



**Points of consideration
Related to global and domestic refugee and statelessness issues (Update I)**

Tokyo, May 2017

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Introduction

The Government and the people of Japan continue to provide strong political, financial and other relevant support to UNHCR's global activities in relation to refugees, internally displaced persons (IDP) as well as stateless persons. UNHCR deeply appreciates this support, which has been critical in our – and our partners' - efforts to respond to an ever increasing number of humanitarian crisis situations world-wide.

UNHCR also wishes to express its sincere appreciation to the Government of Japan for undertaking - during the previous legislative period - a number of important steps in support of domestic refugee protection matters. Such steps include the decision to admit 150 Syrian students and their family members under scholarship programmes and to initiate regular consultations with UNHCR to discuss a wide range of domestic asylum issues. UNHCR also wishes to acknowledge it has been given an opportunity to actively contribute to the deliberations of the Monitoring Committee, which was newly created to oversee the pre-screening process in the context of refugee status determination procedure with a view to efficiently handle an increasing number of asylum applications.

It is hoped that Japan will continue its leadership role in the area of international cooperation. Equally, it is hoped that the Government will proactively pursue its efforts to further strengthen its national asylum system with a view to ensuring that all persons in need of international protection will have access to their rights enshrined in the 1951 Convention relating to the Status of Refugees (hereafter 1951 Convention).

Against this backdrop, UNHCR updated the original document released in July 2015 to highlight four areas which are critical to the work of the office in light of today's circumstances – together with a set of recommendations – which we hope to pursue with the Government and other relevant stakeholders in close dialogue and in a spirit of partnership. We hope that presenting the four thematic areas listed below in one document will serve as a useful reference point for all interested in global as well as domestic affairs related to refugees and stateless persons.

1. Partnership and public awareness
2. Establishment of a comprehensive asylum system
3. Resettlement and Humanitarian Admission
4. Statelessness

1. Partnership and public awareness

Japan is one of UNHCR's top 5 donor countries and, in 2016, Japan's contribution to UNHCR marked US\$164,726,114. Over the years, Japan has managed to position itself as a prestigious leader in humanitarian support. The country has gained enormous respect for its strong humanitarian engagement and has featured as a good practice example. Japan's Humanitarian Aid Policy as well as the Development Cooperation Charter, in particular, are key in advancing policy matters on forced displacement issues. Taking Human Security as the central concept, these policies enhance cooperation with international agencies, amongst other partners, in tackling global issues such as human displacement. Japan also takes a leading role in ensuring synergies between humanitarian and development funding and partnership, which is critical for the seamless transition from emergency response to development and to finding solutions to refugee situations.

UNHCR's needs based budget alone is currently US\$ 7.45 billion. Given the number, size, and complexity of new emergencies, needs are growing considerably faster than the level of funds available to UNHCR and its partners. We thus wish to express the hope that Japan will continue to take a leading role in responding to humanitarian needs and will be able to further strengthen its contributions to the protection and assistance of refugees, IDPs and stateless persons. This is even more crucial as donor fatigue as well as decreased funding expected from some other major

donors to UNHCR will make it increasingly difficult to uphold current levels of UNHCR's global refugee and humanitarian response. UNHCR appreciates Japan's proactive participation in the international dialogue on refugees and migration in preparation and following the UN General Assembly's Summit Meeting on Refugees and Migrants and the support to UNHCR's work on formulating a Global Compact on Refugees.

It is in this context that UNHCR will - as part of its external relations and partnership building activities - continue to facilitate the mobilisation of Japan's humanitarian resources (financial, in-kind, human resource and technical cooperation) for UNHCR's global operations. The Office will also seek to deepen its partnership in the areas of humanitarian assistance, peace-building, humanitarian and development nexus and solutions/development not only with relevant government ministries and agencies, but also with bilateral development agencies, including UN/International Organizations, JICA, civil society and NGOs.

In order to garner the necessary support, UNHCR considers it indispensable to enhance public awareness on the issue of forced displacement and humanitarian crisis, and on how Japan's humanitarian resources continue alleviating the suffering of millions of displaced persons. With this in mind, UNHCR will strive to further enhance public information and outreach activities, such as the World Refugee Day and the UNHCR Refugee Film Festival together with a wide range of partners, such as the media, academic and cultural institutions, student groups, the private sector, as well as the Japan Association for UNHCR.

Proactively engaging the public in refugee protection debates not only helps to create an understanding towards the displaced, but also provides valuable opportunities to increase the visibility of Japan's contributions to global refugee issues. UNHCR encourages that the Government takes a leading role in creating an environment where awareness on displacement can be effectively raised in close cooperation with UNHCR and other relevant actors.

2. Establishment of a comprehensive asylum system

In November 2011, on the occasion of the 60th anniversary of the adoption of the 1951 Convention and the 30th anniversary of Japan's accession thereto, the Diet of Japan adopted unanimously a "resolution concerning Japan's continued commitment to refugee protection and search for solutions". The Diet resolution called on the GOJ 'to develop a comprehensive asylum process in Japan'. In UNHCR's view, such a comprehensive approach encompasses the following areas:

- Development of a comprehensive asylum law and creation of a dedicated refugee agency

With reference to the above Resolution and for Japan to develop a truly comprehensive asylum process and system, it is recommended that an appropriate and dedicated legal framework is developed, covering issues including reception arrangements, refugee status determination as well as integration matters. It is also recommended that such legislation should ensure, inter alia, access by refugees and those with complementary forms of protection to national social welfare schemes. Such a law, which should be separate from the legislation governing immigration control related matters, should clearly stipulate the rights and obligations of asylum seekers and refugees, as well as contain clear references related to the responsibilities of different authorities in asylum and refugee matters.

In a time of rising numbers of asylum seekers coming to Japan, it will also be important to consider the establishment of a dedicated government agency that is responsible for all key refugee-related matters. The creation of such an agency, which would consolidate the tasks which are currently dealt with by different ministries and governmental entities, will undoubtedly ensure a more holistic, efficient and protection oriented approach to asylum related issues. Furthermore, it would be extremely important for the Ministry of Justice, which is responsible for adjudicating asylum applications, to build its own capacity to train its staff in refugee status determination and refugee protection as well as its research capacity of country of origin information.

- Appropriate reception conditions for asylum-seekers

As mentioned above, asylum legislation should clearly stipulate the responsibility of Japan under the 1951 Convention to which Japan is a signatory; as part of this, such legislation should highlight and confirm the responsibility of the State to provide the necessary support from the moment an asylum-seeker declares his/her intention to seek protection against persecution in Japan, be it at the border (airport or seaport) or within the territory.

As part of the overall arrangement related to reception conditions, the following should be taken into account:

- The issuance of proper identity cards for asylum-seekers be ensured for the period that the refugee status is being determined by the authorities;
- The state assistance scheme for asylum-seekers be reviewed to ensure that their basic needs, including necessary financial means, food, clothing, accommodation, and medical care are covered throughout the refugee status determination process, regardless of the applicant's residency status;
- Reception conditions be developed that reflect age, gender, and diversity sensitivity and which ensure adequate support for applicants with special needs (in particular, the specific needs of unaccompanied and separated children, victims of sexual violence, of trauma and torture and persons with disabilities need to be adequately taken care of);
- Pending a decision of the preliminary screening (including examination of admissibility of the re-application), the applicant be entitled to support and reception conditions on a par with regular asylum seekers; and,
- Asylum seekers should be granted a permission to work, if the length of the refugee status determination procedure exceeds 6 months.

- Detention of asylum-seekers and the use of Alternatives to Detention (ATD)

The 1951 Convention and the 1967 Protocol relating to the Status of Refugees define those to whom international refugee protection is to be conferred to and establish key principles, including the non-penalization for illegal entry of persons in need of international protection.

Based on this, the detention of asylum-seekers and refugees should be avoided as a matter of principle and be a measure of last resort only. Fundamentally, asylum-seeking children should not be detained at all. ATD should be sought and given preference, in particular for certain categories of vulnerable persons. Should asylum-seekers be detained, they should be entitled to minimum procedural guarantees and minimum standards of treatment, including appropriate medical care.

UNHCR is pleased to note the intention of the Government of Japan to join the Global Strategy – Beyond Detention 2014-2019 as a focus country from 2017. UNHCR is looking forward to working with the authorities concerned on the following three main goals of the Strategy: (I) End the detention of children, (II) Ensure ATDs are available in law and implemented in practice, and (III) Ensure that conditions of detention where detention is necessary and unavoidable meet international standards.

- Fair and efficient asylum procedures

Fair and efficient as well as transparent asylum procedures are critical to identify those who should benefit from international protection under the 1951 Convention, the 1967 Protocol as well as other relevant international norms, in a speedy manner. With this in mind, the following core elements of a well-functioning asylum process – in keeping with international refugee protection principles – will need to be ensured: (1) the independence of the appeal process, (2) provision of legal support at all stages of the asylum process, (3) compilation and availability of independent, up-to-date, relevant and reliable country of origin information as a basis for solid asylum decisions, (4) the provision of continuous training and capacity building of all actors involved in the asylum process, particularly the decision makers at all levels of the process, (5) the introduction of adequate legal provisions,

including a clear set of criteria and procedural safeguards for the treatment of repeat applications and the granting of complementary forms of protection, (6) the allocation of sufficient financial and human resources to maintain an efficient RSD process, and, (7) well-established mechanisms that assure a consistent high quality of the decision making process.

As a general principle, proper interpretation and application of the eligibility criteria in the 1951 Convention must be fully guaranteed. In realizing this, UNHCR guidelines and international standards and principles should be duly considered and applied in the RSD decision making process.

In order to assist the Government of Japan to further increase the fairness and the efficiency of the Refugee Status Determination (RSD) process and to clear existing backlogs of pending asylum claims, UNHCR stands ready to cooperate closely with the Ministry of Justice, for example in following areas: 1. Providing additional comprehensive training and capacity building opportunities for all individual officials involved in the RSD process at all levels and working closely with MoJ's training entity and the relevant sections to develop its capacity to provide comprehensive training on RSD and refugee protection; 2. Providing technical advice and training for the establishment of a dedicated country of origin unit within the Ministry of Justice; and, 3. Assisting with a joint review of cases in the first instance and the appeal process as part of targeted training and capacity building efforts.

It is in this regard that UNHCR looks forward to working with the Ministry of Justice in pursuing the agreed recommendations of the Sub-Committee as speedily as possible.

- Integration of refugees under a new comprehensive framework

For individuals recognized as a refugee, all necessary steps should be taken to ensure their smooth and speedy integration into Japanese society.

In this regard, it is suggested that the Government develops a comprehensive integration support scheme. UNHCR notes that there are municipalities willing and capable of accommodating refugees, including those who were resettled into Japan. It is considered important to forge closer partnerships between central and local government entities, private sector, relevant civil society organizations, educational institutions and the refugees.

While those who are granted special permission to remain in Japan on humanitarian grounds are entitled to certain benefits, they should also be provided with a more comprehensive set of rights, including state assistance for their integration.

Those provided with complementary forms of protection should enjoy a formal legal status and should be granted the necessary civil, political, social and economic rights, as well as the right to speedy family reunification.

Concerning family reunification, given that the right to family unity is one of the fundamental human rights refugees should be able to enjoy, UNHCR encourages the Government of Japan to consider separating social welfare issues from the issue of reunification of refugees and their families.

Finally, it is also important that the Government makes every effort to expedite naturalization proceedings and reduce the fees for those refugees opting to acquire citizenship.

- Treatment of those who are found not to be in need of international protection

The treatment of individuals who have sought international protection and who, after due consideration of their claims in full and fair procedures, are found neither to qualify for Convention refugee status, nor to be in need of international protection on human rights and/or humanitarian grounds, is an important factor in maintaining a credible refugee status determination system.

A legislative framework and effective system should be put in place that fairly and transparently

regulates the treatment of rejected asylum-seekers who are not entitled to domestic protection or other rights to remain. Such a regulation may include the provision of counseling at the end of the RSD process, provisions for assisted voluntary return and an effective and transparent return monitoring system to ensure return in safety and dignity. The basic principle governing the treatment of such persons includes that they be treated in a humane manner and with full respect for their basic rights and dignity.

3. Resettlement and Humanitarian Admission

In 2010, the Government of Japan initiated a resettlement pilot project as the first country in Asia and for the past five years, it has welcomed eighty-three refugees from Myanmar from the camps in Thailand. Following the pilot phase, a Cabinet agreement was adopted in January 2014 to start an official resettlement programme as from 2015. Through Japan's regular resettlement programme, forty refugees arrived from Malaysia in 2015 and 2016, bringing the total number of resettlement arrivals to 123. UNHCR stands ready to provide support in whatever manner the Government considers necessary. In view of the evolving global resettlement needs, UNHCR urges the Government of Japan to consider the next steps beyond the current resettlement programme that focuses only on Myanmar refugees. A first modest step would be to fill the quota of 30 individuals per year. To that end, it is recommended that the Government implements the resettlement programme as flexibly as possible, including the alignment of the selection criteria with UNHCR's global resettlement policy, considering the humanitarian nature of the programme and considers the expansion of the programme, taking into consideration the global needs.

The lack of municipalities willing to receive resettled refugees as well as the shortage of funds have often been cited as some of the challenges of the Central Government to expand the scope of the current resettlement programme. In order to overcome such challenges, Government of Japan may be encouraged to consider some of the good practices of other Governments where resettled refugees are brought straight from the country of asylum and entrusted to the local government where they are supported to settle down. With the Central Government's support in terms of the programme direction and technical advice, UNHCR believes that there are many such local governments, particularly in areas of acute labour shortages, which are willing and capable to receive refugees.

UNHCR welcomes GoJ's decision and announcement at G7 Ise-Shima Summit, to admit 150 Syrian students and their family members under scholarship programmes. UNHCR considers that such a decision is an important gesture of international solidarity and responsibility sharing, and contributes to preserve the protection space for Syrian refugees in the neighbouring countries. UNHCR hopes that such a humanitarian admission can be expanded in various forms, including through liberal visa arrangements, family reunification as well as broader labour migration schemes.

4. Statelessness

Since UNHCR launched a global accession campaign in October 2010 as well as the "I Belong" campaign in November 2014 to bring statelessness to an end by end 2024, the number of State Parties to the 1954 Convention relating to the Status of Stateless Persons drastically increased from 65 to 89 States, and those of 1961 Convention on the Reduction of Statelessness from 37 to 68 States (as of 19 May 2017). Many States around the world including those which are not parties to the above Conventions are making significant progress such as revising their nationality law or establishing statelessness determination procedure. Given that previous studies commissioned by UNHCR found that no drastic change in legislation is required for Japan to accede to two Conventions, it is hoped that Japan will also consider acceding to the 1954 Convention and 1961 Convention joining other States.

Even while consideration of accession to the two Conventions is pending, it is desirable that the definition of statelessness under article 1 of 1954 Convention (part of customary international law) be adopted in implementing the relevant legislation such as the Nationality Act and Immigration

Control and Refugee Recognition Act, and be interpreted in a full and inclusive manner reflecting the relevant UNHCR's guidance. In order to standardize identification and registration of stateless persons and to protect them, the establishment of a dedicated and centralized statelessness status determination procedure should be favourably considered. Even without a formal statelessness determination procedure, stateless persons and persons of undetermined nationality without residency status and prospect of (re-) admission to another State should be systematically granted special permission to stay, be protected from detention and provided with right to work and other basic rights. There is a need to systematically and flexibly implement article 2(3) of the Japanese Nationality Act granting Japanese nationality to persons born in Japan of unknown or stateless parents, and article 8(4) of the same Act facilitating naturalization of stateless persons born in Japan.

Japan's accession to the two Statelessness Convention and its efforts to strengthen its mechanism to address statelessness would constitute an important contribution to the abovementioned campaign to end statelessness and would likely encourage other countries in the region to follow Japan's lead.