

**WRITENET**  
independent analysis

writenet is a network of researchers and writers on human rights, forced migration, ethnic and political conflict  
writenet is the resource base of practical management (uk)  
e-mail: writenet@gn.apc.org

## **JAPAN: REFUGEES AND ASYLUM SEEKERS**

**A Writenet Report by Professor Meryll Dean, Oxford Brookes University, UK**

**commissioned by United Nations High Commissioner for Refugees,  
Protection Information Section (DIP)**

**February 2006**

(information updated until May 2005)

**Caveat:** Writenet papers are prepared mainly on the basis of publicly available information, analysis and comment. All sources are cited. The papers are not, and do not purport to be, either exhaustive with regard to conditions in the country surveyed, or conclusive as to the merits of any particular claim to refugee status or asylum. The views expressed in the paper are those of the author and are not necessarily those of Writenet or UNHCR.

# Table of Contents

Acronyms Glossary .....	i
Executive Summary .....	ii
<b>1 Introduction .....</b>	<b>1</b>
<b>2 The Legal Framework .....</b>	<b>3</b>
2.1 General.....	3
2.2 Human Rights and International Law.....	4
2.3 International Refugee Law Instruments and National Legislation.....	5
<b>3 Overview of Asylum Policy and Practice.....</b>	<b>6</b>
3.1 Historical Overview .....	6
3.2 The Procedures for Determining Refugee Status .....	7
3.2.1 <i>Application</i> .....	7
3.2.2 <i>First Instance Decision</i> .....	9
3.2.3 <i>Appeal Against Refusal (Objection Procedure)</i> .....	12
3.2.4 <i>Judicial Review</i> .....	13
3.2.5 <i>Post Recognition Status</i> .....	14
3.2.6 <i>Humanitarian Status (Special Permission to Remain)</i> .....	15
3.3 Statistical Information.....	16
3.4 Humanitarian Assistance: reception and integration issues.....	19
<b>4 The Role of UNHCR in Japan .....</b>	<b>21</b>
<b>5 The Role of Civil Society .....</b>	<b>23</b>
<b>6 Selected Protection Issues of Concern .....</b>	<b>24</b>
6.1 Detention Conditions .....	24
6.2 <i>Non-Refoulement</i> and the Principle of Good Faith.....	29
6.3 Confidentiality of Claims .....	29
6.4 Burden-Sharing and Resettlement .....	31
<b>7 Conclusions and Outlook .....</b>	<b>31</b>
<b>8 Tables .....</b>	<b>33</b>
Table 1: Convention Refugee Applications & Decisions.....	33
Table 2: Asylum Seekers' Country of Origin.....	34
Table 3: Landing Permission for Temporary Refuge .....	35
Table 4: Convention Refugee Applications .....	36
Table 5: Refugee Recognitions.....	37
Table 6: Refugee Recognition Rejections .....	38
<b>9 Bibliography .....</b>	<b>39</b>

## Acronyms Glossary

ACLL	Administrative Case Litigation Law
ARH	Airport Rest Houses
CAT	Convention Against Torture
CATOC	Convention Against Transnational Organized Crime
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of Racial Discrimination
CPA	Comprehensive Plan of Action
CRC	Convention on the Rights of the Child
HRW	Human Rights Watch
IB	Immigration Bureau
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRRA	Immigration Control and Refugee Recognition Act
JAR	Japan Association for Refugees
JFBA	Japan Federation of Bar Associations
JLNR	Japan Lawyers' Network for Refugees
JLAA	Japan Legal Aid Association
LPF	Landing Prevention Facility
LTR	Long-Term Residence (status)
MoJ	Ministry of Justice (of Japan)
NGO	Non-Governmental Organization
PPS	Permission for Provisional Stay
RCJ	Refugee Council Japan
RHQ	Refugee Assistance Headquarters
RI	Refugee Inquirer
RRS	Refugee Recognition Section
SPR	Special Permission to Remain
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
US(A)	United States (of America)

## Executive Summary

Japan is an advanced industrialized democracy with a constitutional monarchy and a parliamentary system of government. It has a population of nearly 128 million people of which nearly 99% are ethnic Japanese. Japan joined the United Nations in 1956 but did not become a party to the 1951 Convention Relating to the Status of Refugees (the Convention) and its 1967 Protocol until 1981. These instruments were given effect in the 1981 Immigration Control and Refugee Recognition Act (ICRRA) which was revised most recently in 2004. The new ICRRA came into effect in May 2005.

Japan was a closed country from 1639 to 1867 and subsequently has been a country of emigration rather immigration. Not until the mid-1970s, following the arrival of Indo-Chinese refugees, was Japan faced with the issue of how to deal with refugees and asylum seekers. Whilst initially reluctant to accept these refugees, and following international pressure, Japan introduced special procedures in order to facilitate their admission and settlement. Since accession to the 1951 Convention and 1967 Protocol in 1981 Japan has received 3,544 applications for asylum and has granted refugee status in 330 cases. In addition, since the first granting of humanitarian status in 1991, there have been 284 cases where applicants have been given this alternative status.

Almost all applications for refugee status are made in country. As very few applications are officially recorded at airports and seaports concerns have been raised that potential refugees are being deported without proper consideration of their cases in contravention of the principle of *non-refoulement* under Article 33 of the Convention. Although many applicants remain at liberty, Japan has a policy of detention aimed at illegal entrants and overstayers which impacts most upon asylum seekers and refugees. There have been reports of human rights abuses of foreigners in detention. Prime examples include the denial of access to appropriate interpreter, medical and legal services as well as verbal abuse and physical ill-treatment of detainees.

Refugee status is decided by the Immigration Bureau of the Ministry of Justice at first instance and on appeal. These are administrative procedures which lack independence and transparency and are inadequate. The use of judicial review is developing slowly as a tool with which to challenge the bureaucracy that determines status, but it encounters resistance in the higher courts where the judiciary have yet to overcome their historical reluctance to overturn administrative decisions.

The revised 2004 ICRRA introduces a number of new measures aimed at addressing in part the shortcomings of the system. Some progress is being made towards the proper and full implementation of international human rights and refugee law, but Japan remains a country where compliance continues to be an issue.

# 1 Introduction

Japan is an archipelago whose islands cover 377,835 sq km off the north east coast of Asia between the North Pacific Ocean and the Sea of Japan.<sup>1</sup> The four principal islands, from north to south, are Hokkaido, Honshu, Shikoku and Kyushu, although Honshu is considered the main island since it contains the capital, Tokyo, and the other larger cities and conurbations. The archipelago lies adjacent to the coastlines of, from north to south, Russia, North and South Korea, China and Taiwan. Some of the smaller islands are the subject of disputed sovereignty claims. Japan claims the Southern Kuril islands (known as the Northern Territories) which were occupied by the Soviet Union in 1945 but are now administered by Russia. The Liancourt Rocks are claimed by South Korea and the Senkaku islands are claimed by China and Taiwan. Whilst these unresolved disputes remain a source of friction between Japan and its neighbours, relations are in general good, if occasionally strained.<sup>2</sup> These relations are strongly influenced by both the legacy of Japanese military campaigns before and during World War II and the growth of strong economic ties between Japan and its neighbours.<sup>3</sup>

In 2004 Japan had a population of 127.8 million people. Because of the country's mainly rugged mountain terrain, around 80% of the population live in dense urban concentrations located mainly along the Pacific coastlines of Honshu and northern Kyushu. Although Japan is a modern industrialized country and has the world's second largest economy, it remains a deeply traditional society with entrenched social and employment hierarchies that have far-reaching consequences for its social ordering and government. Whilst these are beginning to be challenged by a younger generation more in tune with Western culture and ideas, Japanese society remains conservative in both operation and outlook. This stems, in part, from the country's ethnic and cultural homogeneity. Japan was a closed country for over two centuries from 1639 to 1867. When it reopened, Japan was confronted with the need move forward into the nineteenth century in almost every sphere of life. Through the transplanting of institutions and ideas and by means of a process of adoption and adaptation Japan "modernized" rapidly. Eventually, in response to this, the fact of Japan's ethnic, cultural and linguistic homogeneity became the foundation for resistance to "outside" influences. This reclaiming of national identity was perpetuated through an ideology of racial purity and uniqueness (*nihonjiron*).<sup>4</sup>

---

<sup>1</sup> Except when other sources are provided the information in this section is based on the following sources: Japan, Ministry of Internal Affairs and Communications, *Japan Statistical Yearbook 2005*, Tokyo, October 2004, <http://www.stat.go.jp/english/data/nenkan/index.htm> [accessed May 2005]; United States, Department of State, *Background Note: Japan*, Washington, April 2005, <http://www.state.gov/r/pa/ei/bgn/4142.htm> [accessed May 2005]; United States, Central Intelligence Agency, *The World Factbook: Japan*, Washington, 1 January 2004 [updated 10 February 2005], <http://www.cia.gov/cia/publications/factbook/geos/ja.html> [accessed May 2005]; Dean, M., *Japanese Legal System*, 2 ed., London: Cavendish, 2002

<sup>2</sup> Clark, G., Northern Territories Dispute Highlights Flawed Diplomacy, *The Japan Times Online*, 24 March 2005, <http://www.japantimes.co.jp/cgi-bin/geted.pl5?eo20050324gc.htm> [accessed May 2005]

<sup>3</sup> Miyazaki, J., Textbook Row Stirs Japanese Concern, *BBC News*, 13 April 2005, <http://news.bbc.co.uk/1/hi/world/asia-pacific/4439923.stm> [accessed May 2005]; Q&A: China and Japan's Troubled Ties, *BBC News*, 14 April 2005, <http://news.bbc.co.uk/1/hi/world/asia-pacific/4443821.stm> [accessed May 2005]; Thousands Join Anti-Japan Protest, *BBC News*, 16 April 2005, <http://news.bbc.co.uk/1/hi/world/asia-pacific/4450975.stm> [accessed May 2005]

<sup>4</sup> Kosaku, Y., *Cultural Nationalism in Japan*, London: Routledge, 1992; Befu, H., *Hegemony of Homogeneity: An Anthropological Study of 'Nihonjiron'*, Melbourne: Trans Pacific Press, 2001

The Japanese government still relies upon this vision of Japan when arguing that integration into society is difficult, if not impossible, for non-Japanese. Moreover, the idea that foreigners bring insecurity is a view often voiced by politicians and other officials and embraced by the media and public alike. Thus the desire to maintain social harmony and cohesion becomes the justification for resisting the acceptance of non-Japanese into what is said to be a mono-ethnic society. It is true that almost 99% of the population is Japanese, with the media reporting that, at the end of 2003, the proportion of “foreigners” had risen to 1.5%.<sup>5</sup> The significant groups are Koreans (614,000), Chinese (462,000), Brazilians (275,000) Filipinos (185,000) and Peruvians (54,000). Ethnicity, unlike language and culture, cannot be acquired and is seen as the defining characteristic of who is Japanese. Thus the Brazilian community in Japan, who are mainly ethnic Japanese now returning as foreign workers, have been accorded limited preferential treatment under the visa and residency rules for foreign workers. Nevertheless, despite a widespread perception to the contrary, Japan is a country virtually untouched by immigration and has a society that cannot be described as either diverse or multi-cultural. This is in stark contrast to Japan’s global impact in the economic and technological spheres, where its influence has been immense.

Following its defeat in World War II, Japan was governed and administered until 1952 by an Allied Occupation Force led by the United States. Legal and administrative reforms took place which provided the foundation for Japan’s subsequent economic success. From the 1960s to the 1980s Japan had one of the highest rates of economic growth worldwide. In the 1990s there was a distinct slowdown in the economy but Japan has nevertheless remained a major economic power regionally and internationally. In more recent times government debt, a troubled banking system and an ageing population have combined to limit economic growth and prevented recovery to former levels of prosperity. Nevertheless, Japan’s long-term economic prospects remain good. It is the world’s third-largest economy after the United States and China, the second largest industrial economy after the US and a major source of global investment finance.

Japan joined the United Nations in 1956 and concomitant with its growing economic strength exercised a more confident involvement in international politics. Since World War II Japan has relied upon the United States for military and strategic protection through the cooperative arrangements set up under the 1960 US-Japan Security Treaty and the Mutual Security Treaty. Whilst this relationship with the United States has provided national security and regional stability it has also shaped Japanese foreign policy. Under Article 9 of the Constitution Japan renounced war and was prohibited from maintaining military forces, but the country nevertheless has air, sea and land Self Defence Forces. However, because Japan’s military and security role in international affairs is limited by law, its main contribution to international relations has been in the form of economic assistance and overseas aid programmes, where it is the world’s second largest donor country.

Following the first Gulf War, in 1992 Japan passed the UN Peacekeeping Operations Law. This enabled the Self Defence Forces to participate in UN peacekeeping operations. More controversially, because it was not a UN backed operation, in 2004 Japan despatched military personnel and equipment to the war in Iraq in a support capacity at a time when there was a national debate, which is still unresolved, about the reinterpretation and possible revision of Article 9. Although Japan has been a non-permanent member of the UN Security Council on

---

<sup>5</sup> Foreigners Make up Record 1.5% of Japan’s Populace, *The Japan Times Online*, 12 June 2004, <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040612a5.htm> [accessed May 1 2005]

eight occasions, and in 2005 began its ninth two-year period, its hopes for a permanent seat to reflect the country's importance as an international actor have so far been frustrated. In the main this is due to it being considered unacceptable for Japan to determine security issues, and in particular troop deployments, when its own security situation is guaranteed by a third party. Further, it is unable to contribute any military forces to UN operations other than in a severely constrained peacekeeping role.

Japan is a secular state with a constitutional monarchy and a parliamentary system of government. Shinto and Buddhism are the two principal religions, followed by 84% of the population. Article 20 of the Constitution guarantees freedom of religion, and other faiths such as Christianity (0.7%) are practised openly. Although a long established religion, which accorded the Emperor divine status, Shinto was appropriated by the pre-World War II leaders and given State support. The 1946 Constitution transformed the Emperor from a deity, with divine right to rule, to the "symbol of the State" (Article 1) and a constitutional monarch. Parliamentary democracy and popular sovereignty were established through a bi-cameral parliament (the Diet) with universal suffrage from the age of 20. Executive power is vested in the Cabinet (Article 65), whose powers are set out in Article 73 and whose members are appointed by the Prime Minister.

In contrast to the pre-war system in which executive bodies exercised considerable control over the courts and legal system, the 1946 Constitution guarantees separation between the judiciary and other branches of government. However, the pre-war tradition of a strong bureaucratic administrative structure has continued. The Allied Occupation reforms may have altered the institutional structures but they did not alter the position of the bureaucratic elite in terms of influence, authority and power. Consequently, despite some legal regulation of administrative action, a very strong tradition of administrative decision-making has developed, which is rarely the subject of challenge or review in court. Japan is a parliamentary democracy with free elections and, currently, six main political parties. However, apart from a short period in the early 1990s, since 1955 the country has been ruled by the same political party (Liberal Democratic Party).

## **2 The Legal Framework<sup>6</sup>**

### **2.1 General**

The Supreme Court is the highest court (Article 81<sup>7</sup>) with responsibility for the administration of the legal profession. Before World War II the courts were subordinated to the administrative will of the Ministry of Justice but following the Occupation reforms were placed under the independent control of the Supreme Court. However, whilst the Supreme Court is established under the Constitution as its guardian (Chapter VI) it is not a constitutional court. Instead it has judicial review powers contained in Article 81 but these are rarely used. Article 76 states that "all judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws". Judges cannot be removed unless they are declared mentally or physically incompetent to perform their official duties and cannot be disciplined by executive agencies (Article 78). In theory a Supreme

---

<sup>6</sup> Dean, *Japanese Legal System...*; United Nations High Commissioner for Refugees, UNHCR Regional Representation In Japan, *Information for Asylum Seekers in Japan*, Tokyo, [updated 18 August 2004], [http://www.unhcr.or.jp/protect/pdf/040818infosheet\\_e.pdf](http://www.unhcr.or.jp/protect/pdf/040818infosheet_e.pdf) [accessed May 2005]

<sup>7</sup> Chapter/Article references in this section are to Japan, Constitution, 3 November 1946 (*UNHCR RefWorld 2004*, Issue 13, CD 2 )

Court judge can be removed by a majority of voters in a referendum (Article 79) but this power has never been used. In practice judges are closely monitored by the Supreme Court which regulates and manages judicial careers and which, on occasion, has been known to interfere with the exercise of judicial independence. This in turn has led to judicial conservatism, particularly in the higher courts and, in part, explains the lack of innovation and judicial activity in the Supreme Court.

The modern Japanese legal system is a hybrid which in the late nineteenth century was modelled on European civil law systems, particularly those of France and Germany, but which, after World War II, was reformed and strongly influenced by aspects of the Anglo-American legal tradition. Underlying these two elements remain aspects of pre-nineteenth century customary law and dispute resolution. The “Six Codes” are the primary sources of law, namely the Constitution, the Civil Code, the Code of Civil Procedure, the Criminal Code, the Code of Criminal Procedure and the Commercial Code. In addition there are the laws passed by the legislature and international treaties concluded by the government.

Although Japan is divided into 47 prefectures it does not have a federal legal system. It has a unified legal system administered by an independent court structure consisting of the Supreme Court in Tokyo and 8 High Courts, 50 District Courts, 50 Family Courts and 575 summary courts spread throughout the country. The legal profession is divided into practising lawyers, prosecutors and judges. Their numbers (less than 20,000 lawyers) are small for a country of Japan’s size and population (nearly 128 million people) and the geographical distribution unevenly concentrated in the two main cities of Tokyo and Osaka. Despite Japan’s economic wealth, the Legal Aid scheme is poorly funded and publicly-funded legal representation is extremely rare. In 2004 a reform of the Legal Aid system introduced a Legal Services Centre which will be effective in 2006. However, the scheme continues to exclude foreigners without legal status which has an impact on asylum cases.

## **2.2 Human Rights and International Law**

The Constitution provides for the protection of fundamental human rights (Chapter III).<sup>8</sup> Early interpretations of these provisions restricted that protection to Japanese citizens and not until 1978 did the Supreme Court expressly state that the fundamental human rights guaranteed in Chapter III should be “extended equally to all aliens staying in Japan except for those solely guaranteed to Japanese citizens by their nature”.<sup>9</sup> The Constitution is silent on the rights of entry for aliens, since, according to international law, a state has discretionary power to allow entry at its borders. That is therefore a matter delegated to the government to regulate according to law. In 1957 the Supreme Court held that the Japanese government is free to regulate the entry of aliens at its discretion under international law and is not obliged to allow such entry in the absence of a specific treaty obligation.<sup>10</sup> Article 98(2) of the Constitution confirms that “treaties concluded by Japan and established laws of nations shall be faithfully observed”.

Japan is a party to the following international human rights law instruments: the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention Against Torture (CAT); the

---

<sup>8</sup> *Idem*, Chapter 3: Rights and Duties of the People

<sup>9</sup> Japan, Supreme Court Grand Bench, Judgement of 4 October 1978, *Minshu*, vol. 32, no. 7, p. 1233

<sup>10</sup> Japan, Supreme Court Grand Bench, Judgement of 19 June 1957, *Keishu*, vol. 11, no. 6, p. 1663



Convention on the Elimination of Racial Discrimination (CERD); the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Japan has not signed the Optional Protocols to the following: ICCPR, ICESCR, CAT and CEDAW. In 2002 Japan signed the Protocols to the CRC on the Involvement of Children in Armed Conflict and the Sale of Children, Child Prostitution and Child Pornography. These were ratified in 2004 and 2005 respectively. In addition Japan has signed, but not yet ratified, the 2000 Convention Against Transnational Organized Crime (CATOC) and its three Protocols (Against Trafficking, Smuggling of Persons and Control of Firearms). It is believed that consideration is being given to ratifying these instruments in 2005. However, Japan is not a party to either the 1954 Convention Relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness.

### **2.3 International Refugee Law Instruments and National Legislation**

In 1981 Japan became a party to the 1951 Convention Relating to the Status of Refugees (the Convention) and the 1967 Protocol Relating to the Status of Refugees (the Protocol).<sup>11</sup> An Immigration Control Law had been in force since 1951 but accession to the Convention and Protocol demanded a change in the law. Rather than introduce a new law specifically dealing with refugee and asylum matters, the old law was amended and renamed the Immigration Control and Refugee Recognition Act 1981 (ICRRA). This combined package of measures came into effect on 1 January 1982. In 2002 the Ministry of Justice initiated a review of the refugee law and determination procedures. This resulted in a revised ICRRA being passed in June 2004 which came into effect in May 2005.<sup>12</sup>

Determination of refugee status is made by the Ministry of Justice (MoJ). An asylum seeker whose claim is rejected by the MoJ, either at first instance or following an “objection procedure” also to the MoJ (ICRRA, Article 61-2-9), can seek judicial review of the decision to refuse asylum under the Administrative Case Litigation Law (ACLL).<sup>13</sup> Since Japan does not have specialist Administrative Courts these cases are heard before the Civil Courts. The procedure, known as “Revocation Litigation” (ACLL, Articles 8-35) must start within three months of the decision to refuse being notified (ACLL, Article 14). This procedure, which is similar to judicial review, provides an independent re-examination of both the facts and the law and can include new evidence. However, the courts do not generally refer to international human rights instruments in their decisions since a strict view of this procedure is that it is a review of the administrative decision and not a fresh hearing of the facts and law.

Someone whose entry or stay within Japan is deemed to be illegal, including an asylum seeker or refugee, may be subject to detention and deportation. Detention for the purposes of deportation is not subject to mandatory judicial or administrative review. In practice judicial review of the legality of detention and deportation procedures is relatively rare.

---

<sup>11</sup> United Nations High Commissioner for Refugees, *States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol*, 1 October 2004 (*UNHCR RefWorld 2004*, Issue 13, CD 2)

<sup>12</sup> Japan, Immigration Control and Refugee Recognition Act 2004, June 2004. For full text, see <http://www.unhcr.ch/cgi-bin/texis/vtx/rsd/rsddocview.htm?CATEGORY=RSDLEGAL&id=3ae6b5754&page=research> [accessed May 2005] (*UNHCR RefWorld 2004*, Issue 13, CD 2). For a summary, see <http://www.moj.go.jp/ENGLISH/IB/ib-78.html> [accessed May 2005]

<sup>13</sup> Japan, Administrative Case Litigation Law, 1962, as amended

## 3 Overview of Asylum Policy and Practice

### 3.1 Historical Overview

Japan's accession to the Convention and Protocol was delayed for thirty years for two main reasons. First, Japan had been a country of emigration and in the years following World War II this remained the case. The issue did not therefore need to be addressed, indeed it could be bypassed since the government considered that the Convention was intended to deal with a specific situation in Europe and did not require action by Japan. Moreover, government and public opinion adhered to the fact that Japan was mono-ethnic, homogeneous and unique and therefore to encourage immigration would disrupt social cohesion. Second, it was feared that a change in the law would send a message to Japan's near neighbours, most of whom were politically unstable, economically underdeveloped and over-populated, that Japan was open to them and this would lead to unacceptable levels of immigration which would likewise have an adverse effect on Japanese society.<sup>14</sup>

Following World War II, Japan had a very small non ethnic-Japanese population (less than 1%). This was mainly comprised of Koreans and Chinese who had not arrived in Japan voluntarily. Instead, following the occupation of those countries in the pre-war and wartime periods, they had been forcibly taken to Japan to work. Combined with the fact that so few people wanted to settle in Japan, this meant that the country had no experience of or need to address immigration issues, let alone asylum. Then, during the 1970s, a flow of refugees from Indo-China started to arrive in Japan. The Japanese government at first estimated that many of the refugees had been picked up by ships merely *en route* elsewhere via Japan. The view was that these refugees should continue to the ship's final destination. Following international criticism, in particular from the United States, Japan granted all refugees permission to enter the country regardless of a vessel's country of registration. Very often the refugees would not be given permission to land unless they had a guarantee of living expenses from UNHCR and a guarantee of admission to a third country. Those that did gain entry were given very limited periods of stay and encouraged to resettle in a third country.

The situation of the Indo-Chinese refugees (from Vietnam, Cambodia and Laos) brought to light, both nationally and internationally, that Japan did not have a refugee policy, still less the mechanisms for dealing with the problem, and had not acceded to the Convention. In order to address the situation the Japanese government decided to admit the refugees as a matter of "policy". This was achieved on the basis of Cabinet Understandings and Decrees together with Ministry of Justice Ordinances and what became known as the Comprehensive Plan of Action (CPA). That "political" solution has endured with the result that between 1978 and 2002 Japan accepted 10,941 Indo-Chinese refugees.<sup>15</sup> They were granted entry and residency rights, and the majority have permanent residence permits. The Indo-Chinese refugees have received adequate government assistance over the years and have been able to achieve local integration.

Following accession to the Convention the Indo-Chinese refugees were still admitted under the "political solution" and on a quota basis. The Convention was only "invoked correspondingly" and few Indo-Chinese refugees went through the procedures put in place

---

<sup>14</sup> Mukae, R., *Japan's Refugee Policy: To Be of the World*, Florence: European Press Academic Publishing, 2001

<sup>15</sup> Japan, Ministry of Foreign Affairs, *Refugees: Acceptance of Refugees by Japan*, Tokyo, n.d., <http://www.mofa.go.jp/policy/refugee/japan.html#ii> [accessed May 2005]

after accession or were granted Convention refugee status. Since 1979 durable solutions have been provided for 11,283 Indo-Chinese refugees in Japan. The majority have permanent residence status and a small number (around 760) have even acquired Japanese nationality. It is estimated that over 2,000 do not have permanent status. However, unless otherwise stated, all references below to “refugees” relate to Convention refugees.

### 3.2 The Procedures for Determining Refugee Status

#### 3.2.1 Application

The Immigration Bureau (IB) of the Ministry of Justice has responsibility for refugee status determination procedures. Asylum seekers can apply for refugee status in one of four ways:

- at the port of entry they can make an application for landing permission as a temporary refugee under Article 18-2 ICRRA;
- they can declare themselves asylum seekers (in accordance with Article 61-2 ICRRA) at the immigration counter when applying for landing permission in accordance with Article 6 ICRRA;
- having been found liable to deportation under Article 24 ICRRA they may then claim to be an asylum seeker in accordance with Article 61-2 ICRRA;
- asylum seekers, having obtained a visa to enter the country, once within Japan, may subsequently make an application for refugee recognition under Article 61-2 ICRRA.

There have only been a handful of asylum claims at the ports of entry in Japan. The Ministry of Justice does not publish official figures for the number of asylum seekers who claim at the port of entry under Article 61-2. In 2003 there were only 9 such applications, none of which was at a sea port, and in 2004 there were “around 15” such applications.<sup>16</sup> Port of entry applications under Article 18-2 are published and these show that very few are made and even fewer granted under this provision.<sup>17</sup> (See also below, **Table 3: Landing Permission for Temporary Refuge.**)

The basis upon which the decision is made to grant temporary landing permission under Article 18-2 is not known. This is not surprising since, as is clear from **Table 3**, Article 18-2 was intended to deal with Indo-Chinese refugees and not Convention refugees. The low number of port of entry claims suggest that immigration control officers are unaware that temporary landing permission under Article 18-2 could be granted to non Indo-Chinese. NGOs and others working with refugees report that it is not uncommon for asylum seekers to declare themselves at the port of entry but to be advised to withdraw the claim in order to be granted entry to Japan, usually on a short-term 90-day tourist visa.<sup>18</sup> The MoJ brochure for asylum seekers does not mention the Article 18-2 temporary landing permission application. This further emphasizes that Article 18-2 is not officially acknowledged as being applicable to those other than Indo-Chinese. Given the general flow of foreigners into Japan, many from refugee generating nations, the low number claiming asylum at ports of entry would suggest that in practice the majority enter on visas falsely claiming to be tourists or on business and

---

<sup>16</sup> Officials of the Immigration Bureau, Ministry of Justice, Tokyo, Personal interview, December 2004

<sup>17</sup> Japan, Ministry of Justice, Immigration Bureau, *2004 Immigration Control*, Tokyo, November 2004, Chapter 2, Table 41

<sup>18</sup> Representatives of the Japan Association for Refugees and Japan Lawyers’ Network for Refugees, Tokyo, Personal interviews, October 2003 and December 2004

that there is a screening process operating which diverts individuals and prevents them from entering Japan.<sup>19</sup>

It is estimated that a significant number of potential refugees are refused entry at airports and deported without proper consideration of their cases.<sup>20</sup> On arrival they are taken for questioning in Special Examination Rooms. If a person has been denied permission to land by an immigration officer, under Article 6 ICRRRA, there will follow a period of questioning. During this time the person will be detained either at an “Airport Rest House”, outside the airport, or at a Landing Prevention Facility within the airport boundaries.<sup>21</sup> Both facilities are operated by private security firms and there are reports of occupants being subjected to ill-treatment by both immigration officials and private employees whilst detained at these premises.<sup>22</sup> Furthermore, no official figures are available as to the number of asylum seekers who might be detained in either of these facilities at any given time. Consequently there is a risk that asylum seekers are without access to adequate legal, medical or interpreter services, and subject to deportation without proper consideration of their claims, or that the opportunity to appeal may be at variance with international human rights standards.<sup>23</sup> Eventually an “order to leave” is issued and the person placed on the next available return flight. The fact that these asylum seekers are not accounted for in the official statistics, because they have not formally “entered” Japan, partly explains the low number of asylum seekers who “officially” claim asylum each year (see **Table 1: Convention Refugee Applications and Decisions**).

This situation raises serious concerns about Japan’s compliance with international instruments to which it is a signatory, in particular the principle of *non-refoulement* under Article 33 of the Convention.<sup>24</sup> Adding to these concerns are the consequences of the re-admission agreement which Japan and China signed in October 2003. Under this agreement the Japanese coastguard is instructed to return undocumented Chinese nationals found on vessels it intercepts, and China agrees to accept those returned to its shores.<sup>25</sup> Not only do these returns act as a deterrent to potential asylum applicants, but they also in consequence have the effect that the individuals concerned do not become part of the official statistics of those seeking asylum.

Except for the few cases of asylum seekers who have claimed at the port of entry, the majority of applications are made after entry to Japan. Under the provisions of the pre-2004 ICRRRA an asylum application had to be made to the authorities within 60 days of an applicant’s arrival. Alternatively, if the applicant was already in Japan but events occurred that might make the

---

<sup>19</sup> Japan, Ministry of Justice, Immigration Bureau, *2004 Immigration Control...*, Chapter 2

<sup>20</sup> Amnesty International, *Japan: Welcome to Japan?*, London, 17 May 2002

<sup>21</sup> *Ibid*

<sup>22</sup> *Ibid*

<sup>23</sup> *Ibid*; see also Amnesty International, *Japan: Ill-Treatment of Foreigners in Detention*, London, 10 November 1997

<sup>24</sup> See Article 33 of the 1951 Convention; Article 7 and 10, ICCPR; Article 3 and 12 CAT; see also United Nations, General Assembly, Body of Principles for the Protection of All persons under Any form of Detention or Imprisonment, A/RES/43/173, 1988 (hereafter quoted as Body of Principles), <http://www.un.org/documents/ga/res/43/a43r173.htm> [accessed May 2005], Principles 13-17 and 32 (*UNHCR RefWorld 2004*, Issue 13, CD2)

<sup>25</sup> Japan Coastguard, Press Release, October 2003, <http://www.kaiho.mlit.go.jp/info/kouhou/h15/k20031021/> [accessed May 2005]; United States Committee for Refugees and Immigrants, *World Refugee Survey 2003: Japan*, Washington, 2004

person a refugee, the application had to be made within 60 days from when the applicant became aware of those facts. Around half of all applications were rejected because they fell foul of the 60 day rule. The revised 2004 ICRRRA, which came into effect in May 2005, abolished the 60 day rule. Whilst it remains to be seen whether this will have a real impact on asylum claims and their success, a small rise in the figures can reasonably be anticipated.

An asylum seeker is required to submit, in person, a written application and evidentiary documents to a Regional Immigration Bureau. Only if applicants are illiterate or have a disability can they make an oral application. Applications for those under 16 years old may be completed by a close relative and whilst each asylum seeker, including minor children, must apply individually, family members are normally considered together and thereby form part of a common decision by the Ministry of Justice. In May 2005 the application form was changed for the first time since Japan's accession to the Convention. The Immigration Bureau publishes a Guide on how to make an application which is now translated into 10 languages.<sup>26</sup> However, the Guide is not widely available and is only issued after potential applicants present themselves at the Immigration Bureau. Even then, it is more a formal summary of the legal and administrative provisions than a practical and informed explanation of how to claim asylum. For such assistance a potential applicant would need to obtain written guidance from UNHCR or an NGO such as the Japan Association for Refugees.<sup>27</sup> Once an application is made the case is considered by a Refugee Inquirer (ICRRA, Article 61-2-14).

Following submission of an application for refugee recognition at a Regional Immigration Bureau an asylum seeker receives an acknowledgment of the application. On average the asylum procedure can take anything from six months to two years. Article 61-2-4 of the 2004 ICRRRA introduces a Permission for Provisional Stay (PPS) which does not confer legal status upon a person who has applied for refugee recognition. The Article contains a number of conditions which exclude certain applicants. These exclusions are highly restrictive and such that detention may remain the likely outcome in a significant number of cases.

### **3.2.2 First Instance Decision**

Refugee Inquirers (RIs) are Immigration Inspectors designated by the Ministry of Justice to deal with refugee recognition for a period of two or three years. These short-term secondments mean that RIs have little expertise in refugee matters. In 2002 a written answer, given by Prime Minister Koizumi to a member of the Diet, stated that there were 44 RIs of which only 4 were full-time; the remaining 40 acted concurrently as Immigration Inspectors.<sup>28</sup> As a consequence there is a lack of independence from the Immigration Service and related government policy aimed at tighter immigration control measures. These short-term or part-time appointments also mitigate against the acquisition of expertise in either refugee law or the determination of refugee status. In addition the Ministry of Justice Ordinances, which set out the precise manner in which a refugee status determination is to be decided, are not in the public domain. The basis of any determination cannot therefore be scrutinized, which further undermines the appeal process. This is of particular concern since Japan's refugee determination procedure, rather than being based on human rights and refugee

---

<sup>26</sup> Japan, Ministry of Justice, Immigration Bureau, *A Guide to the Procedure for Recognition of Refugee Status*, Tokyo, 2000

<sup>27</sup> United Nations High Commissioner for Refugees, UNHCR Regional Representation in Japan, *Information for Asylum Seekers...*; Japan Association for Refugees, *To Those Who Wish to Apply for Refugee Status*, Tokyo, July 2004, [http://www.refugee.or.jp/for\\_refugee/tothose/tothose\\_e\\_0407.pdf](http://www.refugee.or.jp/for_refugee/tothose/tothose_e_0407.pdf) [accessed May 2005]

<sup>28</sup> See, [http://www.shugiin.go.jp/itdb\\_shitsumon.nsf/html/shitsumon/b154195.htm](http://www.shugiin.go.jp/itdb_shitsumon.nsf/html/shitsumon/b154195.htm)



law, is strongly influenced by national immigration and foreign policy. For example, although China is a close neighbour of Japan and produces the third highest number of people seeking asylum in the EU and non-European industrialized countries, there have only been two asylum seekers from China that have successfully achieved refugee status.<sup>29</sup> One of these succeeded in gaining recognition after eleven years and three applications.<sup>30</sup>

As part of the consideration of an application the RI conducts an interview. Applicants may be recalled for interview on further occasions but at no stage during the first instance phase are they entitled to have a lawyer or anyone else present to assist or advise. The only other person present is an interpreter recruited on an *ad hoc* basis by the Regional Immigration Bureau. There is no national interpreter service comprising recommended and approved interpreters and no formal scheme in place to test an interpreter's linguistic skills or to evaluate their suitability for the task. This can lead to inadequate interpreters being provided, for example when they are from the same country as the applicant but do not speak the same language or dialect (Turkey/Kurdish; Afghanistan/Dari or Pashtu). Likewise there could be difficulties if the "interpreter" is not speaking in their mother tongue or is a Japanese student of the language without the necessary knowledge adequately to interpret. In some cases there has been complete denial of access to an interpreter.<sup>31</sup> The inadequate provision of and access to a professional interpreter service have been consistently raised by lawyers and other refugee advocates.<sup>32</sup>

At the interview the RI will often take a statement from the applicant or request additional documents. All documents must be translated into Japanese at the applicant's expense. RIs can also request information about an individual from public offices or private organizations. Whilst both the interview and investigation are conducted by an RI the extent to which they examine the facts of a particular case, in particular objective evidence on the country of origin situation, is not clear. The RI submits a preliminary assessment, endorsed by the Regional Director General, which is then forwarded for the final assessment and decision. This process is carried out by the Refugee Recognition Section (RRS) at the Tokyo headquarters of the Immigration Bureau which consists of six members, including one public prosecutor on secondment. The RRS can return the case to the Regional Bureau if further information is required. The extent to which the RRS can conduct its own enquires into a case has always been unclear. It was generally accepted that the Ministry of Foreign Affairs would send enquiries to overseas missions and this information would be available to the RRS. However in summer 2004 it was demonstrated that their research could be far-reaching and of serious concern. A Ministry of Justice delegation, which included members of the RRS, visited Turkey specifically seeking information to verify the claims of seven Kurdish asylum seekers in Japan.<sup>33</sup> It was reported that this led to the family of one asylum seeker being arrested and questioned in Turkey and has had an adverse effect upon his case in Japan.<sup>34</sup> Verifying

---

<sup>29</sup> United Nations High Commissioner for Refugees, *Asylum Levels and Trends in Industrialized Countries*, 2004, Geneva, 2005, <http://www.unhcr.ch/cgi-bin/texis/vtx/statistics/openssldoc.pdf?tbl=STATISTICS&id=422439144> [accessed May 2005]

<sup>30</sup> Japan Association for Refugees, Tokyo, Personal interview, December 2004

<sup>31</sup> Amnesty International, *Welcome to Japan...*

<sup>32</sup> Body of Principles, Principle 14

<sup>33</sup> Amnesty International, *Japan: Government Endangers Refugees' Families in Turkey*, London, 2 September 2004

<sup>34</sup> Tokyo Told Turkish Cops about Kurd Now in Detention, *The Japan Times Online*, 9 April 2005 <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050409b2.htm> [accessed April 2005]

applicants' claims in the country of origin resulted in a loss of confidence in the refugee determination procedures amongst asylum seekers.

In general if no further information is required the RRS Director makes a recommendation to grant or refuse asylum and forwards the case to the Minister of Justice who, on advice, takes the final decision. What is not clear in this process of status determination is the extent to which the Minister of Justice may exercise his discretion.

Whilst it is recognized that lawyers often assist asylum seekers in making applications, the absence of legal representation during the initial stage, and particularly during interview(s) or if the applicant is in detention, is contrary to Japan's obligations under international law.<sup>35</sup> State-sponsored Legal Aid is not available to asylum seekers. Instead, in recent years UNHCR has partially funded a project via the Japan Legal Aid Association (JLAA). This involved channelling funds specifically designated for lawyers to provide asylum seekers with advice during the asylum determination process and any subsequent court proceedings. However, following changes in the law in 2004 and the possible dissolution of the JLAA in 2006, NGOs will continue to provide legal advice to asylum seekers with limited funds. Some lawyers work on a *pro bono* basis while others assist for reduced fees or a nominal charge. Nevertheless, despite the efforts of a committed group of lawyers, mainly from the Japan Lawyers Network for Refugees, the overall provision of appropriate legal advice to asylum seekers is inadequate.

A major criticism of decisions to refuse refugee recognition is the paucity of reasons given for the rejections.<sup>36</sup> For example:

Your application was submitted after the expiration (*sic*) of the period provided for in Article 61-2 of the ICRRRA and your statement of reasons for the delay of the application cannot be accepted as it does not come under the circumstances to which the proviso to the same paragraph applies.

In other words, the application fell outside the 60 day rule. If the application is made within the 60 days a different reason must necessarily be given. For example:

You are not recognized as a refugee who comes under the category of persons having well-founded fear of being persecuted for the reasons of Race, Religion or Membership of a particular social group provided for in Article 1, Paragraph A(2) of the Convention relating to the Status of refugees because there is no specific proof of your statement that there is a fear of persecution for the reasons of being a family of Shi's Muslim Bayats' member of Hezbe Shieye Vahdate Eslami.

In addition to the brevity of this statement it also inaccurately deals with Article 1 since it leaves out political opinion. In another case the statement of reasons for rejection stated:

Your activities in Falun Gong are not persecuted by the Chinese government. There is a lack of concrete evidence of persecution.

---

<sup>35</sup> Body of Principles, Principle 17

<sup>36</sup> The following anonymized examples were provided to the author by members of the Japan Lawyers' Network for Refugees, October 2003 and December 2004

Since January 2003 a slightly longer explanation is given (now half a page in length) but the English translation is no longer provided. The brevity of the statement of reasons for rejection by the Minister of Justice poses a serious obstacle to the process of framing the “objection procedure” or a subsequent judicial review. If the reasons for the decision are not known, objecting to or reviewing the decision becomes difficult, if not impossible. Likewise, the form to appeal against the initial decision of refusal is only one page in length, although it is now accepted practice that additional information can be attached.

### ***3.2.3 Appeal Against Refusal (Objection Procedure)***

Following a refusal of asylum an applicant has seven days from the date of receiving the decision to object (ICRRA Article 61-2-9). Around 60% to 70% of failed applicants lodge objections. Although considered by a different section, namely the Adjudication Division, the review is still within the Immigration Bureau and barely constitutes a fresh consideration of the case. Whereas in the past new evidence was not allowed to be considered during the “objection procedure” in recent times there has been greater willingness to consider additional information and the process can involve further interviews. The additional interviews are carried out at the same Regional Office as the original application. A lawyer is allowed to be present although their role is limited to silent observer and supporter. Although this is sometimes referred to as an appeal it does not involve a judicial process and is merely an internal review of the initial decision. Moreover, applicants and their lawyers do not have the opportunity to examine the information upon which the original decision was made and therefore are unable to test, challenge or object to the substance of the decision. The Adjudication Division submits a recommendation to an Appeals Board within the IB but, because of the structure and small size of the IB, the membership of that Board will almost certainly have been involved in the original decision. Accordingly there is no independent assessment of the case.

Under the 2004 ICRRA this “objection procedure” will now take place before a panel of Refugee Examination Counsellors (Articles 61-2-9 and 61-2-10). The selection and appointment of these Counsellors was finalized in May 2005. They were appointed by the Minister of Justice “from among persons of reputable character who are capable of making fair judgements and have an academic background in law or current international affairs”. This included former diplomats, international businessmen, bureaucrats, journalists, judges, academics and NGO members. An “academic background in law” does not require Counsellors to have any understanding of refugee and asylum law. The lack of transparency concerning the selection process, together with the broad categories of potential appointees, means that doubts exist as to their likely suitability and independence. As the appointees are in effect nominees rather than persons selected through an open process of recruitment, it will be possible for the Ministry of Justice to ensure the appointment of persons who are sympathetic to the bureaucracy and restrained in their criticism of the Ministry of Justice refugee determination procedure.

Article 61-2-10 of the 2004 ICRRA states that there will be a “certain number” of Counsellors. There are currently 19 Counsellors who sit in teams of three. Their appointment is for two years only. Limited training was provided by the Ministry of Justice. In addition to being employed by the Ministry of Justice, the Counsellors are administered by the IB. Accordingly there remains an absence of independence. The conclusions of the Counsellors are not binding on the IB and the final decision still rests within the IB, the original decision maker. Lawyers have no access to these conclusions which remain strictly internal. An effective “objection procedure” to an administrative decision requires transparency and access to independent judicial review. The introduction of Refugee Examination Counsellors



provides neither. One test of whether this new procedure is effective might be if the reversal of first refusals increases.

In the same way that the reasons for refusing refugee status at first instance are extremely brief, so too are the reasons for refusal under this objection procedure. Again the paucity of reasons is such that it cannot form the basis for a realistic appeal from the decision by way of judicial review. The “reasons” will usually state: “The review of your application for recognition of refugee status has revealed that there was no error in the original decision denying your refugee status, and no further documentary evidence has been found to qualify you as a refugee defined in the Convention Relating to the Status of Refugees.”<sup>37</sup>

In the small number of cases where applicants are granted refugee status they receive a one page document titled “Certificate of Refugee Status” containing their personal details and a short statement that the holder of the certificate is recognized as a refugee.

### 3.2.4 *Judicial Review*

Following a further refusal to grant status at the “objection procedure” stage an applicant can apply for judicial review at the District Court. Whilst it is possible to apply for judicial review after the first non-recognition, most applicants await the outcome of the objection procedure (ACLL 1962, as amended, Articles 8-35). The number of such cases has risen rapidly in the last five years largely as a result of the work of members of the Japan Lawyers’ Network for Refugees and other *pro-bono* lawyers working with refugees. Cases must be submitted within three months of the second refusal. It is these cases which have raised the profile of refugee issues significantly in recent years and highlighted some of the apparent difficulties which Japan has with asylum and refugee issues and in particular applying international law.<sup>38</sup> The ACLL “objection procedure” form of judicial review does not allow for a full review of the facts of a case nor all the legal issues. In addition the court only examines the legality of the MoJ decision at the time it was made and does not consider subsequent events. Accordingly, since the judicial review process may take a number of years, if applicants wish to have subsequent events taken into account they will need to make a fresh asylum application.

The use of administrative case law litigation has become an effective legal tool for challenging IB decisions not only on the refugee determination but also on deportation and residency. In 1999 the total number of ACLL cases lodged against the IB was just 62, but by 2003 the figure had risen to 205.<sup>39</sup> Whereas in 1999 there were only 82 such cases pending, in 2003 the number was 327. In relation to the suspension of deportation orders there were just 17 cases in 1999 whereas in 2003 the number was 93. Of all the ACLL cases lodged against

---

<sup>37</sup> *Ibid*

<sup>38</sup> Kodama, K, *Nanmin Hanrei-shu (Compilation and Commentary on Refugee Case-Law)*, Tokyo, Gendai-jimbun-sha, 2004; United Nations High Commissioner for Refugees, Deep Concern over Refugee Deportation, 18 January 2005 (press release); Japan Criticized over Detainees’ Deportations, *The Japan Times Online*, 28 January 2004, <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040128b1.htm> [accessed May 2005]; Immigration Might Ship New Refugee, *The Japan Times Online*, 8 February 2005, <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050208f2.htm> [accessed May 2005]; Last ‘Mandate Refugees’ Allowed Out of Detention, *The Japan Times Online*, 20 February 2005, <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050220a3.htm> [accessed April 2005]; Thrice Court-Recognized Refugee Wants Ministry Nod, *The Japan Times Online*, 9 April 2005, <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050409b1.htm> [accessed May 2005]; Asylum Seeker Sues State for Damages, *The Japan Times Online*, 9 April 2005, <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050409a3.htm> [accessed May 2005]

<sup>39</sup> Japan, Ministry of Justice, Immigration Bureau, *2004 Immigration Control...*, Chapter 5; Tables 55 and 56 [Japanese edition only]

the IB in 2003, 68 dealt with issues related to the deportation procedure, 53 related to the refugee determination procedure and 58 were on issues related to the extension or alteration of residency status.<sup>40</sup> In 2003 the cases dealing with refugee determination issues accounted for 26% of ACLL cases against the IB. Whilst the increase in this type of case might also reflect the rise in the number of refugee applications during the period (see **Table 1** and **Table 2: Asylum Seekers' Country of Origin**), there is no doubt that lawyers are now using the ACLL to challenge IB decisions more frequently and effectively than before. In addition there is a growing willingness to claim damages against the government for perceived abuses during the refugee determination procedure.<sup>41</sup> In 2003 there were 26 cases lodged against the IB that dealt with issues of government liability in cases with which it had dealt.<sup>42</sup>

Until 2000 in all but one case, the MoJ's decision to refuse asylum was upheld. However, from 2001 onwards there have been several cases in the District Courts where the MoJ's decision has been overturned. Not every case is then appealed to the High Court, but if it is the ruling against the MoJ is invariably overturned.<sup>43</sup> The Supreme Court shows a similar unwillingness to go against decisions of the MoJ. In short, the higher courts demonstrate considerable unwillingness to challenge the Administration. One explanation for this is the inherent conservatism and lack of judicial independence which has been observed in the Japanese judiciary.<sup>44</sup> However, another contributory factor is the absence of experience or training in international law. In 1998 the Human Rights Committee in its concluding observations on Japan's Fourth Periodic Report under the ICCPR stated: "The Committee is concerned that there is no provision for the training of judges, prosecutors and administrative officers in human rights under the Covenant. The Committee strongly recommends that such training be made available."<sup>45</sup> However, little seems to have been done in response to this criticism. Until very recently international law was not taught at the Legal Training and Research Institute, where the judiciary are trained, and there is no specialist training in refugee and asylum law for judges. The willingness of judges in the District Courts to find against the MoJ compared with the unwillingness of those in the higher courts to find against the MoJ could be a function of the age profile of the judiciary. Thus, whilst younger judges with a broader education and experience are now coming through the ranks, the judiciary in the higher courts remain conservative and compliant in their approach.

### 3.2.5 *Post Recognition Status*

Under the pre 2004 ICRRA a person recognized as a refugee did not automatically obtain residency rights. Therefore, if at the time of recognition the person's stay was illegal or they had a short-term visa, an application still had to be submitted to the MoJ for a long-term residence permit. The revised 2004 ICRRA (Article 61-2-2) streamlines this process and states that when the Minister of Justice recognizes an applicant as a refugee he "shall" also grant Long Term Residence status (LTR) at the same time. However, the granting of such a

---

<sup>40</sup> *Ibid*

<sup>41</sup> Asylum Seeker Sues State...

<sup>42</sup> Japan, Ministry of Justice, Immigration Bureau, *2004 Immigration Control...*, Chapter 5

<sup>43</sup> See Kodama, *Nanmin Hanrei-shu...*

<sup>44</sup> Ramseyer, J.M. and Rasmusen, E.B., *Measuring Judicial Independence: The Political Economy of Judging in Japan*, Chicago: University of Chicago Press, 2003

<sup>45</sup> United Nations, Human Rights Committee, Concluding Observations of the Human Rights Committee: Japan, CCPR/C/79/Add.102, 19 November 1998, Observation 32, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/5a2baa28d433b6ea802566d40041ebbe?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/5a2baa28d433b6ea802566d40041ebbe?Opendocument) [accessed May 2005]

permit will be subject to two conditions: (i) in the absence of “unavoidable circumstances”, they must have applied for asylum within six months of arrival or knowledge of events relevant to the grant of refugee status, and (ii) they must have come “directly from a territory where their life, physical being or physical freedom was likely to be persecuted” due to reasons set out in Article 1A(2) of the Convention.

By making LTR a concomitant of refugee status the revised law is undoubtedly an improvement, but the failure to satisfy the two conditions in ICRRA Article 61-2-2 could undermine the position of some refugees. First, the term “unavoidable circumstances”, which is used to exempt a person from the new provision, is not defined. It will therefore depend upon the discretion of the Minister of Justice and the exercise of such discretion is unlikely to be successfully challenged. Second, the provision that a person must have come “directly” from a territory where they were in danger, is open to a very wide interpretation and again depends upon the exercise of ministerial discretion. It is known that many incoming flights touch down in third countries or that “direct” flights can involve a change of plane in a third country. In such circumstances asylum seekers who transit through a third country may be deemed to be outwith the provision. In the light of the lack of transparency and independence that will remain in the refugee determination process, even after the implementation of the 2004 ICRRA, leaving these important issues of interpretation to ministerial discretion raises the possibility of political decision-making. Since residency rights are a corollary of protected rights under the Convention the continued failure to grant them in some cases will result in refugees not having access to health and welfare benefits and assistance.

### **3.2.6 Humanitarian Status (Special Permission to Remain)**

The general definition of “humanitarian status” comprises three categories of person: those with a refugee claim under the Convention; those who are entitled to complementary forms of protection and those allowed to remain on compassionate grounds.<sup>46</sup> In Japan no distinction is made between these categories. Instead Article 50 of the ICRRA permits the Minister of Justice to exercise his discretionary powers and grant a failed asylum seeker “special permission to stay” in Japan. This is preserved in Article 61-2-2 of the 2004 ICRRA. This provides that when an alien, without residence status, has had their application for refugee recognition refused “the Minister of Justice shall examine whether there are grounds for granting special permission to stay” and if such grounds are found, to grant that permission. This provision does not specifically include those persons who fail to meet the definition contained in Article 1(A) of the Convention but who nevertheless need international protection such as, for example, persons fleeing the indiscriminate effects of violence in a conflict situation with no specific element of persecution.<sup>47</sup>

The power to grant Special Permission to Remain (SPR) has been used infrequently (see **Table 1**). In 2004 there were 294 cases in which refugee status was refused and only 9 where SPR was granted. In 2003 there were 298 cases in which refugee recognition was refused and only 16 where SPR was granted. In the 10 years from 1994 to 2004 there were 2,524 cases where refugee recognition was refused but SPR was granted in only 284 cases. The

---

<sup>46</sup> Brownlie, I., *Principles of Public International Law*, 6 ed, Oxford: Oxford University Press, 2003; Feller, E., Türk, V., Nicholson, F. (eds), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, Cambridge: Cambridge University Press, 2003

<sup>47</sup> United Nations High Commissioner for Refugees, Global Consultations on International Protection: Complementary Forms of Protection, EC/GC/01/18, 4 September 2001, [http://www.unhcr.bg/global\\_consult/ec\\_gc\\_01\\_18\\_en.htm](http://www.unhcr.bg/global_consult/ec_gc_01_18_en.htm) [accessed May 2005] (*UNHCR RefWorld 2004*, Issue 13, CD1)

Adjudication Division of the MoJ is responsible for handling requests for “humanitarian status” or SPR. This is the same Division that deals with the “objection procedure” against first refusals of refugee recognition. In order to be considered for SPR under Article 61-2-2 applicants must have failed to be recognized as refugees and therefore, under this system, their cases for SPR are considered by the same officials who determined the initial refusals. The basis of decision-making in these cases is not known since it is ultimately based upon the discretion of the Minister of Justice. Once again, as in refugee recognition cases, this means that decision-making can be influenced by wider political and policy considerations.

The number of applicants granted SPR is higher than those granted refugee status. In 2003 only 10 applications for refugee recognition were granted. From 1994 to 2003 only 109 applicants were granted refugee status. However, the grant of SPR provides a less secure residency right than that afforded to refugees under the 2004 ICRRA, since SPR is a one-year, renewable, residency permit which will usually be granted under the category of “designated activity”.<sup>48</sup> Thus a person with SPR falls within the same category as 27 other categories of resident permit which are liable to discretionary revocation by the authorities but which do allow access to health, pension and education provision. In theory, after 10 years, the holder can apply for a change of visa status and, at the discretion of the MoJ, be granted a long-term residence permit or permanent residence. In reality, few holders of SPR have obtained permanent residence. Moreover, the SPR does not provide protection against *refoulement*. Whereas the renewal of SPR is *de facto* automatic, because of the discretionary power to revoke, a holder of SPR is always at risk of revocation and subsequent *refoulement*. This would be the case where the holder committed a serious criminal offence leading to imprisonment. Accordingly it is clear that SPR provides far less protection or support than the grant of refugee status and is a poor substitute for the grant of humanitarian status provided by other jurisdictions.

### 3.3 Statistical Information<sup>49</sup>

In the period since accession to the Convention in 1982 there have been 3,544 applications for Convention refugee status. During that time Japan has recognized 330 refugees (see **Table 1**). Of those, 17 were granted status following an appeal against refusal, usually by way of judicial review. This is in a country with a population of 127.8 million people. Before 1995 there were no cases where appeals resulted in status being granted and since that time the number each year is limited to single figures. During the same period 284 applicants have been granted humanitarian status, although it was not until 1991 that the first grant of humanitarian status (SPR) was made (see **Table 1**). However, since 1991 humanitarian status has been granted in significantly more cases than Convention refugee status. This is particularly so amongst asylum seekers arriving from China and Turkey where the Japanese government considers it politically expedient to grant humanitarian status rather than

---

<sup>48</sup> Japan, Ministry of Justice, Immigration Bureau, *Immigration: Controlling Embarkation and Disembarkation*, Tokyo, n.d., <http://www.moj.go.jp/ENGLISH/IB/ib-07.html> [accessed June 2005]

<sup>49</sup> United Nations High Commissioner for Refugees, *Statistical Yearbook 2003: Country Data Sheet Japan*, Geneva, January 2005, <http://www.unhcr.ch/cgi-bin/texis/vtx/statistics/opendoc.pdf?tbl=STATISTICS&id=41d2c17dc&page=statistics> [accessed May 2005]; United Nations High Commissioner for Refugees, *2003 Global Refugee Trends*, Geneva, June 2004, <http://www.unhcr.ch/cgi-bin/texis/vtx/statistics/opendoc.pdf?tbl=STATISTICS&id=40d015fb4> [accessed May 2005]; United Nations High Commissioner for Refugees, *Asylum Levels and Trends...*; Japan, Ministry of Justice, [Information Website], <http://www.moj.go.jp/> (in Japanese), <http://www.moj.go.jp/ENGLISH/> (in English); Japan, Ministry of Foreign Affairs, *Refugees*, <http://www.mofa.go.jp/policy/refugee/index.html> [all accessed May 2005]

Convention status. In relation to China, in addition to broader foreign policy considerations, the issue is driven by the immigration control agenda since the statistics demonstrate that Chinese nationals tend to lead the overall numbers of illegal entrants, overstayers and deportees.<sup>50</sup> With Turkish claimants there is a perception that they are economic migrants whose claims are fraudulent. In all cases the purpose of identifying unfounded claims and preventing illegal immigration overrides protection concerns. Whereas between 1998 and 2002 Japan granted humanitarian status to between 36 and 67 people a year, in 2003 this fell to 16 and in 2004 there were just 9 cases. Since the basis for deciding these cases is not in the public domain, it is not clear if this downward trend results from tightening the criteria or some other factor.

Since 1975 Japan has accepted around 11,000 Indo-Chinese refugees mainly under the provisions of the Comprehensive Plan of Action. In general this group of refugees has been accorded some form of residence status, though not always permanent, and received adequate assistance from the Japanese government. Since the Indo-Chinese refugees were admitted under special procedures the vast majority do not have Convention status. However, half of the number of 330 refugees granted refugee status in Japan since 1982 are Indo-Chinese. Apart from this group, asylum seekers and refugees come mainly from Myanmar, Afghanistan, Iran, and Turkey (Kurds).<sup>51</sup> In addition there are small numbers of mandate refugees, or individuals who meet the criteria of the UNHCR Statute although they have not been accorded refugee status by the Japanese authorities. For these UNHCR tries to find durable solutions, preferably local settlement which entails UNHCR requesting legal status for mandate refugees on humanitarian grounds. For its part the Japanese government usually requests that UNHCR find a third country for the resettlement of mandate refugees. The resulting stalemate means that mandate refugees have an uncertain and unsettled status. Since they do not have any legal status under Japanese domestic law they do not receive any assistance from the state. At the end of 2004, 27 failed asylum seekers (36 including dependants) who had been recognized as refugees under UNHCR's Statute remained without legal status in Japan.<sup>52</sup>

The number of asylum applications has been rising steadily since 1996 and during that time has consistently been in the hundreds (see **Table 1**). In 2004 the numbers peaked at 426 applications with the majority being single male adults. Although the applicants were from over 40 countries the majority came from what has become recognized as common countries of origin for those seeking asylum in Japan in recent times. Of the 426 applications, 138 were from Myanmar and 131 from Turkey (ethnic Kurds).<sup>53</sup> In addition there were 33 from Bangladesh, 18 from Iran, 16 from China, 12 from Pakistan and 11 from Cameroon. In 2003 the country of origin of the majority of asylum seekers was very similar: 111 from Myanmar, 77 Turks (ethnic Kurds), 25 Iranians and 22 Chinese. Between January 1982 and December 2003 there were 3,118 applications for asylum.<sup>54</sup> This is broken down by country of origin as follows: Turkey 483; Pakistan 395; Iran 362; Myanmar 359; Afghanistan 256; Vietnam 195; China 146 and Laos 115. Refugee recognition rates are extremely low. Between January 1982 and December 2003, 2,936 asylum applications were processed of which 304 were recognized

---

<sup>50</sup> Japan, Ministry of Justice, Immigration Bureau, *2004 Immigration Control...*

<sup>51</sup> United Nations High Commissioner for Refugees, *Statistical Yearbook 2003...*, p. 205

<sup>52</sup> Information provided by UNHCR, Tokyo, December 2004

<sup>53</sup> Japan, Ministry of Justice, [Press Release on Asylum], 24 February 2005 (in Japanese)

<sup>54</sup> Japan, Ministry of Justice, [Press Release], 27 February 2004 (in Japanese)



as refugees with the main groups by country of origin being: Vietnam 59; Iran 52; Myanmar 52; Cambodia 50 and Laos 48. In the last five years the top countries of origin for those applying for refugee recognition have been Afghanistan, Iran, Myanmar and Turkey (see **Table 4: Convention Refugee Applications**). Between 1999 and 2003 the three countries of origin whose nationals lead the tables of those granted refugee status were Afghanistan, Iran and Myanmar (see **Table 5: Refugee Recognitions**). Rejections of applicants from those countries are also high, but those from Turkey (Kurds) have consistently featured amongst those most likely to be rejected (see **Table 6: Refugee Recognition Rejections**).

Where a failed applicant has appealed to the MoJ against a refusal decision the rejection rate over five years (1999-2003) has averaged 76% (between 62% and 85%).<sup>55</sup> Whilst the refugee recognition rates are very low, the chances of success on appeal are also low. In 2003 there were 219 appeals to the MoJ against refusal of refugee status but in only four cases was the decision overturned. In the same year 53 cases were lodged seeking revocation of a decision to refuse recognition under the 1962 Administrative Case Litigation Law (judicial review). In 2004 24 cases were lodged. At the end of 2003 there were 127 cases pending before the District Courts under the ACLL, 4 before the High Court and 1 before the Supreme Court. Over a five-year period the main countries of origin of those involved in ACLL litigation were Myanmar (49), Afghanistan (52), Turkey (29) and Iran (10) (see **Table 2**). Although in recent years the District Courts have been more willing to uphold an applicant's case against the MoJ, the higher courts remain reluctant to do likewise. Nevertheless, the overall refugee recognition numbers remain exceptionally low when compared to the number of actual applicants and this excludes potential applicants deported through the LPF and ARHs without officially entering Japan. Moreover, not only is the refugee recognition rate intrinsically small but also, when compared to 49 other industrialized countries, it can be described as insignificant.<sup>56</sup>

Recently the issue of human trafficking has become another matter of concern. Various reports have highlighted that Japan has been poor at enforcing minimum standards for the elimination of human trafficking. Significantly, there are no official statistics giving the number of trafficked persons. Japan has had a very relaxed attitude to the problem but the issue has been highlighted by NGOs which have pointed to the ever-increasing numbers of "entertainer" visas which the government is prepared to grant.<sup>57</sup> Between 1999 and 2003 the figure rose from 82,305 to 133,103. As such they represent the largest proportion of foreign nationals within the country who have residence and employment status. In the same period Philippine nationals accounted for around 60% of the total.

In 1997 the International Organization for Migration published a report outlining the problem of women trafficked to Japan.<sup>58</sup> Human Rights Watch published a major report in 2000 which highlighted trafficking issues in Japan.<sup>59</sup> Then in 2003 the US Department of State Annual

---

<sup>55</sup> *Ibid*

<sup>56</sup> United Nations High Commissioner for Refugees, *Asylum Levels and Trends in Industrialized Countries, 2004*, Geneva, March 2005, <http://www.unhcr.ch/cgi-bin/texis/vtx/statistics/opendoc.pdf?tbl=STATISTICS&id=422439144> [accessed May 2005]

<sup>57</sup> Japan, Ministry of Justice, Immigration Bureau, *2004 Immigration Control...*, pp 13 and 126, Table 15-1

<sup>58</sup> International Organization for Migration, *Trafficking in Women to Japan for Sexual Exploitation: A Survey on the Case of Filipino Women*, Geneva, 1997

<sup>59</sup> Human Rights Watch, *Owed Justice: Thai Women Trafficked into Debt Bondage in Japan*, New York, 2000

Trafficking in Persons Report raised the profile of the issue yet further when it stated that “the Government of Japan does not fully comply with the minimum standards for the elimination of trafficking”.<sup>60</sup> Their 2004 report was similarly critical of Japan and repeated its ranking of the country amongst those on its Tier 2 “watch list”.<sup>61</sup> With recent revisions to the 2004 ICRRA and proposals to amend the Penal Code the Japanese government has signalled a willingness to start addressing the issue. .

### **3.4 Humanitarian Assistance: Reception and Integration Issues**

The Humanitarian Assistance Division of the Ministry of Foreign Affairs administers small-scale assistance programmes for asylum seekers and Convention refugees. These programmes are managed by the Refugee Assistance Headquarters (RHQ).<sup>62</sup> This is a quasi-governmental organization created in the 1980s following the Indo-Chinese refugee crisis. In this it has been successful and offered appropriate resettlement assistance. Even so, it has dealt with only around 10% of Indo-Chinese refugees. Although the RHQ states that its mission is to provide assistance for both Indo-Chinese and Convention refugees the programme to provide assistance to Convention refugees only started in 2003. Since that time there have been a handful of Convention refugees who have been accepted onto the programme. The interpreter services offered by RHQ are primarily directed at Indo-Chinese since the only languages offered are English, French, Vietnamese, Laotian and Cambodian.<sup>63</sup> RHQ assistance is mainly given to already recognized refugees as well as small numbers of asylum seekers. It provides limited financial and shelter assistance to selected cases. With the decline in the number of Indo-Chinese refugees over the years the work of the RHQ has gradually been scaled down and the Indo-China programme is due to be concluded during the 2005-2006 tax year. Consequently unless there is some other assistance programme put in place the government provision for Convention refugees will be virtually non-existent.

Despite the assistance provided by RHQ, the position of asylum seekers remains extremely poor. Whilst social assistance for asylum seekers “in need” (and in practice that is almost all applicants) is available during the processing of their claims this is limited in both scope and duration. Financial assistance is limited to four months, which can be renewed but in practice is both hard to obtain and difficult to renew. Asylum seekers who are seeking judicial review are not eligible for assistance. In addition, mandate refugees whose claims are rejected by the Japanese government do not get any assistance and instead must rely upon a small-scale UNHCR project managed by the Japan Association for Refugees (JAR) and International Social Services Japan. This project also provides for a limited number of non-mandated refugees who are in need. In 2004 it provided support for 434 needy asylum seekers.

In 2003, following pressure from NGOs and UNHCR to address the issue of destitute asylum seekers, the government instituted a small-scale shelter programme. Under this scheme the government (the Ministry of Foreign Affairs through the RHQ) finances to a maximum of 20 places the renting of furnished rooms for the benefit of needy asylum seekers. In 2004 accommodation was provided for 19 asylum seekers under this scheme. In addition they may

---

<sup>60</sup> United States, Department of State, *Annual Trafficking in Persons Report 2003: Japan*, Washington, June 2003, <http://www.state.gov/g/tip/rls/tiprpt/2003/21276.htm> [accessed May 2005]

<sup>61</sup> United States, Department of State, *Annual Trafficking in Persons Report 2004: Japan*, Washington, June 2004, <http://www.state.gov/g/tip/rls/tiprpt/2004/33191.htm> [accessed May 2005]

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

apply for financial assistance of ¥45,000 (c. US\$400) a month. In the abstract this is a reasonable amount but given the cost of living in Japan and the expense of legal and welfare services this is a very small sum. Moreover, the criteria for eligibility are not clear and the numbers who actually receive this sum are small. To obtain financial assistance there is a six month qualifying period in addition to which applicants must have a decision pending with the MoJ and have a very low income threshold. This excludes those whose judicial review cases are pending. In the absence of effective official provision the proportion of vulnerable individuals remains high and calls into question whether Japan is meeting its obligations under international human rights instruments to which it is a party. In these circumstances UNHCR and the JAR continue to assist vulnerable individuals as do a number of other NGOs. However this provision neither exonerates the Japanese government from its obligations under international law nor prevents the risk that many asylum seekers will remain destitute and vulnerable.

Since most asylum seekers enter Japan illegally or are subsequently deemed to be in the country illegally having overstayed a valid visa, there are severe limitations on their rights to work. Asylum cases can take up to two years to reach final determination and therefore the restrictions on the right to work have the effect of forcing asylum seekers onto the black market in order to avoid destitution. This has inherent dangers such as poor working conditions and low pay but also carries the risk of arrest and prosecution. Article 70 of the 2004 ICRRA makes illegal entry or overstaying a criminal offence punishable by up to three years imprisonment and/or a fine of up to ¥3 million (c. US\$27,000). However, Article 70-2 provides that a refugee is exempt from these penalties. Whilst this provides some protection it leaves asylum seekers and those whose refugee status is overturned on appeal vulnerable to prosecution under this section. In practice the Immigration Bureau appears to have tolerated asylum seekers working on the black market but it also means that the IB can at any time detain asylum seekers who have not otherwise been detained for violation of these provisions.

ICRRA Article 73-2 makes it a criminal offence, punishable by up to three years imprisonment and/or a fine of up to ¥3 million (c. US\$27,000), to employ illegal aliens, though again in practice there is a high degree of tolerance on the part of the IB. There will be the occasional high profile “round-up” of illegal workers but in general illegal workers, including asylum seekers, are tolerated because they tend to be employed in “3 D” jobs (dirty, difficult or dangerous). In the circumstances few asylum seekers qualify for government financial assistance or are prepared to risk going through the process for fear of detention as a result of illegal entry or overstay. However, where asylum seekers hold valid visas at the time of their asylum applications they can apply for an extension, pending the initial decision of their case by the MoJ. This enables an individual to apply for a work permit, but should the asylum application fail their visa will not be extended pending the outcome of an appeal. Consequently they are then unable to work legally. Even UNHCR mandate refugees do not have the right to work. Therefore these people are inevitably at risk of being destitute or forced to work illegally to survive and thereby risk arrest. This situation further illustrates the failure of the Japanese government to provide adequate reception conditions for asylum seekers in accordance with international law.

As far as Indo-Chinese refugees are concerned the Japanese government has accepted the cost of care, maintenance and integration. In this it has been successful. In addition, for many years there has been a family reunification scheme for the settlement of close relatives of Indo-Chinese refugees. Under this scheme 144 “quasi-refugees” were settled in 2002 (135 Vietnamese and 9 Cambodians) and in 2003 147 were accepted (138 Vietnamese and 9



Cambodians). But similar integration programmes for Convention refugees have not been established. Indo-Chinese refugees have access to counselling, language education, job seeking advice and medical assistance. Since 2003, some of these services are provided to Convention refugees.

Japanese law provides for equal access to health and dental services as well as medical insurance without discrimination but in practice destitute asylum seekers are not eligible for assistance since they are non-nationals lacking legal status.<sup>64</sup> This differential treatment between Indo-Chinese refugees, asylum seekers and Convention refugees led the UN Committee on the Elimination of Racial Discrimination to recommend in 2001 that the Japanese government take “the necessary measures to ensure equal entitlement to such services by all refugees” and “ensure that all asylum seekers have the right *inter alia* to an adequate standard of living and medical care”.<sup>65</sup> Whilst this led to the Cabinet extending the RHQ programme to Convention refugees in 2003, this has proved ineffective and insufficient. In spite of this, and pressure from UNHCR, the Japanese government has not contemplated a reform of social welfare provision to take account of its obligations to asylum seekers.

#### 4 The Role of UNHCR in Japan

UNHCR’s main role is supervisory. It monitors the implementation of the Convention and carries out intervention and protection activities over a wide range of areas within its competence. These supervision activities cover the admission and reception of asylum seekers, as well as the determination of refugee status, together with the regularization of stay within, or return from, Japan. UNHCR will also intervene with the Japanese authorities on various protection issues such as the development and observance of basic standards for the treatment of asylum seekers and refugees. Its advocacy and protection activities are carried out in partnership with Japanese NGOs through project agreements to provide assistance as well as social and welfare counselling. In this its main partners are the Japan Association for Refugees (JAR) and International Social Services Japan. In addition UNHCR has an important advisory role. Recently this has involved detailed comment on the revisions to the 2004 ICRR and giving specific legal advice, for example on the standard of proof in *sur place* claims, as well as submitting advisory opinions in court proceedings. Whilst public and media attention focuses on the mandating role of UNHCR it is clear that the scope of its activities is much wider and covers such activities as providing training and lectures for NGOs, lawyers, IB staff and universities. UNHCR’s work in monitoring the application of the Convention and promoting minimum standards in the refugee recognition system is set out in the UNHCR Executive Committee summaries of the Country Operations Plan for Japan.<sup>66</sup>

---

<sup>64</sup> See the relevant articles of the following laws: Medical Practitioners Law, 1948, Article 19; Dentists Law, 1948, Article 19; Health Nurses Law, 1948, Article 34; Pharmacists Law, 1960, Article 21; National Health Insurance Law, 1958, *passim*

<sup>65</sup> United Nations, Committee on the Elimination of Racial Discrimination, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Japan, CERD/C/304/Add.114, 27 April 2001, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.304.Add.114.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CERD.C.304.Add.114.En?Opendocument) [accessed May 2005]

<sup>66</sup> United Nations High Commissioner for Refugees, *Country Operations Plan: Japan 2004: Executive Summary*, Geneva, September 2003, <http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RSDCOI&id=3f8e6a8c4&page=home> [accessed May 2005] (*UNHCR RefWorld 2004*, Issue 13, CD1); United Nations High Commissioner for Refugees, *Country Operations Plan: Japan 2005: Executive Summary*, Geneva, September 2004, <http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RSDCOI&id=4180ec8d4&page=home> [accessed May 2005]

At a government level UNHCR co-operates with the MoJ by giving advice on policy matters and refugee law as well as country of origin information. However, the extent to which this advice is followed is unclear and events during 2004 and 2005 indicate that political considerations may overrule legal opinion for the following reasons.

First, it emerged that the Japanese government had sent officials from the MoJ (IB) to Turkey to visit the town from where a number of Kurdish asylum seekers and their families originated. Their report was submitted in proceedings before the Tokyo District Court in August 2004 prompting criticism from UNHCR as it could place the remaining families at risk from the Turkish authorities and undermine the integrity of the asylum system.<sup>67</sup>

Second, in January 2005 the Japanese government deported two UNHCR “mandated” refugees. Until then the Japanese government had respected the principle of *non-refoulement* under Article 33 of the Convention but the unprecedented deportation of two “mandated” Kurdish asylum seekers was a serious departure from previous policy. The deportations prompted a strong rebuke from UNHCR.<sup>68</sup> It stated that the deportations were “contrary to Japan’s obligations under international law” and were in contrast with Japan’s humanitarian assistance towards refugees and disaster victims abroad.<sup>69</sup> The Ministry of Justice claimed that UNHCR’s criteria for granting mandate status are far wider than that for refugee status and accordingly Japan was not in breach of its obligations under international law. However, this overlooks the importance of the UNHCR mandate in assisting “persons of concern”. In such cases a mandated refugee would normally receive humanitarian status. The political nature of these two *refoulement* cases is highlighted by the fact that the MoJ did not grant SPR but instead chose deportation. At the time there were a further 25 mandated refugees not recognized by the government. Comments reported in the press at the time suggested not only a political reluctance on behalf of the Japanese government to honour its obligations under international law, but also some confusion as to the legal nature and content of those obligations.<sup>70</sup> In this context it is also important to note that to date no Kurds have been granted refugee status in Japan.

UNHCR has no formal role in the refugee determination process but through the monitoring of activities has sought to impact upon the manner in which cases are considered and determined. The way in which this process is conducted has evolved. From 2000 through 2002 UNHCR reviewed individual cases proceeding through the recognition process. It would interview applicants, assess each case and, where appropriate, provide letters of support. In many cases supported by UNHCR this would result in the grant of some form of protection by the MoJ. Even so, the number of support letters was in excess of the numbers granted protection. This approach to monitoring by UNHCR seems to have been intended as a means of urging the government to make positive asylum decisions and provided part of an important learning process as Japan was been forced to confront the reality of rising numbers of incoming asylum seekers. It was a process much appreciated by NGOs and lawyers working on refugee cases. On closer analysis it seems that this type of monitoring process was

---

<sup>67</sup> Amnesty International, *Japan: Government Endangers...*

<sup>68</sup> United Nations High Commissioner for Refugees, *Deep Concern...*

<sup>69</sup> Tokyo Under Fire for Deporting Refugees, *The Japan Times Online*, 21 January 2005, <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050121f2.htm> [accessed May 2005]; Nagamine, Y., *Refugee System Needs Review*, *Daily Yomiuri*, 24 February 2005

<sup>70</sup> Tokyo Under Fire ...

not intended as a “back-door route” to status but as a means of influencing the MoJ and indicating how the proper application of refugee law might lead to the granting of status. Nevertheless, by monitoring virtually all applications there was a danger that it would ultimately undermine UNHCR’s monitoring role and instead become a parallel system of determination. Whilst this might put pressure on the MoJ, the true role of UNHCR is not to provide an alternative to the national system. During the period that this monitoring process operated it certainly highlighted discrepancies in the approach of the MoJ to refugee determination according to international law.

Whilst this form of influence was no doubt important as part of the totality of UNHCR’s monitoring role it nevertheless remained vulnerable to accusations of setting up a parallel system, albeit in a country where the refugee recognition system is open to serious criticism, and as such had the potential to weaken and undermine the national system of refugee determination. Consequently from 2003 onward there has been a change in the monitoring process so that only a selected number of cases are now reviewed by UNHCR. Whilst this change is something which the NGOs and lawyers have considered to be a retrograde step, it repositions UNHCR as the independent arbiter of facts and law in appropriate individual cases rather than the organizer of a parallel system. It is clear from the Convention that UNHCR’s role is much wider than simply “mandating” refugees. Accordingly, the proactive and positive influence of UNHCR over protection issues is maintained through giving advisory opinions in judicial review cases and providing legal training for a variety of NGOs, lawyers and interested groups.

UNHCR also has a role in the further resettlement of mandated refugees as they are likely to remain in legal and administrative limbo without access to any form of assistance. Some have even been kept in indefinite detention. For its part, the Japanese government has had a long-term expectation that mandated refugees will be found a third country for resettlement. This clearly falls within the remit of UNHCR but the failure to find durable solutions within Japan undermines the overall asylum situation by shifting to UNHCR the burden of finding a solution rather than encouraging Japan to take a responsible attitude in accordance with its international obligations.

## **5 The Role of Civil Society**

In addition to international organizations such as UNHCR and Amnesty International, which have offices in Tokyo, there are a number of Japanese NGOs that offer a wide range of assistance to refugees. The Japan Association for Refugees (JAR) was the first NGO in Japan to be established with the sole purpose of dealing with asylum seekers and refugees other than Indo-Chinese. It was established in September 1999 and remains the leading organization for the provision of a wide range of advice and support to refugees.<sup>71</sup> The Refugee Assistance Headquarters (RHQ) had earlier been established to deal with the resettlement of Indo-Chinese refugees.<sup>72</sup> It is a quasi-governmental agency fully funded by the government. In spite of its title it was only in 2002 that Cabinet approval was given for the RHQ to extend its activities to Convention refugees. The Japan Lawyers’ Network for Refugees (JLNR) has also provided invaluable support and become highly active in ensuring that cases for judicial review are properly prepared and applicants legally represented. As the number of refugees

---

<sup>71</sup> See the website of the Japan Association for Refugees at <http://www.refugee.or.jp/> (Japanese) and [http://www.refugee.or.jp/index\\_e.html](http://www.refugee.or.jp/index_e.html) (English) [accessed May 2005]

<sup>72</sup> See the website of Refugee Assistance Headquarters at <http://www.rhq.gr.jp/english/> [accessed May 2005]

has increased the JLNR has created specialist country groups for Myanmar, Afghanistan, Turkey and China.

In August 2004 the Refugee Council Japan (RCJ) was established to act as an umbrella organization for Japanese NGOs undertaking refugee assistance. At present the RCJ consists of the following 10 organizations: International Social Service Japan; Amnesty International Japan; Catholic Tokyo International Centre; Association for Supporting Refugees' Settlement in Kanagawa Prefecture; Support 21 Social Welfare Foundation; Japan Lawyers' Network for Refugees; Japan Association for Refugees; Catholic Commission of Japan for Migrants Refugees and People on the Move; Japan Evangelical Lutheran Association and the Japan Legal Aid Association. Although still in its infancy the aim of the organization is to establish more of a "one-stop" approach to refugee assistance by being the first point of contact for refugees who will then be referred on to the appropriate agency for advice, welfare assistance etc. If it is successful and financially secure the RCJ could bring a co-ordinated approach to NGO activities in the refugee field and thereby represent a major step forward.

## 6 Selected Protection Issues of Concern

### 6.1 Detention Conditions

The majority of asylum seekers in Japan make in-country applications and do not claim at ports of entry. Before 2001 the Ministry of Justice did not release statistics that identified where an asylum application was made. Now, applications under ICRRRA Article 18-2 are published but the place of application of those applying under ICRRRA Article 61-2 is not officially disclosed (see **Table 3**). In addition NGOs estimate that "thousands" are denied entry and deported without proper consideration of their claims and following detention at the Landing Prevention Facility (LPF) or the Airport Rest Houses (ARH).<sup>73</sup> No official figures are published as to the numbers of people detained in the LPF and ARH. However, information obtained from immigration officials by Amnesty International during a visit in 2000 to the LPF at Narita Airport, Tokyo, revealed that "a daily average of some seven persons were detained in the LPF".<sup>74</sup> Based upon this figure and the number of LPFs and ARHs, the estimate of "thousands" of "invisible detainees" being deported without having entered Japan is realistic. In addition to those detained at LPFs or ARHs anyone who is deemed to fall within the provisions for deportation set out in ICRRRA Article 24 will be detained at an Immigration Detention House or Centre. In all three types of detention facility the evidence suggests that there is a serious risk of a breach of an individual's human rights.<sup>75</sup>

The grounds for deportation under ICRRRA Article 24 are extensive and cover all categories of persons, not just asylum seekers and those who have violated immigration controls. Their detention is governed by ICRRRA Articles 39 to 43. Whilst Article 39 states that a person "may" be detained if he comes within the grounds for deportation contained in Article 24, in

---

<sup>73</sup> Amnesty International, *Japan: Welcome...*; Japan Association for Refugees, Tokyo, Personal Interview, December 2004

<sup>74</sup> Amnesty International, *Japan: Welcome...*, p. 4

<sup>75</sup> Amnesty International *Japan: Ill-Treatment...*; Amnesty International, *Annual Report 2004: Japan*, London, 2004; Human Rights Watch, *Prison Conditions in Japan*, New York, 1995; Doctor Hits Immigration Center Health Care, *The Japan Times Online*, 16 November 2004, <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20041116f1.htm> [accessed May 2005]; Detainees Seeking Asylum Claim Abuse by Guards, *The Japan Times Online*, 21 December 2004, <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20041221a3.htm> [accessed May 2005]

practice and without exception such persons are detained at an Immigration Detention Centre. It is possible that the revised 2004 ICRRA, which came into effect on 16 May 2005, may mitigate the harshness of this situation to some extent. Although an asylum seeker who entered or remained in Japan without authorization was liable to detention under the ICRRA, according to Article 61-2-4 of the revised 2004 ICRRA such a person may now be entitled to a temporary permit (Permission for Provisional Stay – PPS). This provides limited legal status to someone applying for refugee recognition. The article nevertheless contains a number of restrictive conditions on the grant of PPS. The person considered must:

- have applied for asylum within six months of arrival in Japan;
- come directly from a territory where his or her life, physical security or physical freedom was threatened due to reasons defined in Article 1A(2) of the Convention;
- be considered to be unlikely to abscond;
- not have been convicted of a violation of any law or regulation of Japan, or of any other country, and sentenced to penal servitude for one year or more, with the exception of convictions for political offences.

Clearly a denial of PPS is *de facto* a decision to place the person in detention. Although a person in detention can apply for “provisional release” under ICRRA Article 54 this hardly provides adequate protection, since the provision does not clearly define the requirements for release but rather refers in vague terms to taking into consideration “evidence produced in support of the application, character, financial ability etc.” and upon depositing a bail bond of up to ¥3 million (c. US\$27,000). Since the decision rests with an Immigration official and the Article states that he “may” accord provisional release, this is an administrative decision subject to discretionary action but with little chance of effective or timely review. In practice most asylum seekers who are subject to a deportation order are detained for a minimum of one year before their application for provisional release has a realistic prospect of succeeding. Therefore whilst Article 61-2-4 of the revised ICRRA appears to offer an alternative to detention, the restrictive conditions on the grant of PPS, together with the uncertainties associated with an application for provisional release under ICRRA Article 54, mean that an asylum seeker is still more likely be detained than not. Only after the 2004 ICRRA has been in effect for a few years will it be possible to evaluate whether or not alternatives to detention are being properly considered.

The success, or not, of the 2004 ICRRA will depend entirely upon the implementation of the new provisions by the IB. This will rest upon the interpretation of the conditions for PPS and in particular the meaning of “coming directly” under Article 61-2-4. For asylum seekers who are subject to deportation the ICRRA effectively allows for indefinite detention since detention for the purposes of deportation is not subject to a time limit. In the absence of appropriate safeguards, such as mandatory judicial review, this could constitute arbitrary detention contrary to Japan’s obligations under Article 9 of the ICCPR. In this context it should be noted that Japan does have a Habeas Corpus Act, which was enacted in 1948.<sup>76</sup> This allows a court either to order provisional release of a detainee under oath to appear when summoned (Article 10), or release the detainee following questioning of the parties (Article 16). However, the Act is limited in the scope of its application by Article 2-1 which requires that applicants for a writ of habeas corpus be “those who are detained without due legal process” and Rule 4 of the Habeas Corpus Rules, which limits the application of the Act “to cases where the decision was made without due authority” or where there has been a

---

<sup>76</sup> Japan, Habeas Corpus Act (Law 199), 1948 (*UNHCR RefWorld*, Issue 13, 2004, CD2)

“manifest violation of due process”. It is also necessary for a habeas corpus applicant to have exhausted all other remedies. To date there have been no known successful challenges to the detention of asylum seekers and refugees under this Act. Moreover in 1998 the UN Human Rights Committee specifically commented on the ineffectiveness of the Act and stated that the absence of such a remedy to challenge the legality of detention “is therefore incompatible with Article 9 of the ICCPR”.<sup>77</sup> The Committee recommended that the remedy of habeas corpus should be made “fully effective without any limitation or restriction”. The Japanese government has yet to act upon that recommendation and therefore continues to fail fully to fulfil its obligations under international law.

A very high proportion of asylum seekers are detained either on arrival in Japan or following the issuing of a detention order once in Japan (ICRRA Articles 39 to 44). It is anticipated that whilst the use of PPS under the 2004 ICRRA will facilitate a lower rate of detention, significant numbers will still be detained or become liable to detention once their applications have been rejected on appeal. There is nothing in the 2004 ICRRA to suggest that the MoJ’s current practice on detention will change, and therefore an in-country applicant is likely to be detained when an appeal has been rejected or at an earlier stage if the authorities believe the applicant poses a danger to the community or is likely to abscond.

The MoJ’s figures also show that 87% to 95% of those applicants who remain in the country pending the outcome of the first stage of the refugee determination procedure comply with reporting restrictions.<sup>78</sup> Given that many will be liable to be detained during this period because their visas have expired, this is a high degree of compliance. The statistics also show that between 20% and 25% of asylum seekers “abuse the system” with the majority absconding during the period when their application is being determined.<sup>79</sup> Under the 2004 ICRRA in-country applicants who come forward before being apprehended will retain their liberty, whereas those who apply after being apprehended are more than likely to be placed in detention for the entire determination process. At the moment, most failed applicants are apprehended when they appear at the Immigration Bureau to receive their notice of rejection. At this point the asylum seeker will be subject to a detention order, followed by a deportation order (ICRRA Articles 39 to 44 and 51 to 53). Except for the months following the events of 11 September 2001, the government practice has been to suspend the issuing of deportation orders until a refugee determination is made either at first instance or on appeal. Those who are detained pending judicial review, however, can find themselves detained for extended periods of time. In two recent expert medical reports, based upon research at the East Japan Immigration Centre in 2004, a sample group of 37 asylum seeking detainees had been held for between one and eighteen months, an average of 7.4 months.<sup>80</sup> In the 2005 report from the same institution the sample group was 67 and the average period of detention had risen to 13 months.<sup>81</sup> The MoJ refuses to release the figures for the number of asylum seekers in

---

<sup>77</sup> United Nations, Human Rights Committee, Concluding Observations..., Observation 24

<sup>78</sup> Japan, Ministry of Justice, Refugee Recognition in 2003, 27 February 2004 (press release)

<sup>79</sup> Japan, Ministry of Justice, Refugee Recognition in 2004, 24 February 2005 (press release)

<sup>80</sup> Yamamura, J., Wounded Asylum Seekers: The Situation and Problems with respect to Medical Services at the East Japan Immigration Centre, March 2004 (unpublished report), p 2

<sup>81</sup> Yamamura, J., Persecuted Foreigners: Human Rights Violation at Immigration Centre under the Ministry of Justice, March 2005 (unpublished report), p 2



detention – even to UNHCR. It is estimated that at any one time there are 50 or more asylum seekers in detention centres across Japan, including those seeking judicial review.<sup>82</sup>

The ICRRRA does not have any age limit for detainees. There have been cases reported by NGOs of children being held at Regional Immigration centres.<sup>83</sup> It is believed that children are not generally held at detention centres for extended periods but are placed in foster care or “child consultation offices”.<sup>84</sup> This inevitably results in prolonged periods of separation which are likely to cause further medical and psychological harm. Detention also extends to those whom UNHCR has mandated but who are seeking judicial review of their refusal by the government. At the end of 2003 there were five mandate refugees in detention, of whom two had been in detention for over a year. At the end of 2004 there were three mandate refugees in detention, including an elderly woman.<sup>85</sup> In the absence of evidence that these refugees are a danger to the community, it is almost unprecedented for UNHCR mandated refugees to be detained. In January 2005 there was an international outcry when Japan deported two mandated refugees.<sup>86</sup> Following this in February 2005 the government released the last two mandated refugees in detention.<sup>87</sup>

In addition to the LPFs and ARHs, Japan has four Immigration Detention Centres: Shinagawa (in Tokyo); East Japan Immigration Centre (Ushiku, near Tokyo); West Japan Immigration Centre (Ibaraki, near Osaka) and Southern Japan Immigration Centre (Omura). There are also short-term detention facilities in a variety of locations and at Narita and Kansai airports. Over the years conditions in detention have been of concern. In 2002 Amnesty International published a report which highlighted the ill-treatment of those detained upon entry to Japan and catalogued a number of cases illustrating serious breaches of human rights.<sup>88</sup> In addition to serious verbal and physical abuse those detained were denied access to adequate interpreter services, lawyers and diplomatic representation. This report concludes that Japan is in breach of its obligations under international human rights instruments. In 1995 Human Rights Watch published an extensive report on conditions in Japanese prisons.<sup>89</sup> It concluded that prisoners in Japan “experience routine violations of human rights from the first moment of their arrest and detention” and that the violation of prisoners’ human rights was “on a massive scale”.<sup>90</sup> On immigration detainees in particular the report found that they “tend to receive more punishments” than the rest of the prison population and that “conditions for non-criminal foreigners are often harsher than those for criminal suspects”.<sup>91</sup>

---

<sup>82</sup> Information provided to the author by Japan Lawyers’ Network for Refugees, Tokyo, December 2004

<sup>83</sup> Immigration Review Task Force, *The Actual Status of the Deportation Procedures and Immigration Detention Facilities in Japan*, Tokyo, [1998], <http://www2.odn.ne.jp/nyukan/englis/englis00.htm> [accessed May 2005]

<sup>84</sup> Yamamura, *Persecuted Foreigners...*, pp. 3, 5

<sup>85</sup> Information provided to the author by UNHCR Regional Office, Tokyo, December 2004

<sup>86</sup> United Nations High Commissioner for Refugees, *Deep Concern... ; Japan Criticized...*

<sup>87</sup> Last ‘Mandate Refugees’ ...

<sup>88</sup> Amnesty International, *Japan: Welcome...*

<sup>89</sup> Human Rights Watch, *Prison Conditions...*

<sup>90</sup> *Idem*, pp xi, 66

<sup>91</sup> *Idem*, p. 51

In 1997 Amnesty International published a report on the ill-treatment of foreigners in detention, including asylum seekers.<sup>92</sup> It presented a situation similar to that found by researchers for the earlier Human Rights Watch report in that there were serious human rights violations and that Japan was in breach of its international obligations under international law. A year later the Japanese government submitted its Fourth Periodic Report under the ICCPR.<sup>93</sup> The reports of the international NGOs had highlighted abuses which constituted violations of Articles 6, 7, 9, 10, 12, 13 and 24 of the ICCPR. In the Fourth Report the sections dealing with Japan's obligations under those articles reported simple facts in an anodyne manner, thereby giving the impression that there were no breaches of the ICCPR and none possible.

At the same time a number of Japanese NGOs issued parallel reports.<sup>94</sup> The report of the respected Japan Civil Liberties Union highlighted the ill-treatment of asylum seekers at Detention Centres.<sup>95</sup> The Immigration Task Force Review, an NGO founded in 1994 consisting of lawyers and academics, produced a report setting out in detail the breaches of the ICCPR and detailing individual cases of abuse at Immigration Detention Centres. In addition the report of the Japan Federation of Bar Associations (JFBA) detailed the legal basis for its conclusion that the Japanese government was in breach of its obligations under the ICCPR.<sup>96</sup> It found that the deportation procedure "(1) violates article 9 paragraph 4 of the Covenant, since a court hearing without delay following an administrative decision of detention is not ensured; (2) violates article 13 of the Covenant, since it cannot be said that in the deportation procedures there is a way to submit reasons against the propriety of the expulsion; (3) moreover, violates article 13 of the Covenant, since the detainee has no right of confidential communication with his/her counsel."<sup>97</sup> In relation to the treatment of those in immigration detention centres the JFBA concluded: "Detention in immigration detention facilities violates the prohibition against arbitrary detention contained in article 9 paragraph 1 of the Covenant, in that those confinements are unnecessary and unreasonably long. Moreover, it also violates articles 7 and 10 as well as article 17 paragraph 1 of the Covenant, in that the conditions of detention are extremely poor and in contravention of the legality principle with detainees subject to immigration officers' violence, sexual harassment, abusive punishment, restrictions on communication, inadequate medical facilities, etc."<sup>98</sup>

Reports since 1998 have continued to highlight abuses of human rights within Detention Centres. Most recently two reports have been published by a doctor who has monitored the

---

<sup>92</sup> Amnesty International *Japan: Ill-Treatment of Foreigners...*

<sup>93</sup> United Nations, Human Rights Committee, Consideration of Reports... : Fourth Periodic Reports... Addendum: Japan, CCPR/C/115/Add.3, 1 October 1997, <http://documents-dds-ny.un.org/doc/UNDOC/GEN/G97/184/68/pdf/G9718468.pdf?OpenElement> [accessed May 2005]; and Corrigendum, CCPR/C/115/Add3/Corr.1, 2 October 1998, <http://documents-dds-ny.un.org/doc/UNDOC/GEN/G98/185/11/pdf/G9818511.pdf?OpenElement> [accessed May 2005]

<sup>94</sup> Japan Civil Liberties Union, *1998 Report Concerning the Present Status of Human Rights in Japan*, Tokyo, October 1998, [http://www.jclu.org/katsudou/counter\\_report\\_1998/](http://www.jclu.org/katsudou/counter_report_1998/) [accessed May 2005]; Immigration Review Task Force, *The Actual Status...*

<sup>95</sup> Japan Civil Liberties Union, *1998 Report...*, pp 25-27

<sup>96</sup> Japan Federation of Bar Associations, *Alternative Report to the Fourth Periodic Report of Japan on the ICCPR*, Tokyo, [1998], <http://www.nichibenren.or.jp/jp/katsudo/jinkenlibraly/treaty/liberty/report-4th/jfba-report/index.html> [accessed May 2005]

<sup>97</sup> *Idem*, Chapter 2, Section 6

<sup>98</sup> *Idem*, Chapter 2, Section 7



situation of asylum seekers at the East Japan Immigration Centre at Ushiku, near Tokyo.<sup>99</sup> This expert opinion reinforces the findings of previous reports by NGOs and the JFBA in that they detail and confirm the ill-treatment of asylum seekers in detention as well as analysing the negative physical and psychological effects of detention upon those examined. Both reports confirm that in many cases there is an absence of interpreter services, that detainees are ill-treated and that this has an adverse effect on their psychological health. In particular it is stated that there is a “complete lack of preparedness for medical emergencies” and that if the Detention Centres were general Japanese medical facilities they would “probably be sued for negligence”.<sup>100</sup>

## **6.2 Non-Refoulement and the Principle of Good Faith**

Article 2(2) of the UN Charter states that “all members...shall fulfil in good faith the obligations assumed by them in accordance with the Charter”. This means that having ratified a UN treaty a member state must apply and perform that treaty in good faith and not frustrate the achievement of its object and purpose. This is specifically provided for in Articles 26 and 31 of the 1969 Vienna Convention on the Law of Treaties. The principle of “good faith” is accepted as a legal principle that is applied generally throughout international law and has been expanded upon by the International Court of Justice as well as leading jurists.<sup>101</sup> Japan has signed and ratified the ICCPR and other international instruments, including Article 33 of the Convention which provides that “no Contracting State shall expel or return (“refouler”) a refugee.... to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”.<sup>102</sup> There are concerns that Japan may be in breach of the principle of *non-refoulement* in relation to “invisible detainees” who are returned from the LPFs and ARHs. In January 2005, two UNHCR mandated refugees were deported (discussed above), in contravention of Japan’s obligations under international law.<sup>103</sup> In addition the Re-admission Agreement between China and Japan, whereby the Japanese coastguard intercepts and returns undocumented Chinese nationals to the mainland without allowing them to enter Japan or seek asylum could call into question the good faith of the State in upholding the principle of *non-refoulement* enunciated under Article 33 (1) of the Convention.<sup>104</sup>

## **6.3 Confidentiality of Claims**

As previously mentioned, in July 2004 officials from the MoJ (IB) visited Turkey, in particular the towns where a number of Kurdish asylum seekers and their families originated. Their report was submitted in proceedings before the Tokyo District Court in August 2004. Despite the number of Turkish (mainly Kurdish) asylum seekers in Japan, the MoJ has yet to

---

<sup>99</sup> Yamamura, Wounded Asylum Seekers...; Doctor Hits Immigration Centre...; Yamamura, Persecuted Foreigners...

<sup>100</sup> Yamamura, Wounded Asylum Seekers..., p. 6

<sup>101</sup> International Court of Justice, Nuclear Tests (Australia v France), Case 1974, *ICJ Reports*, p. 253; International Court of Justice, Transborder Armed Actions 1988, *ICJ Reports*, p. 105; Brownlie, pp 423-7; Crawford, J. (comp.), *The International Law Commission’s Articles on State Responsibility: Introduction, Text and Commentaries*, Cambridge: Cambridge University Press, 2002, p. 84

<sup>102</sup> Lauterpacht, Sir E. and Bethlehem, D., The Scope and Content of the Principle of *non-refoulement*, in Feller, Türk, Nicholson, F. (eds), *Refugee Protection...*, pp 87-179

<sup>103</sup> Amnesty International, *Japan: Government Endangers...*; United Nations High Commissioner for Refugees, *Deep Concern...*; Tokyo Under Fire...

<sup>104</sup> Japan Coastguard, Press Release...; US Committee for Refugees and Immigrants, *World Refugee Survey...*

recognize these applicants [Tables 4 to 6]. However, a number of court cases have been brought in which the original rejection has been overturned.<sup>105</sup> It is believed that this prompted the MoJ to send the delegation to Turkey. The aim of the mission was to establish whether or not the claims of the Kurdish asylum seekers were true and prepare information to submit before the courts in cases where the original refusal to grant refugee status was being challenged by way of judicial review. But, by disclosing the identity of the asylum seekers to the Turkish authorities and visiting their relatives in the company of Turkish security forces, Japan was in breach of its obligations under international law.<sup>106</sup>

Article 12 of the 1948 Universal Declaration of Human Rights states: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his reputation. Everyone has the right to the protection of the law against such interference or attacks.” Article 17 of the ICCPR reiterates that guarantee. The right to privacy and confidentiality enshrined in these instruments applies equally to asylum seekers and refugees.<sup>107</sup> Accordingly, State signatories to these instruments must refrain from sharing information with the authorities of an asylum seeker’s country of origin or even informing those authorities that a claim has been made. That is the case regardless of whether the country of origin is a so-called “safe country”. Whilst the general rule against sharing information may be justifiably breached in exceptional circumstances, such as combating terrorism, it was clear at the Tokyo District Court hearing that this was not the situation in the July 2004 mission to Turkey. Clearly, the actions of the Japanese authorities in relation to the July 2004 MoJ delegation visit to Turkey were against both the letter and spirit of international law instruments to which Japan is a signatory.

Obtaining accurate, reliable and objective country of origin information is essential to a just and fair determination process. Major refugee receiving countries have developed systems for collating and evaluating such information from a wide variety of sources including government and NGO reports as well as independent fact-finding missions. Japan is in the early stages of establishing such a body of information. One way of assisting in the process would be for UNHCR to provide objective evidence or an advisory opinion to the court. This role is as yet undeveloped in Japan. Although UNHCR would only be able to intervene at the judicial review stage and not in the first stage of refugee determination, it could nevertheless be a role which would be of mutual benefit to all parties. In the absence of a more developed system for providing objective information on the country of origin, if a procedure was developed whereby UNHCR could routinely provide advisory opinions and objective information it might have a number of benefits. First it would further mitigate reliance on issuing mandate status and second, the body of information could eventually be used to enhance the refugee determination decision-making and appeals process.

---

<sup>105</sup> Nagoya District Court Decision of 15 April 2004; Tokyo District Court Decisions of 20 April 2004 and 14 May 2004, in Kodama, *Nanmin Hanrei-shu*...

<sup>106</sup> Tokyo Told Turkish Cops...

<sup>107</sup> United Nations High Commissioner for Refugees, UNHCR Regional Representation in Japan, *Advisory Opinion on the Rules of Confidentiality Regarding Asylum Information*, Tokyo, 31 March 2005, [http://www.unhcr.or.jp/protect/pdf/mar2005\\_advconf\\_e.pdf](http://www.unhcr.or.jp/protect/pdf/mar2005_advconf_e.pdf) [accessed May 2005]

## 6.4 Burden-Sharing and Resettlement

Japan consistently ranks as the second largest donor to UNHCR and its overseas refugee aid and assistance programmes are extensive.<sup>108</sup> By comparison Japan has always been the country that accepts one of the lowest numbers of refugees, whether that is measured according to GDP, population or territorial size and whether or not the Indo-Chinese refugees are included.<sup>109</sup> In 2004 Japan was ranked 48 out of 50 industrialized countries in relation to the number of refugees accepted per 1,000 of population. Only Korea and Georgia accepted fewer.<sup>110</sup>

Since 1979 Japan has been a country of resettlement for Indo-Chinese refugees, thereby providing durable solutions for 11,283 such refugees. The family reunification programme for Vietnamese refugees will cease during 2005-2006. However, Japan does not have a resettlement programme for other nationalities and relies upon issues of integration and cost as reasons for its lukewarm response to suggestions of creating a non-Indo-Chinese resettlement programme. By any measurement, Japan's integration capacity is considerably in excess of its current absorption and refugee acceptance rates. The refugee acceptance rate is so low in comparison to its capacity that resettlement agreements could be the most effective way of facilitating a burden-sharing responsibility for a country that wishes to play a full and effective part in the international community of industrialized countries.

## 7 Conclusions and Outlook

The formulation of coherent refugee policy is now a global issue fuelling controversy at a domestic level and amongst the community of nations. In response to this Japan has played its part as a major donor nation. It has led the way in contributing to international refugee aid and assistance programmes and been at the forefront of those countries ready to offer rapid financial assistance at times of emergency or sudden crisis. The next step is for Japan to develop fully its humanitarian response beyond that of predominantly donor status. That process has begun and the issue of asylum seekers and refugees is now being addressed at the political level. The 2004 revision of the ICRRRA demonstrated a willingness on the part of the Japanese government to recognize the need for change. It also represented an important step toward ensuring that refugees can access and enjoy the full protection guaranteed to them under international refugee law. Although there are shortcomings in the new law, its implementation should herald the start of a process of engagement and learning leading to further revisions in the light of experience. As part of this process UNHCR has an important future role in continuing to build and strengthen protection capacities within Japan. In particular it will need to continue providing technical advice and assistance in developing appropriate refugee status determination and resettlement procedures. However, the revision of rules, processes and procedures is only one element of a complex picture.

The broader issue of Japan's asylum and refugee policy, together with its implementation, remains to be addressed. In addition there needs to be a greater awareness on the part of the Japanese government that these issues should be seen within the framework of international

---

<sup>108</sup> Japan, Ministry of Foreign Affairs, *Refugees...*; Japan, Ministry of Foreign Affairs, *Refugee Assistance*, Tokyo, 2000, <http://www.mofa.go.jp/policy/un/pamph2000/refugee.html> [accessed May 2005]

<sup>109</sup> United Nations High Commissioner for Refugees, *Asylum Levels and Trends...*; United Nations High Commissioner for Refugees, *2003 Global Refugee Trends...*; United Nations High Commissioner for Refugees, *Statistical Yearbook...*

<sup>110</sup> United Nations High Commissioner for Refugees, *Asylum Levels and Trends...*, Table 1

law and that as a signatory to international refugee and human rights instruments it has a duty to observe the requirements placed upon it. Japan has so far failed adequately to respond to critical reports published by international bodies. Acting upon the requirement fully to observe its obligations under international law would result in Japan providing and securing the protection guaranteed to asylum seekers and refugees under international refugee and human rights standards. The deportation of two UNHCR mandated refugees in January 2005 demonstrates that Japan needs to understand the extent of these obligations. Likewise the dispatch of the Turkey delegation showed a misunderstanding of the need to observe principles of confidentiality as well as a failure to consider the wider implications of their actions with regard to the families of asylum seekers who might be at risk.

Japan has policies and strategies in place that have ensured the number of asylum seekers and refugees coming into the country remains very low. Until now the focus has been upon preventing, or severely controlling, the entry of foreigners to the country. This has been driven by economically based foreign policy considerations and underpinned by official insistence on preserving Japan's unique ethnic, cultural and linguistic homogeneity. The time has now come for a more humanitarian focus. Current procedures and conditions for asylum application, detention and *refoulement* at ports of entry remain matters of concern. Despite improvements brought about by the revised ICRRA, the refugee determination and appeal system remains flawed, not only through the lack of access to proper advice, representation and welfare assistance but also because of the lack of transparency and independence inherent in the administrative and legal structures. Without more reforms Japan will remain vulnerable to accusations that it fails to respect or uphold the obligations placed upon it as a signatory to international refugee and human rights instruments.

Japan has signalled that it wishes to make a contribution to international affairs that goes beyond financial assistance. Since 1991, when there was a change in the law, Japan has offered its Self Defence Forces for UN peacekeeping operations and they have participated in over ten such missions. More controversially, in 2004 a contingent from the SDF was dispatched to Iraq. In the past few years Japan has been canvassing for a permanent seat on the Security Council, although it has been a non-permanent member on eight previous occasions. Japan's approach to humanitarian assistance has hitherto been defined as an overseas aid issue allied to its role as a major donor. To date little has been published in English that would draw attention to the fact that Japan's record in relation to asylum seekers and refugees at home is so poor. However, this situation could be much improved by putting humanitarian considerations at the heart of Japan's asylum and refugee policy. More is needed than just incremental changes to rules and procedures. The humanitarian approach also needs to be embraced and adopted by the Japanese government and people as well as those who implement the procedures and apply the rules. Not only will this result in greater compliance with international refugee law standards, but it will also lead to broader acceptance and integration of those who enter Japan and seek to remain as refugees.

## 8 Tables

**Table 1: Convention Refugee Applications & Decisions**

Year	Applied	Recognised by MoJ		Rejected	Withdrawn	Humanitarian Status
		First instance	On appeal			
1982	530	67	0	40	59	0
1983	44	63	0	177	23	0
1984	62	31	0	114	18	0
1985	29	10	0	28	7	0
1986	54	3	0	5	5	0
1987	48	6	0	35	11	0
1988	47	12	0	62	7	0
1989	50	2	0	23	7	0
1990	32	2	0	31	4	0
1991	42	1	0	13	5	7
1992	68	3	0	40	2	2
1993	50	6	0	33	16	3
1994	73	1	0	41	9	9
1995	52	1	1	32	24	3
1996	147	1	0	43	6	3
1997	242	1	0	80	27	3
1998	133	15	1	293	41	42
1999	260	13	3	177	16	44
2000	216	22	0	138	25	36
2001	353	24	2	316	28	67
2002	250	14	0	211	39	40
2003	336	6	4	298	23	16
2004	426	9	6	294	41	9
<b>Totals</b>	<b>3544</b>	<b>313</b>	<b>17</b>	<b>2524</b>	<b>443</b>	<b>284</b>

Source: Japan, Ministry of Justice, February 2005 (press release)

**Table 2: Asylum Seekers' Country of Origin**

Revocation Litigation (judicial review) filed under the Administrative Case Litigation Law  
1962

Country of Origin	2000	2001	2002	2003	2004	Total (Cases)
Afghanistan	6	0	25	21	0	52
Myanmar	20	3	9	8	9	49
Turkey	3	0	15	6	5	29
Iran	0	1	0	6	5	12
Sudan	6	0	2	1	1	10
Ethiopia	2	2	0	0	0	4
Pakistan	0	2	1	1	0	4
Somalia	0	0	0	4	0	4
China	0	0	0	3	1	4
Sri Lanka	3	0	0	0	0	3
Sierra Leone	2	0	0	0	0	2
Iraq	1	0	0	1	0	2
Bangladesh	1	0	0	0	1	2
DRC	0	0	0	1	1	2
Cameroon	1	0	0	0	0	1
Chad	1	0	0	0	0	1
Tanzania	0	0	0	1	0	1
Guinea	0	0	0	0	1	1
India	0	0	0	0	1	1
Totals	46	8	52	53	25	184

Source: Japan, Ministry of Justice, February 2005 (press release)

**Table 3: Landing Permission for Temporary Refugee  
(Article 18-2 ICRRA)**

Division Year	Boat people	Others			
	Recognised	Applications	Recognised	Denied	Withdrawn
Total	5688	104	35	66	3
1982	1037	22	22	-	-
1983	798	8	3	5	-
1984	503	5	1	4	-
1985	435	17	-	17	-
1986	330	6	1	4	1
1987	145	1		1	-
1988	219	1		1	-
1989	1909	-		-	-
1990	155	4		4	-
1991	20	-		-	-
1992	100	-		-	-
1993	17	-		-	-
1994	-	-		-	-
1995	-	-		-	-
1996	-	1		1	-
1997	-	4		2	2
1998	-	6	1	5	-
1999	-	-	-	-	-
2000*	-	8	-	6	-
2001*	-	8	1	9	-
2002	-	11	6	5	-
2003	-	2	-	2	-

\* Two applications in 2000 were dealt with in 2001.

Source: Japan, Ministry of Justice, Immigration Bureau, *2004 Immigration Control*, Tokyo, November 2004, p. 61, Table 41

**Table 4: Convention Refugee Applications  
Highest Numbers, by Country of Origin**

Year	Nationality	Number of RSD applicants
1999	Pakistan	59
	Myanmar	44
	Turkey	42
	Afghanistan	33
	Iran	19
	Yugoslavia	14
	Ethiopia	12
2000	Pakistan	74
	Turkey	40
	Myanmar	23
	Afghanistan	21
	Iran	17
2001	Turkey	123
	Afghanistan	78
	Pakistan	47
	Myanmar	23
	Iran	20
	China	10
	Bangladesh	10
2002	Turkey	52
	Myanmar	38
	Pakistan	26
	China	22
	Iran	19
	Cameroon	15
	Nigeria	12
	Bangladesh	12
2003	Myanmar	111
	Turkey	77
	Iran	25
	China	22
	India	12
	Pakistan	12

Source: Japan, Ministry of Justice, February 2004 (press release)



**Table 5: Refugee Recognitions**  
**Highest Number by Country of Origin**

Year	Nationality	Number of Recognized Refugees
1999	Iran	5
	Myanmar	3
2000	Myanmar	15
	Iran	4
	Afghanistan	3
2001	Myanmar	12
	Iran	8
2002	Afghanistan	6
2003	Myanmar	5

Source: Japan, Ministry of Justice, February 2004 (press release)

**Table 6: Refugee Recognition Rejections  
Highest Number by Country of Origin**

Year	Nationality	Number of Rejected applicants
1999	Pakistan	43
	Afghanistan	38
	Ethiopia	15
	Iran	12
	Turkey	10
	Myanmar	10
2000	Pakistan	65
	Myanmar	15
	Afghanistan	11
	Turkey	10
2001	Turkey	165
	Afghanistan	39
	Myanmar	35
	Pakistan	31
2002	Afghanistan	40
	Pakistan	38
	Turkey	30
	Iran	18
	Myanmar	18
	Bangladesh	12
2003	Myanmar	73
	Turkey	65
	China	32
	Pakistan	21
	Iran	20
	Cameroon	18
	Bangladesh	10

Source: Japan, Ministry of Justice, February 2004 (press release)

## 9 Bibliography

- Amnesty International, *Japan: Government Endangers Refugees' Families in Turkey*, London, 2 September 2004
- \_\_\_\_\_, *Annual Report 2004: Japan*, London, 2004
- \_\_\_\_\_, *Japan: Welcome to Japan?*, London, 17 May 2002
- \_\_\_\_\_, *Japan: Ill-Treatment of Foreigners in Detention*, London, 10 November 1997
- Asylum Seeker Sues State for Damages, *The Japan Times Online*, 9 April 2005, <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050409a3.htm> [accessed May 2005]
- Befu, H., *Hegemony of Homogeneity: An Anthropological Study of 'Nihonjiron'*, Melbourne: Trans Pacific Press, 2001
- Benedict, R., *The Chrysanthemum and the Sword: Patterns of Japanese Culture*, London: Routledge & K. Paul, 1967
- Brownlie, I., *Principles of Public International Law*, 6 ed, Oxford: Oxford University Press, 2003
- Clark, G., Northern Territories Dispute Highlights Flawed Diplomacy, *The Japan Times Online*, 24 March 2005, <http://www.japantimes.co.jp/cgi-bin/geted.pl5?eo20050324gc.htm> [accessed May 2005]
- Crawford, J. (comp.), *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries*, Cambridge: Cambridge University Press, 2002
- Dean, M., *Japanese Legal System*, 2 ed., London: Cavendish, 2002
- Detainees Seeking Asylum Claim Abuse by Guards, *The Japan Times Online*, 21 December 2004, <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20041221a3.htm> [accessed May 2005]
- Doctor Hits Immigration Center Health Care, *The Japan Times Online*, 16 November 2004, <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20041116f1.htm> [accessed May 2005]
- Feller, E., Türk, V., Nicholson, F. (eds), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, Cambridge: Cambridge University Press, 2003
- Foreigners Make up Record 1.5% of Japan's Populace, *The Japan Times Online*, 12 June 2004, <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040612a5.htm> [accessed May 2005]
- Human Rights Watch, *Owed Justice: Thai Women Trafficked into Debt Bondage in Japan*, New York, 2000
- \_\_\_\_\_, *Prison Conditions in Japan*, New York, 1995
- Immigration Might Ship New Refugee, *The Japan Times Online*, 8 February 2005, <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050208f2.htm> [accessed May 2005]
- Immigration Review Task Force, *The Actual Status of the Deportation Procedures and Immigration Detention Facilities in Japan*, Tokyo, [1998], <http://www2.odn.ne.jp/nyukan/englis/englis00.htm> [accessed May 2005]
- International Organization for Migration, *Trafficking in Women to Japan for Sexual Exploitation: A Survey on the Case of Filipino Women*, Geneva, 1997
- Japan, Administrative Case Litigation Law, 1962, as amended
- \_\_\_\_\_, Constitution, 3 November 1946 (*UNHCR RefWorld* 2004, Issue 13, CD 2)
- \_\_\_\_\_, Habeas Corpus Act (Law 199), 1948 (*UNHCR RefWorld*, Issue 13, 2004, CD2)
- \_\_\_\_\_, Immigration Control and Refugee Recognition Act 2004, June 2004. For full text, see <http://www.unhcr.ch/cgi-bin/texis/vtx/rsd/rsddocview.htm?CATEGORY=RSDLEGAL&id=3ae6b5754&page=research>

- [accessed May 2005] (*UNHCR RefWorld 2004*, Issue 13, CD 2). For a summary, see <http://www.moj.go.jp/ENGLISH/IB/ib-78.html> [accessed May 2005]
- \_\_\_\_\_, Ministry of Foreign Affairs, *Refugees*, <http://www.mofa.go.jp/policy/refugee/index.html> [accessed May 2005]
- \_\_\_\_\_, Ministry of Foreign Affairs, *Refugee Assistance*, Tokyo, 2000, <http://www.mofa.go.jp/policy/un/pamph2000/refugee.html> [accessed May 2005]
- \_\_\_\_\_, Ministry of Internal Affairs and Communications, *Japan Statistical Yearbook 2005*, Tokyo, October 2004, <http://www.stat.go.jp/english/data/nenkan/index.htm> [accessed May 2005]
- \_\_\_\_\_, Ministry of Justice, *Refugee Recognition in 2004*, 24 February 2005 (press release)
- \_\_\_\_\_, Ministry of Justice, *Refugee Recognition in 2003*, 27 February 2004 (press release)
- \_\_\_\_\_, Ministry of Justice, Immigration Bureau, *2004 Immigration Control*, Tokyo, November 2004
- \_\_\_\_\_, Ministry of Justice, Immigration Bureau, *A Guide to the Procedure for Recognition of Refugee Status*, Tokyo, 2000
- \_\_\_\_\_, Ministry of Foreign Affairs, *Refugees: Acceptance of Refugees by Japan*, Tokyo, n.d., <http://www.mofa.go.jp/policy/refugee/japan.html#ii> [accessed May 2005]
- \_\_\_\_\_, Ministry of Justice, Immigration Bureau, *Immigration: Controlling Embarkation and Disembarkation*, Tokyo, n.d., <http://www.moj.go.jp/ENGLISH/IB/ib-07.html> [accessed June 2005]
- Japan Association for Refugees, *To Those Who Wish to Apply for Refugee Status*, Tokyo, July 2004, [http://www.refugee.or.jp/for\\_refugee/tothose/tothose\\_e\\_0407.pdf](http://www.refugee.or.jp/for_refugee/tothose/tothose_e_0407.pdf) [accessed May 2005]
- Japan Civil Liberties Union, *1998 Report Concerning the Present Status of Human Rights in Japan*, Tokyo, October 1998, [http://www.jclu.org/katsudou/counter\\_report\\_1998/](http://www.jclu.org/katsudou/counter_report_1998/) [accessed May 2005]
- Japan Criticized over Detainees' Deportations, *The Japan Times Online*, 28 January 2004, <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040128b1.htm> [accessed May 2005]
- Japan Federation of Bar Associations, *Alternative Report to the Fourth Periodic Report of Japan on the ICCPR*, Tokyo, [1998], <http://www.nichibenren.or.jp/jp/katsudo/jinkenlibraly/treaty/liberty/report-4th/jfba-report/index.html> [accessed May 2005]
- Kodama, K., *Nanmin Hanrei-shu (Compilation and Commentary on Refugee Case-Law)*, Tokyo, Gendai-jimbun-sha, 2004
- Kosaku, Y., *Cultural Nationalism in Japan*, London: Routledge, 1992
- Last 'Mandate Refugees' Allowed Out of Detention, *The Japan Times Online*, 20 February 2005, <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050220a3.htm> [accessed April 2005]
- Lauterpacht, Sir E. and Bethlehem, D., The Scope and Content of the Principle of *non-refoulement*, in Feller, Türk, Nicholson, F. (eds), *Refugee Protection...*, pp 87-179
- Miyazaki, J., Textbook Row Stirs Japanese Concern, *BBC News*, 13 April 2005, <http://news.bbc.co.uk/1/hi/world/asia-pacific/4439923.stm> [accessed May 2005]
- Mukae, R., *Japan's Refugee Policy: To Be of the World*, Florence: European Press Academic Publishing, 2001
- Nagamine, Y., *Refugee System Needs Review*, *Daily Yomiuri*, 24 February 2005
- Q&A: China and Japan's Troubled Ties, *BBC News*, 14 April 2005, <http://news.bbc.co.uk/1/hi/world/asia-pacific/4443821.stm> [accessed May 2005]
- Ramseyer, J.M. and Rasmusen, E.B., *Measuring Judicial Independence: The Political Economy of Judging in Japan*, Chicago: University of Chicago Press, 2003

Thousands Join Anti-Japan Protest, *BBC News*, 16 April 2005, <http://news.bbc.co.uk/1/hi/world/asia-pacific/4450975.stm> [accessed May 2005]

Thrice Court-Recognized Refugee Wants Ministry Nod, *The Japan Times Online*, 9 April 2005, <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050409b1.htm> [accessed May 2005]

Tokyo Told Turkish Cops about Kurd Now in Detention, *The Japan Times Online*, 9 April 2005 <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050409b2.htm> [accessed April 2005]

Tokyo Under Fire for Deporting Refugees, *The Japan Times Online*, 21 January 2005, <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050121f2.htm> [accessed May 2005]

United Kingdom, Home Office, Country Information and Policy Unit, *China: Country Report April 2005*, London, 2005, [http://www.workingintheuk.gov.uk/ind/en/home/0/country\\_information/country\\_reports.Maincontent.0037.file.tmp/China April 2005.doc](http://www.workingintheuk.gov.uk/ind/en/home/0/country_information/country_reports.Maincontent.0037.file.tmp/China April 2005.doc) [accessed May 2005]

United Nations, Committee on the Elimination of Racial Discrimination, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Japan, CERD/C/304/Add.114, 27 April 2001, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.304.Add.114.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CERD.C.304.Add.114.En?Opendocument) [accessed May 2005]

\_\_\_\_\_, General Assembly, Body of Principles for the Protection of All persons under Any form of Detention or Imprisonment, A/RES/43/173, 1988 <http://www.un.org/documents/ga/res/43/a43r173.htm> [accessed May 2005] (*UNHCR RefWorld 2004*, Issue 13, CD2)

\_\_\_\_\_, Human Rights Committee, Concluding Observations of the Human Rights Committee: Japan, CCPR/C/79/Add.102, 19 November 1998, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/5a2baa28d433b6ea802566d40041ebbe?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/5a2baa28d433b6ea802566d40041ebbe?Opendocument) [accessed May 2005]

\_\_\_\_\_, Human Rights Committee, Consideration of Reports... : Fourth Periodic Reports... Addendum: Japan: Corrigendum, CCPR/C/115/Add3/Corr.1, 2 October 1998, <http://documents-dds-ny.un.org/doc/UNDOC/GEN/G98/185/11/pdf/G9818511.pdf?OpenElement> [accessed May 2005]

\_\_\_\_\_, Human Rights Committee, Consideration of Reports... : Fourth Periodic Reports... Addendum: Japan, CCPR/C/115/Add.3, 1 October 1997, <http://documents-dds-ny.un.org/doc/UNDOC/GEN/G97/184/68/pdf/G9718468.pdf?OpenElement> [accessed May 2005]

United Nations High Commissioner for Refugees, *Asylum Levels and Trends in Industrialized Countries, 2004*, Geneva, March 2005, <http://www.unhcr.ch/cgi-bin/taxis/vtx/statistics/opendoc.pdf?tbl=STATISTICS&id=422439144> [accessed May 2005]

\_\_\_\_\_, Deep Concern over Refugee Deportation, 18 January 2005 (press release)

\_\_\_\_\_, *Asylum Levels and Trends in Industrialized Countries, 2004*, Geneva, 2005, <http://www.unhcr.ch/cgi-bin/taxis/vtx/statistics/opendoc.pdf?tbl=STATISTICS&id=422439144> [accessed May 2005]

\_\_\_\_\_, *Statistical Yearbook 2003: Country Data Sheet Japan*, Geneva, January 2005, <http://www.unhcr.ch/cgi-bin/taxis/vtx/statistics/opendoc.pdf?tbl=STATISTICS&id=41d2c17dc&page=statistics> [accessed May 2005]

\_\_\_\_\_, States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, 1 October 2004 (*UNHCR RefWorld 2004*, Issue 13, CD 2)

\_\_\_\_\_, *Country Operations Plan: Japan 2005: Executive Summary*, Geneva, September 2004, <http://www.unhcr.ch/cgi-bin/taxis/vtx/home/opendoc.pdf?tbl=RSDCOI&id=4180ec8d4&page=home> [accessed May 2005]

- \_\_\_\_\_, *2003 Global Refugee Trends*, Geneva, June 2004, <http://www.unhcr.ch/cgi-bin/texis/vtx/statistics/opendoc.pdf?tbl=STATISTICS&id=40d015fb4> [accessed May 2005]
- \_\_\_\_\_, *Country Operations Plan: Japan 2004: Executive Summary*, Geneva, September 2003, <http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RSDCOI&id=3f8e6a8c4&page=home> [accessed May 2005] (*UNHCR Refworld 2004*, Issue 13, CD1)
- \_\_\_\_\_, Global Consultations on International Protection: Complementary Forms of Protection, EC/GC/01/18, 4 September 2001, [http://www.unhcr.bg/global\\_consult/ec\\_gc\\_01\\_18\\_en.htm](http://www.unhcr.bg/global_consult/ec_gc_01_18_en.htm) accessed May 2005] (*UNHCR RefWorld 2004*, Issue 13, CD1)
- \_\_\_\_\_, UNHCR Regional Representation in Japan, *Advisory Opinion on the Rules of Confidentiality Regarding Asylum Information*, Tokyo, 31 March 2005, [http://www.unhcr.or.jp/protect/pdf/mar2005\\_advconf\\_e.pdf](http://www.unhcr.or.jp/protect/pdf/mar2005_advconf_e.pdf) [accessed May 2005]
- \_\_\_\_\_, UNHCR Regional Representation In Japan, *Information for Asylum Seekers in Japan*, Tokyo, [updated 18 August 2004], [http://www.unhcr.or.jp/protect/pdf/040818infosheet\\_e.pdf](http://www.unhcr.or.jp/protect/pdf/040818infosheet_e.pdf) [accessed May 2005]
- United States, Central Intelligence Agency, *The World Factbook: Japan*, Washington, 1 January 2004 [updated 10 February 2005], <http://www.cia.gov/cia/publications/factbook/geos/ja.html> [accessed May 2005]
- \_\_\_\_\_, Department of State, *Background Note: Japan*, Washington, April 2005, <http://www.state.gov/r/pa/ei/bgn/4142.htm> [accessed May 2005]
- \_\_\_\_\_, Department of State, *Country Reports on Human Rights Practices: China 2004*, Washington, February 2005, <http://www.state.gov/g/drl/rls/hrrpt/2004/41640.htm> [accessed May 2005]
- \_\_\_\_\_, Department of State, *Annual Trafficking in Persons Report 2004: Japan*, Washington, June 2004, <http://www.state.gov/g/tip/rls/tiprpt/2004/33191.htm> [accessed May 2005]
- \_\_\_\_\_, Department of State, *Annual Trafficking in Persons Report 2003: Japan*, Washington, June 2003, <http://www.state.gov/g/tip/rls/tiprpt/2003/21276.htm> [accessed May 2005]
- United States Committee for Refugees and Immigrants, *World Refugee Survey 2003: Japan*, Washington, 2004
- Yamamura, J., *Persecuted Foreigners: Human Rights Violation at Immigration Centre under the Ministry of Justice*, March 2005 (unpublished report)
- \_\_\_\_\_, *Wounded Asylum Seekers: The Situation and Problems with respect to Medical Services at the East Japan Immigration Centre*, March 2004 (unpublished report)