:

“We waited for one week to translate our application form from Arabic to Korean. The translation was very bad because the translator was not fluent in our language. It was very hard to make him understand what we wrote and what happened to us. It took a long time just to make him understand. The interpreter didn't know the word ‘torture’ in Arabic so in the end, he wasn't able to translate this term into Korean.”³⁵

Access to information and advice

Assessing whether someone is at risk of persecution is a complex legal test. It is therefore vital that those seeking protection understand the process and are assisted to ensure they provide all the information and evidence pertaining to their case.

While the Refugee Act states that applicants are entitled to receive legal advice from an attorney to assist them with their application (Article 12) and be accompanied by a trusted person during the interview (Article 13), this rarely happens in practice. This is because there is no legal aid service available to pay for professional advice and few applicants are able to afford to pay for one themselves. The inability of most refugee applicants to access legal assistance is highlighted by Il Lee, lawyer from APIL:

“Legal support is vital for refugee applicants. Many applicants need help in preparing their application and interviews; certifying and translating documents; arranging and submitting documents, including written opinions. However in Korea, there is a shortage of lawyers and organizations that can provide applicants with this type of legal assistance. And because there is no legal aid, refugee applicants must fend for themselves. The lucky ones are those few who find an NGO to help them connect with a lawyer. Others may find lawyers through their community but as many can ill afford legal fees, they are in no position to hire one.”³⁶

Similarly, the majority of those seeking refugee status will not know anyone in South Korea whom they can go to for advice on how to make an application or ask to accompany them to their interview.

Consequently, most applicants will be entirely dependent on the information they receive from officials. The experience of interviewees indicates that many officials do not explain even the basics of the Refugee Status Determination procedures, let alone assist applicants to ensure

³⁴ NANCEN interview with Il Lee on 10 April 2020.

³⁵ NANCEN interview with Karim on 11 September 2019.

³⁶ NANCEN interview with Il Lee on 10 April 2020.

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they make their case for protection as well as they can, as the following examples illustrate:

"The Immigration officer didn't instruct or give me information about procedures. She just gave me the application form."³⁷ (Tarek)

"When I went to the Immigration office to fill out the application, I had to do it four times. I don't know why and the officer didn't tell me what was wrong with my application forms. I was very afraid because I thought they were going to send me back to my country. I came to the office at 9:30 in the morning and finished filling out the form around 5:30pm. It was a very long time. I had a very bad headache and was scared."³⁸ (Raissa)

"I didn't get any information about how to apply for asylum. They just showed me the door to exit the secure area of Incheon airport. I didn't know where to go. I didn't have any money. I had to sleep at the airport. I used my phone to look for Ministry of Justice and UNHCR. At UNHCR, I got the necessary information."³⁹ (Fahad)

None of the interviewees had access to legal advice to assist them with their initial application, but all of them said that such advice would have greatly helped them to present why they needed protection. Salem summarised the challenges that applicants face in making their case without professional advice:

"At Incheon Airport, I was not allowed to contact anyone and besides, I didn't know anyone in Korea. In a situation like that, it is really important to have legal support. You need to know how to deal with interviews, what to say first, what evidence to submit, what evidence is more important than others. I felt like the immigration officer at the airport didn't want to help me. They don't want us to enter the country so they try to find a way to refuse us entry."⁴⁰

Approving and accessing the record of the interview

The Refugee Act stipulates that the contents of the interview must be interpreted/translated to the applicant in a language they understand so that they can confirm that it is an accurate record of what was said (Article 15). This is an important mechanism to ensure that there are no errors or misunderstandings in the interview notes, which may affect the final determination. However, several interviewees noted that this does not happen in practice:

"They gave me the interview transcript without any explanation. I just signed it."⁴¹ (Tarek)

"The Immigration officer showed me the transcript after the interview, but it was in Korean. I didn't understand what was written. I just had to believe what the interpreter said was correct. Then I had to sign on every page."⁴² (Salem)

³⁷ NANCEN interview with Tarek on 25 July 2019.

³⁸ NANCEN interview with Raissa on 6 November 2019.

³⁹ NANCEN interview with Fahad on 29 August 2019.

⁴⁰ NANCEN interview with Salem on 21 August 2019.

⁴¹ NANCEN interview with Tarek on 25 July 2019.

⁴² NANCEN interview with Salem on 21 August 2019.

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"The transcript was shown to us but everything was in Korean so we couldn't read what was written. The interpreter only explained about its general information like my name, passport number, my address in Egypt. The transcript was full of fabricated information, so why would he read it to me? The officer said if I signed the document, that means I agree but that is not true. I signed on what I understood from the interpreter. In order to finish the process, I had to sign. I had no choice."⁴³ (Karim)

It should be noted that even where the interpreter does translate the full details of the interview transcript, there may still be instances in which the applicant does not feel able to correct inaccuracies (e.g. they are intimidated by the individual conducting the interview).

Under the Refugee Act, applicants are entitled to ask for an audio or video recording of the interview and such a request cannot be refused (Article 8.3). The use of this provision would facilitate a quick resolution of disputes regarding the conduct of an interview, issues with interpretation or the accuracy of what was recorded in the transcript.

As with other aspects of the Act, there are issues with the way this provision is being implemented in practice. The first problem is that many applicants are not informed that they can ask for the interview to be recorded. This was the case for Nada who said:

"They didn't record my interview, so we don't have any proof of what happened to us on that day. I didn't even know they should record interviews. No one told me."⁴⁴

The second problem is that when applicants do raise the issue of recording the interview, some officials seek to dissuade them from doing so. This was the case for Fahad:

"I asked the interviewing officer if our interview is being recorded. The officer said there is no need to record it."⁴⁵

Of those interviewed for this research, only Salem had his interview video recorded. However, he was then unable to obtain a copy of the recording. This appears to reflect internal guidance not to issue interview recordings to applicants. He made several attempts to get a copy of the video recording of his interview:

"When I returned to the Incheon Airport Immigration office to ask for the video recording, the officer said they don't have it and I am not allowed to ask for it there. They kept sending me to different offices in the airport for one and a half hours. I called Incheon Airport Refugee Center and asked for help. Then someone came, brought me to another office, and gave me an application form to request for my video recording. So I filled out the application and gave it to the officer who then got a phone call from someone and afterwards he told me, 'No, I can't give you the video recording.' I asked why and told him it was my right to have a copy. He said that he had received a call and was instructed not to give me a copy. He then told me, 'You have to leave the office now. We are not giving you anything.'"⁴⁶

⁴³ NANCEN interview with Karim on 11 September 2019.

⁴⁴ NANCEN interview with Nada on 11 September 2019.

⁴⁵ NANCEN interview with Fahad on 29 August 2019.

⁴⁶ NANCEN interview with Salem on 21 August 2019.

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In July 2018, the South Korean government made it mandatory to record interviews and this will resolve some of the issues highlighted above. In 2019, 3,705 interviews were recorded. However, only in two of the cases was there a request by the applicants to review the recording.⁴⁷ While mandatory recording is a welcome initiative, the Government must also ensure that refugee applicants are informed that they may review the recording and are provided with copies of the recording immediately upon request.

Lack of specifics in refusal letters

The letter issued by the Ministry of Justice communicating its decision on a refugee application must “include the grounds of the decision (including judgements on the factual and legal claims of refugee applicants)”, as well as the procedures for lodging an appeal (Article 18.3 of the Refugee Act).

Having clear and detailed reasons as to why an application has been refused is crucial to the integrity of the Refugee Status Determination procedures. However, several of the interviewees reported that their refusal letters provided no details as to why their claims had been rejected beyond stating that it had been concluded that the applicant did not have a well-founded fear of persecution. Karim’s description of his rejection letter was typical of other interviewees:

“The reason was like a template paragraph. It was not related to my case. It was a general response.”⁴⁸

Il Lee, lawyer from APIL, explained that:

“Most of the reasons that I have come across for the Ministry of Justice in refusing a refugee application have been based on subjective comments by the Immigration officers on why their claim makes no sense. For certain groups of people such as those from conflict zones like Syria and Yemen or applicants who were victims of political persecution in Egypt, Immigration officers fail to provide any valid reason for refusing their application, only to say something generic like, ‘The statement is too artificial’, ‘It’s hard to believe’ or ‘This is a private persecution.’ I find it incredulous that the officers deem persecution to be a private matter.”⁴⁹

Interview requests and cancelling applications

The Refugee Act allows the Minister of Justice to terminate a refugee application if the applicant “fails to appear at least three consecutive times” following a request to attend an interview (Article 8.6). This is not an unreasonable provision, but there are indications that it is not always implemented in a reasonable way, as illustrated in Fahad’s case:

“I waited for my first interview for five years, from 2012 to 2017. In 2014, I remember I had two missed calls from an unknown number, in an interval of five seconds. I called the number later, but no one picked up the phone. I found out that Immigration had

⁴⁷ Information provided to NANCEN by the Ministry of Justice on 27 March 2020.

⁴⁸ NANCEN interview with Karim on 11 September 2019.

⁴⁹ NANCEN interview with Il Lee on 10 April 2020.

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called me in February 2014 when I went to Incheon Immigration to get my work permission in May 2014. They told me to go back to Yemen. I asked them where I can go for help. They just said, 'Go to Seoul'. When I went to the Seoul Immigration, they said, 'We called you and your application is cancelled'. The reason was because I didn't pick up the phone. After I re-applied in Sep 2014. I got a call in January 2017. Same thing happened. I got a missed call. I knew 1345 is the number for Immigration so I called straight back."⁵⁰

A decision to cancel a refugee application on the above grounds is not in line with either the letter or spirit of the Refugee Act. Furthermore, many applicants will face extremely testing economic circumstances while waiting for a decision on their application, which may involve them moving accommodation multiple times, becoming homeless or struggling to pay for amenities, including mobile phones (see below for further details). Given this reality, the Ministry of Justice must take care to ensure that applicants have received an invitation to attend an interview before concluding that a failure to attend an appointment is an act of non-compliance.

It should also be noted that the number of refugee applications, which are categorised as “withdrawn” has increased significantly every year from 2015, rising from 278 to reach 4,139 in 2019. In 2019, 2,622 applications were cancelled by the Ministry of Justice, while a much smaller figure of 1,518 applications were withdrawn by refugee applicants themselves.⁵¹ This means that nearly two-thirds of the cases (63%) classed as “withdrawn” in 2019 were in fact cancelled by the Ministry of Justice rather than withdrawn by refugee applicants. This raises concerns that the case cited above is not an isolated example and that significant numbers of refugee applicants are having their cases unfairly dismissed before the merits of their application have been considered.

Issues in the appeals process

In July 2013, the Refugee Committee was established under Articles 25-28 of the Refugee Act to review appeals by applicants against a decision to refuse them refugee status in South Korea. The Committee is comprised of up to 15 people and is made up of lawyers, senior academics, civil servants (grade level 4 or higher and in charge of refugee-related work) and individuals with professional experience in refugee issues. Committee members are appointed by the Ministry of Justice for three-year terms. The Committee can form sub-committees and appoints refugee investigators to examine appeals and handle administrative matters for the Committee.

Like the initial determination procedure, the appeals process also suffers from under-resourcing. In 2019, there were just 12 refugee investigators and each one was responsible for reviewing and preparing 44 cases a month. The Refugee Committee itself meets between four and six times a year and will review hundreds of appeals at each sitting. In 2019, the Committee considered a total of 3,478 appeals, which means on average it reviewed 580 appeals at each meeting (see Figure 7).

⁵⁰ NANCEN interview with Fahad on 29 August 2019.

⁵¹ Information provided to NANCEN by the Ministry of Justice on 27 March 2020 and 20 May 2020. There is a discrepancy of 1 between the updated figure of 4,139 (provided by the Ministry on 20 May 2020) and the disaggregated figures of 2,622 and 1,518, which total 4,140 (provided on 27 March 2020).

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	1 st	2 nd	3 rd	4 th	5 th	6 th
Date	31 Jan	22 Mar	17 May	19 Jul	11 Oct	06 Dec
No. of cases	432	438	448	416	573	1,171
No. of Committee members	14	11	15	12	12	13

Figure 7: Refugee Committee meetings in 2019⁵²

While the cases will be investigated and prepared to some degree by the refugee investigators in advance of Committee meetings, it is difficult to have confidence in an appeal procedure in which just over a dozen people are responsible for reviewing the background, case details and the reasoning behind a determination for more than 400 cases in one day.

Furthermore, the time constraints imposed on the Refugee Committee mean that there are very few instances in which an applicant is interviewed at the appeal hearing. This is extremely problematic because applicants often do not submit additional information (see below) and it means that Committee members are not able to probe areas that may have been missed in the initial interview or to test questions relating to the credibility of the applicant – an issue which is pivotal to the decision on many refugee applications.

The challenges faced by the Refugee Committee members in reaching an accurate appeal determination are compounded by the procedural weaknesses, which make it difficult for refugee applicants to present their case effectively. While applicants may be aware that they have 30 days in which to appeal, there is little or no information provided to them on how the appeal process works and what information they should submit. It is also extremely difficult for refugee applicants to access free legal advice. The fact that more than one interviewee tried to submit their appeal on the same day that they received a refusal of their application for refugee status illustrates that many applicants have no understanding of how the procedure works and what is required of them:

“I tried to appeal on the same day I got the decision, but the Immigration officer said I was not allowed to submit on the same day. I had to come back the next day to appeal or do it within 30 days.”⁵³ (Akmal)

“The Immigration officer just gave us a form for appeal. No information on the appeal process was given and nothing about submitting evidence. The officer told me to fill out the form and submit it. So, we went to Seoul Immigration office to submit the appeal application, then they made us come again because I could not submit the appeal on the same day that I received the rejection notice. [...] On the appeal form, I wrote that I was rejected but didn’t know why. I believed that my case was not well investigated. I was not here to make money. They could see that I was a human rights defender from my passport. And I deserved to have another interview.”⁵⁴ (Karim)

As the above cases show, many applicants simply re-submit the same documents they provided for the initial determination on appeal, without challenging the basis on which they have been refused or providing any additional evidence.

⁵² Information provided to NANCEN by the Ministry of Justice on 27 March 2020.

⁵³ NANCEN interview with Akmal on 21 October 2019.

⁵⁴ NANCEN interview with Karim on 11 September 2019.

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In these circumstances, it is not surprising that appeal recognition rates are extremely low, with just 50 individuals being granted refugee status between 2016 and 2019 out of 13,452 applications (a recognition rate of 0.4%). In 2019, the recognition rate at appeal fell to its lowest rate since the passage of the Act with just three successful appeals out of more than 3,400 applications. It is also extremely difficult for applicants to challenge the fairness of an appeal decision, as they are not provided with written reasons explaining the determination.

Year	Initial decision	Appeal	Judicial review
2013	5	9	10
2014	18	53	3
2015	13	27	0
2016	17	10	3
2017	27	24	5
2018	39	13	6
2019	11	3	5

Figure 5: Total number of applicants given refugee status since the passage of the Refugee Act⁵⁵

	2013	2014	2015	2016	2017	2018	2019
No. of appeals	324	968	1,995	4,341	3,064	2,613	3,434
No. granted refugee status	9	53	27	10	24	13	3

Figure 6: Number of applicants given refugee status upon appeal since the passage of the Refugee Act⁵⁶

Meeting living expenses during the determination process

The Refugee Act stipulates that “basic food, clothing, and shelter shall be provided to refugee applicants at ports of entry and departure” (Article 6.4). This support is extremely “basic”, as Salem described during his interview:

“In the waiting room for refugee applicants, we had three meals. Breakfast was juice or milk and bread or a small cake. Lunch and dinner was a sandwich and a Coke from Lotteria [a fast food restaurant]. These meals are not enough for a normal person. Some nights, we asked an officer to buy us food with our money. Sometimes the officer would agree to do it but at other times he would refuse. The door was always locked except when meals were given or when someone was taken for an interview.

There was a lot of people in the room. There were two spaces – one for men and one for women. When the space for women was empty, they moved some men to the women’s area. There were two toilets and one shower. Because many people wanted to use them at the same time, it was not easy.”⁵⁷

⁵⁵ Information provided to NANCEN by the Ministry of Justice on 24 June 2015, 5 Feb 2017, 7 March 2018, 7 March 2019 and 27 March 2020.

⁵⁶ Information provided to NANCEN by the Ministry of Justice on 24 June 2015, 5 Feb 2017, 7 March 2018, 7 March 2019 and 27 March 2020.

⁵⁷ NANCEN interview with Salem on 21 August 2019.

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While conditions for refugee applicants at the ports of entry are challenging, the situation they face once they are given permission to enter South Korea is even more difficult. The Refugee Act stipulates that applicants are only allowed to work if they have not received a decision on their application after six months, but its provisions for those who are not able to support themselves are less clear-cut stating only that “the Ministry of Justice may subsidize the living costs” (Article 40) and “may operate residential facilities for applicants” (Article 41).

Applicants can apply for living expenses support,⁵⁸ but this is only available for six months from the date their application was submitted and will not be paid retrospectively if it takes some time for the application to be made and/or decided. There is no published guidance outlining who will be eligible for this support and no standard amount of support given to each refugee applicant. The Enforcement Decree of the Refugee Act⁵⁹ specifies that the Minister of Justice has the authority to decide whether to provide living expenses after taking into consideration the length of stay of the refugee applicants in Korea, employment activities, use of refugee support facilities, presence of dependents, and living conditions (Article 17.2).

The Enforcement Decree further states that the Minister of Justice may:

“subsidize living expenses, etc. within a period of not more than six months from the date of submitting the application for recognition of refugee status to refugee claimants pursuant to Article 40 (1) of the Act.” (Article 17.1)

However, in cases of serious illness or physical disability, this support period may be extended to up to six months.

In 2018, out of 1,765 applicants who applied for support, only 624 or 35% were in receipt of these living expenses. In 2019, only 717 applicants applied, of whom 542 received living expenses (76%). In 2019, the South Korean government spent KRW 709,000,000 (US\$678,110)⁶⁰ for 609⁶¹ refugee applicants.⁶²

Similarly, refugee applicants can apply to be housed at the Government-run Immigration Reception Center in Yeongjong Island, Incheon for a maximum of six months, but applicants are not aware of this scheme and the criteria for eligibility is not publicly available.

The capacity for the facility is 82 people per six-month period or a total of 164 per year. Despite the reality that many refugee applicants struggle to pay for accommodation in Korea, these facilities are consistently operating below capacity and only housed 109 people in 2015 (66% capacity), 114 in 2016 (70%) and 103 in 2017 (63%), 155 in 2018 (95%) and 84 in 2019 (51%). The average time spent at the facility was 153 days.⁶³

Even though less than half of the total number of applicants in 2018 applied for support in 2019, many are still being refused. Remy, a Burundian man, described his experience in trying to access living support:

⁵⁸ In 2014, this was set at KRW 382,200 (US\$317) for those who did not have accommodation provided and KRW 267,540 (US\$222) for those who did.

⁵⁹ See: http://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=44659&type=new&key=, accessed 12 March 2020.

⁶⁰ The currency conversion throughout the report is KRW1 = US\$0.00083 with rounded figures.

⁶¹ This figure includes 67 refugee applicants who had applied in 2018.

⁶² Information provided to NANCEN by the Ministry of Justice on 7 March 2019 and 27 March 2020.

⁶³ Information provided to NANCEN by the Ministry of Justice on 5 Feb 2017, 26 Feb 2017, 7 March 2018, 7 March 2019, 10 May 2019 and 27 March 2020.

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*"When I went to the Ansan Immigration Office, I told them that I came to apply for the living expenses support. They then gave me the application. Some time later, I received a text message from the immigration office just saying "Your living support allowance has not been approved". That was it, no explanation given on why my application was rejected."*⁶⁴

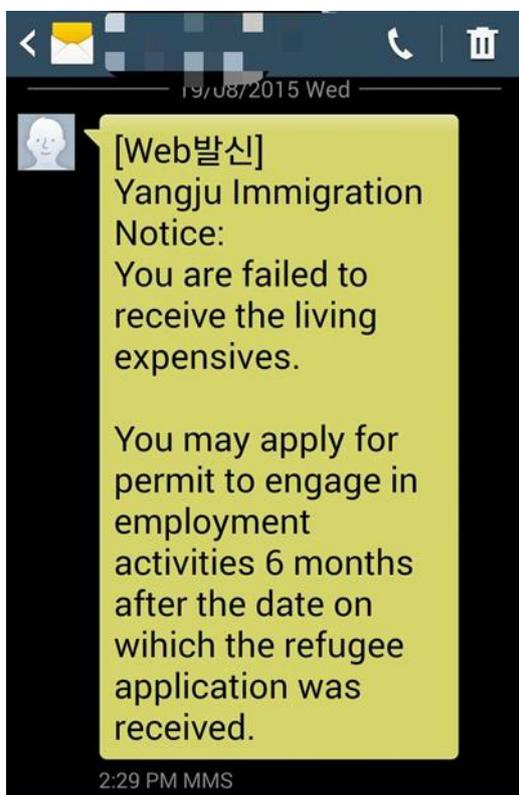


Figure 7: Refusal message from Yangju Immigration office, 19 August 2015⁶⁵

However, the primary concern here is that most refugee applicants are not aware of their entitlement to apply for support or do not know how to do so and this leave them struggling to meet their subsistence needs while they wait for their claim to be processed. The following testimonies from interviewees underline the degree of hardship that refugee applicants have to endure:

*"When I was released from Hwaseong detention centre, I didn't know anything about Korea and didn't know where to go. I contacted the pastor whom I met at the detention centre and he came and picked me up. I stayed at his church for almost six months. After that, I borrowed money from my friends to rent a place. No money was given to me from the Korean government. I had a difficult time at the detention centre, but it was worse when I came out. I was not allowed to work, I had to go the Immigration office every month. There was constant stress. I had to get a visa extension every three months. Whenever I went to Immigration, I was always afraid that they would not extend my stay or detain me. There was uncertainty. Also, I needed almost US\$1,500 per month for rent, food and transportation."*⁶⁶ (Akmal)

⁶⁴ NANCEN interview with Remy on 1 April 2020.

⁶⁵ Text message sent to a NANCEN client on 19 August 2015. See: <https://n.news.naver.com/article/047/0002124356>, accessed 13 April 2020.

⁶⁶ NANCEN interview with Akmal on 21 October 2019.

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"The most difficult thing during the whole process was money. Without an ID card, it is very difficult to find a job. Because I had to survive, I did some cash-in-hand jobs but always in a fear of getting arrested. People said that I was doing something illegal but it was not me who wanted to become illegal. I had no choice."⁶⁷ (Meihui, a Chinese woman)

"It is more difficult for women to survive. So many women ended up earning money by sleeping with men for money. Because I cannot work legally and I have no support, I had to do bad things."⁶⁸ (Raissa)

"I wish to know how the Korean government wants us to live. If they don't provide us with accommodation and don't give us support, then at least, allow us to work even at a part-time job, so that we can have a place to stay and buy food. If there was no organisation that helped me, I would be living on the streets."⁶⁹ (Salem)

The uncertainty of not knowing whether they will be forced to return to countries where they fear persecution, combined with worries about how they will pay for food and accommodation creates a high level of stress for refugee applicants. Those struggling to survive will find it difficult to present their case to the best of their ability, both because they are preoccupied with how they will meet their immediate living needs and because they do not have the money to pay for things, which would help them secure evidence to support their applications (e.g. postage costs, translations, telephone calls, etc.). Applicants who do not have a permanent address or contact number are also more likely to lose touch with the authorities and have their application terminated.

The long delays in the Refugee Status Determination procedures mean that many applicants are forced to live below the poverty line for extended periods of time and this is likely to negatively impact on the mental and physical health, and their ability to quickly integrate into Korean society if they are granted status.

In addition, refugee applicants will face additional costs the longer their case remains unresolved as they will need to pay KRW 60,000 (US\$50) every three to six months – depending on their asylum situation – for their visa extension. Applicants who are appealing a decision can get a visa extension for up to six months. For example, if they need to wait for two years until an appeal decision is made, they would need to apply for an extension at least four times, which would mean incurring a minimum total cost of KRW 240,000 (US\$200). Those involved in a judicial review can apply for a three to six month extension, which, if the case lasts two years, would mean between four and eight extensions totalling KRW 240,000-480,000 (US\$200-400).

In addition, applying for an alien registration card, a Korean ID card for foreign nationals, costs KRW 130,000 (US\$108). This is an important form of identification, as it would demonstrate – if approached for example by Immigration or police officers – that they have a legal right to be in South Korea.

⁶⁷ NANCEN interview with Meihui on 16 October 2019.

⁶⁸ NANCEN interview with Raissa on 6 November 2019.

⁶⁹ NANCEN interview with Salem on 21 August 2019.

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It is unreasonable to charge applicants who have no means of paying these fees, particularly when the reason they need a visa extension is usually because the South Korean government is not meeting its own commitment to take decisions within six months. According to data provided by the Ministry of Justice, there were 4,974 applicants who had to extend their visa more than three times in 2019 because their case had not been decided.⁷⁰ There is also evidence that fines are levied unfairly on applicants which, if unpaid, can affect their immigration status in South Korea, as illustrated by the following cases:

"I was living at the PNAN [an NGO working on refugee issues] shelter, but when I tried to extend my visa, the officer wouldn't allow us to use the PNAN address because it was not a residential address. Because my address couldn't be updated, they said they could not renew my visa. It was April 9th and I gave birth on April 13th, which was the last day my ID card was valid. After one month, I visited the Immigration office. They told me to pay KRW 1 million [US\$830] because I had overstayed for one month. They also issued a deportation order. They told me to leave the country within three months.

I submitted a complaint about the Immigration office not updating the address and rejecting my application for renewal of visa. Immigration then withdrew the deportation order, but I still had to pay KRW 1 million [US\$830] because there was no record of my visit on April 9th – they said they didn't believe me. It was a big mistake. Because my daughter was born but I didn't have a valid ID so neither did my daughter. My daughter couldn't go to a doctor or hospital. After one year, we went to the Government to register my daughter's birth, but they made me pay a penalty again because I didn't register her sooner."⁷¹ (Nada)

"Once I had to pay KRW 2 million [US\$1,660] for a penalty due to the expiration of my visa. I said I didn't have the money, that I was not allowed to work and didn't have any support. I didn't know Korea. How could I pay? I begged the Immigration officer, 'Please, please. How can I get KRW two million [US\$1,660] in 10 days? But he just replied that if I come again and beg, he would send me back to my country."⁷² (Raissa)

"It was the last day that my alien registration card was valid. I went to the Immigration office to extend it. There they told me to go to the office where they handle refugee affairs. The officer at that office printed a notification of rejection. She said, 'Now you have nothing to do with this office. Go to court.' I told her that today was the last day of my registration card. If I went out now without an extension, tomorrow I would be arrested.' She said, 'You have 90 days to go to court after receiving this notification paper.' When I asked about my extension, she just said 'I don't know' and kept saying 'You have 90 days.' So I thought I wouldn't have any problem for 90 days, but later, I found out that I had to pay KRW 2 million [US\$1,660] in fine."⁷³ (Fahad)

⁷⁰ Information provided to NANCEN by the Ministry of Justice on 27 March 2020.

⁷¹ NANCEN interview with Nada on 11 September 2019.

⁷² NANCEN interview with Raissa on 6 November 2019.

⁷³ NANCEN interview with Fahad on 29 August 2019.

Conclusion and recommendations

*"If the Immigration officers had done their job properly, if they read our case carefully, we wouldn't have had to face all these problems for the past two years. If the officers read what we wrote, they wouldn't reject our case and our lives wouldn't turn out this way – not with so much hardship. Because the officers didn't care about their work, it affected people's lives. This may look like a normal job but it has a huge impact on people's lives. Maybe they don't see it like that. They don't realise that if they reject someone's refugee application and they send them back, that person could die. They think it is just a job. They should understand that they are working on refugees, on people's lives."*⁷⁴ (Karim)

The implementation of the Refugee Act in 2013 demonstrated the Government of South Korea's commitment to "shouldering greater responsibility in the arena of global refugee policy" and is consistent with its growing role on the world stage.⁷⁵ However, seven years on from the Act's enforcement, there are implementation issues which are putting the safety and well-being of refugees at risk and need to be urgently addressed. In this context, we make the following recommendations to the Government of South Korea:

- The Ministry of Justice should set up a review, in conjunction with the UNHCR and relevant civil society organisations, to identify policy and practice issues, which are contributing to poor quality decisions and an extremely low recognition rate for refugee applicants in both the initial determination and appeals procedures. This review should include an appraisal of training procedures and measures in place to ensure that particularly vulnerable applicants (minors, unaccompanied children, survivors of torture or sexual violence, those with disabilities, etc.) are supported to present their claims to the best of their ability.
- The budgets for both the initial and appeal determination procedures must be significantly increased and additional staff employed in both stages of the process to ensure that good quality and timely decisions are made on all applications.
- The merits of an individual's case should not be reviewed in a pre-assessment screening. This should only be used to establish straight forward facts, which mean that the individual should not enter the Refugee Status Determination procedures.
- Officials who display prejudiced or hostile attitudes to refugee applicants or act in a way that is incompatible with the provisions of the Refugee Act should be provided with the necessary training and/or disciplined, as appropriate.
- Measures should be taken to ensure that all interpreters working in the Refugee Status Determination procedures conform to the highest professional standards, both in terms of their personal conduct and the quality of their work.

⁷⁴ NANCEN interview with Karim on 11 September 2019.

⁷⁵ Korea Immigration Service, *Refugee Status Determination Procedures in Korea: Handbook for Recognized Refugees, Humanitarian Status Holders, and Refugee Status Applicants*, April 2015, p4.

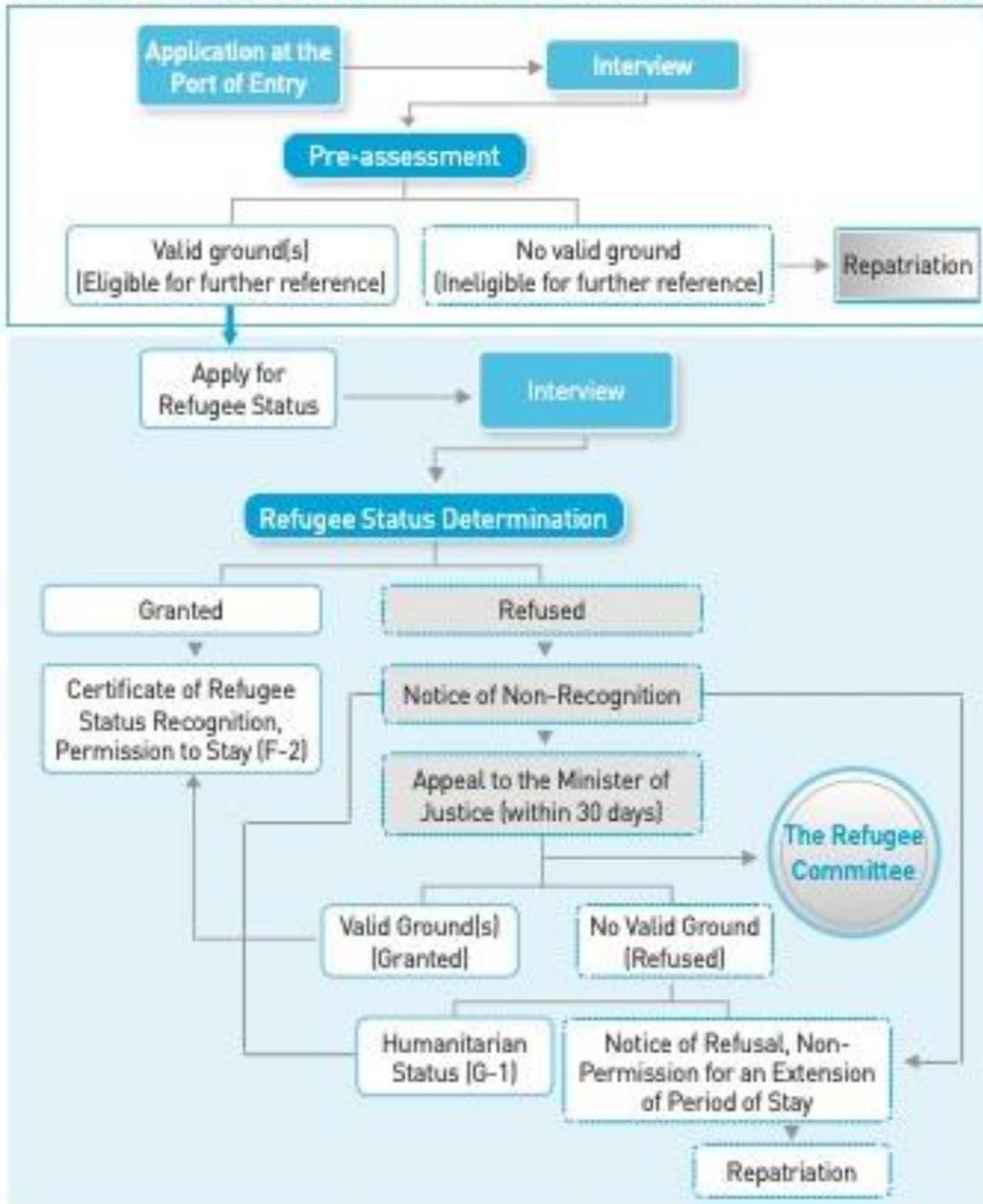
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- Clear guidance and training must be provided to Refugee Status Determination officers to ensure that refusal letters provide specific and detailed reasons for concluding that the refugee applicant is not at risk of persecution or other forms of serious harm, including appropriate reference to country of origin information.
- Refugee applicants need to be provided with better quality advice and assistance at all stages of the determination process (e.g. how to make an application/appeal, what information is required from them, what evidence should be submitted and in what format, how to access living expenses, etc.). This should be provided by both Immigration officers and qualified civil society organisations.
- There should be greater access to free legal advice for refugee applicants at both the initial determination and appeal stages.
- All refugee applicants should be provided with copies of the recording of their interview immediately on request.
- Immigration officers must ensure that applicants have received an invitation to attend an interview before concluding that a failure to attend is an act of non-compliance.
- The eligibility criteria for accessing living expenses and accommodation support should be clear and publicly available. The level of support provided to meet living expenses should be increased and those qualifying should have their living expenses backdated to the date when they made their application for support.
- Visa extensions, which are required because a decision has not been taken on a claim within six months should be provided free of charge.
- The criteria for granting humanitarian status should be clearly defined and made publicly available. Those granted humanitarian status should be provided with the same rights and entitlements as refugees.

Appendix 1: Refugee Status Determination Procedures⁷⁶

1 Applying for Refugee Status at Ports of Entry

〈Refugee Recognition Application and Procedures at a Port of Entry〉



⁷⁶ Korea Immigration Service, *Refugee Status Determination Procedures in Korea: Handbook for Recognized Refugees, Humanitarian Status Holders, and Refugee Status Applicants*, April 2015, p16.

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Appendix 2: Annual statistics, 1994-2019⁷⁷

Year	No. of applications ⁷⁸	Granted refugee status									Humanitarian Status	Rejected	Withdrawn/Cancelled ⁷⁹
		Total	Ministry of Justice					Judicial Review					
			Initial decision	Appeal	Resettlement	Family Reunion	Subtotal	Granted refugee status	Family Reunion	Subtotal			
1994	5	-	-	-	-	-	-	-	-	-	-	-	-
1995	2	-	-	-	-	-	-	-	-	-	-	-	-
1996	4	-	-	-	-	-	-	-	-	-	-	-	-
1997	12	-	-	-	-	-	-	-	-	-	-	-	-
1998	26	-	-	-	-	-	-	-	-	-	-	-	-
1999	4	-	-	-	-	-	-	-	-	-	-	-	-
2000	43	-	-	-	-	-	-	-	-	-	-	-	-
2001	37	1	1	-	-	-	1	-	-	-	-	-	-
2002	34	1	1	-	-	-	1	-	-	-	8	-	-
2003	84	12	11	1	-	-	12	-	-	-	5	-	-
2004	148	18	14	-	-	4	18	-	-	-	1	7	9
2005	410	9	9	-	-	-	9	-	-	-	13	79	29
2006	278	11	6	1	-	3	10	1	-	1	13	114	43
2007	717	13	1	-	-	11	12	1	-	1	9	86	62
2008	364	36	4	-	-	16	20	16	-	16	14	79	114
2009	324	74	45	10	-	15	70	4	-	4	22	994	195
2010	423	47	20	8	-	10	38	9	-	9	35	168	65
2011	1,011	42	3	8	-	13	24	18	-	18	20	277	90
2012	1,143	60	25	-	-	20	45	15	-	15	31	558	194
2013	1,574	57	5	9	-	33	47	10	-	10	6	523	327
2014	2,896	94	18	53	-	20	91	1	2	3	533	782	362
2015	5,711	105	13	27	22	43	105	0	-	0	198	1,835	278
2016	7,542	98	17	10	34	34	95	3	-	3	252	6,013	735
2017	9,942	121	27	24	30	35	116	5	-	5	317	5,607	1,197

⁷⁷ Information provided to NANCEN by the Ministry of Justice on 14 June 2012, 31 May 2013, 24 June 2015, 5 Feb 2017, 7 March 2018, 7 March 2019, 10 May 2019, 27 March 2020 and 20 May 2020.

⁷⁸ There is a discrepancy of 1 in the Ministry of Justice data on the total number of applications from 1994-2019. Between 2012-2019, the Ministry provided NANCEN with figures for the number of applications, which total 64,359 (as shown in Appendix 2). However, on 27 March 2020, the Ministry provided the figure of 64,358 for the total number of applications for 1994-2019.

⁷⁹ Applications withdrawn by refugee applicants or cancelled by the Ministry of Justice during the initial decision stage.

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2018	16,173	144	39	13	26	60	138	6	-	6	508	3,221	2,305
2019	15,452	79	11	3	37	23	74	5	-	5	231	5,639	4,139