

Submission by the United Nations High Commissioner for Refugees
for the Office of the High Commissioner for Human Rights' Compilation Report
- Universal Periodic Review:

JAPAN

I. BACKGROUND AND CURRENT CONDITIONS

Japan has made progress in the capacity-building of the refugee status determination (RSD) personnel, resettlement, alternatives to detention and Government/UNHCR/NGO partnership. Further improvements are desired, especially on issues relating to reception conditions for asylum-seekers, local integration and statelessness.

II. ACHIEVEMENTS

UNHCR welcomes the Government's achievements in the following areas:

1. **Historic Resolution Renewing Japan's Commitment to Creating a Comprehensive Asylum Process:** The year 2011 marked the 30th anniversary of Japan's accession to the 1951 Refugee Convention (coinciding with the Convention's 60th anniversary). In November, both houses of the Diet passed a historic resolution renewing Japan's commitment to creating a comprehensive asylum process through strengthened coordination with international organizations and civil society. During the UNHCR-hosted Ministerial Meeting in December 2011 commemorating the 60th anniversary of the 1951 Convention and the 50th anniversary of the 1961 Convention on the Reduction of Statelessness, Japan reiterated its commitment to enhancing the quality/quantity of RSD decisions, to improving information provision to asylum-seekers, and to addressing the detention of asylum-seekers. The Diet resolution and the Government's pledges on the asylum process are good indicators that Japan seeks to fully meet its commitments under the 1951 Convention.
2. **Extension of Resettlement Pilot Project and Establishment of a Council on Resettlement:** In April 2012, the Government decided to extend the resettlement pilot project for an additional two years (until 2015), while broadening the selection criteria (expanding the target refugee camps in Thailand from one to three) and strengthening the integration assistance system. The Japanese pilot project is intended to inspire other countries in the region to develop their own programs. Further, the Government established a Council on Resettlement and invited academics, journalists and NGO members to make recommendations towards improving local integration prospects of refugees in Japan.
3. **Decrease in Number of Detained Asylum-Seekers and Reduced Duration of Detention:** Significant progress has been made on the alternatives to detention front in recent years. The number of detained asylum-seekers decreased from 332 (345 including judicial review) to around 150 (UNHCR estimate) at the end of 2011. The

average duration of detention has also decreased significantly. The Ministry of Justice adjusted RSD application receipts to include facial photos and some biographical data, and briefed local law enforcement authorities, measures which may have prevented police arresting asylum-seekers for illegal stay since 2010. The Ministry of Justice extended the Provisional Permission to Stay duration from three to six months, launched a periodic review of detention for long-term detainees, and sped up the examination of the Provisional Release requests. The Ministry of Justice also concluded an agreement with the Japan Federation of Bar Associations to provide free legal counseling in detention facilities. Upon UNHCR's continued advocacy, the Immigration Bureau started to provide limited mental health services in detention. The Government/NGO partnership on alternatives to detention, for which UNHCR continuously advocated, has been strengthened. Throughout 2010-2011, the Immigration Bureau of the Ministry of Justice, Japan Federation of Bar Associations and Forum for Refugees Japan (a NGO coordination mechanism) gradually strengthened their collaboration regarding alternatives to detention. In February 2012, the three parties established a framework of cooperation in the form of a Memorandum of Understanding. The Memorandum of Understanding provides that the three parties will discuss and cooperate on improving the asylum system, including the issue of securing shelters for asylum-seekers upon release from detention. This framework is therefore expected to contribute significantly to an expanded use of alternatives to detention, including the amendment or the creation of relevant legal provisions.¹

- 4. The Establishment of Immigration Detention Monitoring Committees:** Based on the recommendations from several UN Human Rights mechanisms and civil society, including the Japan Federation of Bar Associations, Japan has established quasi-independent Immigration Detention Monitoring Committees in July 2010. The Committees regularly visit immigration detention facilities all over Japan, conduct hearings with detainees on detention conditions, and submit recommendations to the directors of both the immigration detention facilities and the relevant regional Immigration Bureau. The committees submitted their first recommendations to the Justice Minister in May 2011. The recommendations included improving access to information/legal assistance, investigating alleged violence against deportees at airports, and enhancing medical care and living conditions.² The impact of the measures taken by the relevant Immigration Bureau detention centres to address these recommendations has not yet been evaluated.³ NGOs and lawyers have expressed concerns that the Committees' independence and effectiveness may be undermined, as the Immigration Bureau is acting as their Secretariat.
- 5. Improved Asylum Processing:** First instance RSD processing is considerably faster (5.4 months on average for decisions during January-March 2012) and the number of positive decisions has increased in recent years. Upon the Ministry of Justice's request

¹ The Memorandum of Understanding is reported on the Ministry of Justice's website at http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri03_00084.html and, for example, by Mainichi Daily News on 10 February 2012 at

<http://mdn.mainichi.jp/mdnnews/news/20120210p2g00m0dm016000c.html>).

² These issues have also been highlighted in the Report of the Special Rapporteur on the Human Rights of Migrants: "Report of the Special Rapporteur on the human rights of migrants, on his mission to Japan (23-31 March 2010)" (21 March 2011)

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/121/27/PDF/G1112127.pdf?OpenElement>

³ Ministry of Justice website at http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri01_00102.html

and as a part of its capacity-building priorities, UNHCR provided increased hours of trainings to RSD officers. UNHCR also delivered briefing sessions for interested Refugee Examination Counselors, non-immigration appeal board members. One Immigration Bureau officer participated in a two-week RSD training at UNHCR Kuala Lumpur in 2011. The training programme is expected to expand in 2012. This degree of UNHCR involvement in Immigration Bureau capacity-building activities represents a major step forward in UNHCR's partnership with the Ministry of Justice.

6. **Proposed Human Rights Protection Bill:** The Special Rapporteur on the human rights of migrants⁴ has previously made recommendations to the government of Japan to adopt specific legislation prohibiting racial discrimination and xenophobia. The recommendation and years of civil society advocacy may have prompted the Ministry of Justice's proposed "Human Rights Protection Bill", to be submitted during the next Diet session (ending in June 2012). The draft Bill foresees the establishment of a "Human Rights Committee" reflecting the 1998 UN Principles relating to the Status of National Institutions ("Paris Principles") which set out the necessary qualifications of any national human rights body. The Committee, external to the Ministry of Justice and independent from the Government, would receive complaints from the general public, including illegal migrants. If the law is enacted, it should enhance the protection of the rights of asylum-seekers, refugees and stateless persons.

III. CHALLENGES AND RECOMMENDATIONS

Issue 1: Detention of Asylum-Seekers

Despite the positive developments, detention of asylum-seekers, often for long periods, remains a protection concern. Alternatives to detention, including Provisional Release and Provisional Permission to Stay, have not been fully streamlined. Provisional Permission to Stay, for example, was only granted to just over 10% (71 persons) of illegally-staying asylum-seekers examined for such Permission (689) in 2011.

The indefinite nature of detention continues to be an issue. Describing detention conditions in Japan on 21 March 2011, the Special Rapporteur on the Human Rights of Migrants said:⁵

"There is no time limit for detention, and if the government cannot deport the person for any reason, it can keep the person detained indefinitely. As stated by the Committee against Torture in its concluding observations to Japan in 2007, indefinite detention of migrants or asylum-seekers is contrary to article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and Japan should establish limits to the length of the detention period for persons awaiting deportation."

Reception conditions for asylum-seeking children can be further enhanced. The Committee on the Rights of the Child has previously expressed its "concern at the widespread practice of detaining children seeking asylum...and at the lack of an established mechanism for the care of unaccompanied asylum-seeking children."⁶ In recent years, the authorities have made

⁴ See further Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante, 21 March 2011 (A/HRC/17/33/Add.3, HUMAN RIGHTS COUNCIL, 17th Session, para 78 d).

⁵The Special Rapporteur on the Human Rights of Migrants, Report on Mission to Japan <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/121/27/PDF/G1112127.pdf?OpenElement>

⁶ Committee on the Rights of the Child, 54th Session, CRC/C/JPN/CO/3 (20 June 2010) <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.JPN.CO.3.pdf#search='CRC/C/JPN/CO/3'>

efforts to avoid detaining minors, including asylum-seeking ones, whenever possible.⁷ However, challenges remain in referring minors to the existing child protection mechanisms (such as Child Consultation Centres) under the Child Welfare Law. The lack of focal point for the minors within the Immigration Bureau hinders its coordination with the Child Consultation Centres. Further, Child Consultation Centres often report difficulties in accommodating foreign minors, as they are overcrowded⁸ with Japanese children and often lack resources for hiring interpreters.

The Child Welfare Law provides for the establishment of child protection regime at the municipal government level to provide state protection to minors in need, including those who are unaccompanied and/or separated. The Committee on the Rights of the Child has noted that the Child Welfare Law “does not adequately reflect the primacy of the best interests [of the child]. The Committee is, in particular, concerned that this right is not formally and systematically integrated into all legislation through a mandatory process of integrating the best interests of all children, including refugee and undocumented migrant children.”⁹

Some female asylum-seekers have been detained for prolonged period for as long as a year. There is no mechanism to ensure that applicants are provided with an interviewer and interpreter of the preferred sex during RSD interviews. In practice, the Immigration Bureau makes an effort to provide a female interviewer and/or an interpreter to a female asylum seeker at first instance interviews if the applicant so requests and if an interviewer/interpreter is available. The number of female Refugee Examination Counsellors is relatively small, and no Refugee Examination Counsellors’ team consists only of female counsellors.

Recommendations: As described above, the Government has made efforts in recent years to use detention of asylum-seekers as a last resort, for as short a period as possible. Support from the civil society including finding shelters upon release is necessary to further expand the use of alternatives to detention. Establishing mandatory/independent review (which may include judicial safeguards) and the maximum period of detention would further facilitate the Government’s efforts to prevent unnecessary and/or indefinite detention.¹⁰

The Government would benefit from ensuring that social workers at the Child Consultation Centres routinely consider the views of children as they assess their best interests. The Government is also encouraged to incorporate the UNHCR Guidelines in its best interest determination process. As stated in the Concluding Observations of the Committee on the Rights of the Child, the Government officers may find it useful to refer to “UNHCR Guidelines on Protection and Care of Refugee Children in following up on asylum-seeking children and refugees.”¹¹

⁷ Alice Edwards, “Back to Basics: The Right to Liberty and Security of Person and ‘Alternatives to Detention’ of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants” UN High Commissioner for Refugees, April 2011 <http://www.unhcr.org/4dc949c49.html>

⁸ The Ministry of Health, Labour and Welfare reported that occupancy rate vis-à-vis number of beds available in the Child Consultation Centres in Tokyo was 100.6% for 2010.

<http://www.mhlw.go.jp/toukei/saikin/hw/fukushi/10/dl/kekka-sisetu1.pdf>

⁹ Ibid

¹⁰ UN High Commissioner for Refugees, *UNHCR’s Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, 26 February 1999, available at: <http://www.unhcr.org/refworld/docid/3c2bf844.html>.

¹¹ Committee on the Rights of the Child, 54th Session, CRC/C/JPN/CO/3 (20 June 2010)

Additionally, the Government may receive support from UNHCR and NGOs to address the current lack of qualified interpreters, which has at times prevented Child Consultation Centres from conducting a comprehensive assessment. The Government may wish to consider abolishing or amending some of the restrictive criteria necessary for Provisional Permission to Stay more systematically.

Issue 2: Reception Conditions for Asylum-Seekers

The March 2011 earthquake/tsunami and the continuing economic deterioration impacted the general reception conditions for asylum-seekers. Many asylum-seekers working at restaurants or factories either lost their jobs or worked reduced hours. Asylum-seekers who have residency permits when applying for RSD (more than 60% in 2011) are granted work permits six months after the application, but they face difficulties finding jobs due to the temporary nature of their permit. The Ministry of Foreign Affairs provides livelihood assistance for asylum-seekers through Refugee Assistance Headquarters. However, eligibility screening for assistance normally takes up to two months, or several weeks if urgent. During this waiting period, asylum-seekers need to seek other assistance from NGOs or available community support mechanisms, whose resources are limited. The Refugee Assistance Headquarters reportedly covers approximately 10% of the cases awaiting the Immigration Bureau's RSD decisions. In principle, asylum-seekers with work permits and those who are on provisional release (as they have "guarantors" who are expected to take care of their livelihood upon release from detention) are not eligible for Refugee Assistance Headquarters' assistance, with some exceptions. Normally, re-applicants (asylum-seekers whose applications have been rejected on appeal and have re-applied) are not eligible for assistance, except for second-time applicants simultaneously pursuing a lawsuit with the District Court to revoke the Immigration Bureau's rejection of their first application. The cases pending with higher courts (High Courts and Supreme Court) are not eligible for the Refugee Assistance Headquarters' assistance. As the amount of Refugee Assistance Headquarters' assistance is less than the welfare benefits for low/no income Japanese nationals and long-term foreign residents, some asylum-seekers with Refugee Assistance Headquarters' assistance report difficulties meeting their basic needs. Asylum-seekers are required to pay for their medical care up front and wait for a reimbursement from Refugee Assistance Headquarters. Consequently, many postpone their visits to the doctors as they may not have sufficient savings at the time of illness.

Recommendations: Speeding up the screening process for receiving assistance from Refugee Assistance Headquarters is essential to ensure minimum standards of living for asylum-seekers in Japan. The Government is also encouraged to adopt more inclusive criteria for assistance. Asylum-seekers with work permits that were unable to find a job after several attempts have exceptionally been assisted by Refugee Assistance Headquarters. Likewise, those on provisional release have been granted assistance if the guarantors genuinely cannot provide for them. The government is encouraged to continue this flexible approach on assistance provision. Finally, the Government may wish to consider making changes necessary to ensure that asylum-seekers have full access to health care. In particular, the Government could adjust the current policy requiring asylum-seekers to pay for their medical care out-of-pocket and wait for reimbursements from Refugee Assistance Headquarters.

Issue 3: Pressures on the Asylum Procedure

In 2011, there were 1,867 asylum applications, a record-breaking number. Of the total, 540 (28.9%) were repeat applications, putting a significant burden on the RSD system. The total

number of first and appeal instance decisions in 2011 was 2,999, an increase from 1,906 in 2010.¹² Twenty-one Convention recognitions and 248 decisions to grant Humanitarian Status were reached at first and appeal instances. The vast majority of those protected were from Myanmar. The speedier first instance determination process continued to create a backlog at the appeal level.

The majority of asylum-seekers did not qualify for public legal aid, because they do not have long-term residence permits. The Japan Federation of Bar Associations, with a small contribution from UNHCR, provided free legal representation services, but has consistently emphasized the non-sustainable budget level. As the number of lawyers representing asylum-seekers is limited, UNHCR continued to provide training sessions for lawyers in cooperation with NGOs.

Recommendations: The Government may consider establishing appropriate criteria for lodging repeat applications. The Government may also wish to introduce re-opening system where asylum-seekers with valid reasons¹³ may have their file re-opened. The Government is encouraged to apply a full and inclusive interpretation of the refugee definition, especially in non-Myanmarese cases. To maximize the independence and integrity of decisions made by the Refugee Examination Counsellors, it will be beneficial to empower them with additional RSD training, a Secretariat independent from the Immigration Bureau and the authority to manage their own caseload.

Furthermore, as stated in the Concluding Observations of the Committee on the Rights of the Child, the Government is encouraged to “expedite the processing of asylum claims of unaccompanied children under fair and child-sensitive refugee status determination procedures, ensuring that the best interests of the child are a primary consideration.”¹⁴

Issue 4: Racial Discrimination and Xenophobia

Some conservative groups have expressed negative opinions regarding the admission of foreigners, including refugees, in Japan.

Recommendation: It would be useful for the Government to closely monitor public statements and campaigns to ensure that they do not negatively affect the integration of persons in need of international protection or their enjoyment of rights.

Issue 5: Statelessness Conventions and Statelessness Status Determination Procedure

Information on the nature and the scope of statelessness in Japan is limited. Japan is not a State party to the *1954 Convention relating to the Status of Stateless Persons*, or to the *1961 Convention on the Reduction of Statelessness*. There are no reliable statistics on statelessness in Japan. Some stateless persons without residency permits have previously faced indefinite pre-deportation detention as they did not have readmission prospects to any country. Without residency permits, they face difficulties in sustaining an adequate standard of living. Statelessness is not an established criterion for regularizing an illegal person’s stay. The

¹² Ministry of Justice’s Press Release on 24 February 2012 at http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri03_00085.html. Japan Lawyers Network for Refugees’s website at http://www.jlnr.jp/stat/2011/stat_2011.htm

¹³ For example, where there is a significant change in the personal circumstances, reliable and material new evidence, or serious reason to believe that the claim was improperly decided. See further UNHCR, *Procedural Standards for Refugee Status Determination under UNHCR’s Mandate* (2003), Unit 9, 9-2

¹⁴ Committee on the Rights of the Child, 54th Session, CRC/C/JPN/CO/3 (20 June 2010)

Japanese Nationality Act has provisions for the prevention and the reduction of statelessness: Article 2-iii of the Act grants citizenship to children born in Japan from stateless or unknown parents, and Article 8-iv facilitates the naturalization of stateless children born and raised in Japan for more than three consecutive years. However, UNHCR is aware of only few cases where these legal provisions were implemented. This may be partly due to the absence of a statelessness determination procedure which would determine the beneficiaries of these provisions.

As previously noted by the Committee on the Rights of the Child,¹⁵ an unknown number of children are born in Japan, but unregistered with the authorities of Japan and/or country of origin. Some undocumented migrants do not register the birth of their children with the authorities of Japan and/or country of origin for fear of deportation or for lack of required documentations. Many refugee and asylum-seeking parents do not approach their embassy for birth registration for obvious reasons. Some of these unregistered children may be stateless or *at risk of* statelessness depending on their circumstances and the nationality laws relevant to their case.

The *1954 Convention relating to the Status of Stateless Persons* establishes a framework to protect stateless individuals. It is aimed at avoiding the detrimental effects of statelessness on individuals and society by ensuring minimum standards of treatment of stateless persons, providing such persons with stability and security, and ensuring that certain basic rights and needs are met. Furthermore, the *1961 Convention on the Reduction of Statelessness* establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth. This treaty is therefore complementary to standards contained in other human rights treaties. An increase in the number of State parties is essential to strengthening international efforts to prevent and reduce statelessness. The Japanese legal framework already reflects many of the principles enshrined in the two Conventions. Minimal adjustment or mere “tweaking” of the system is necessary for Japan to prepare for accession to these Conventions.

Recommendations: The Government is encouraged to develop a statelessness status determination procedure to ensure the identification and protection of stateless persons. The Government may wish to consider acceding to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*. A proactive implementation of abovementioned provisions of the Japanese Nationality Act for reduction and prevention of statelessness would provide a good example for other countries. As recommended by the Committee on the Rights of the Child,¹⁶ in accordance with Article 7 of the Convention, measures need to be taken to ensure systematic registration of births with the aim of preventing statelessness among children.

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¹⁵ Committee on the Rights of the Child, 54th Session, CRC/C/JPN/CO/3 (20 June 2010)

¹⁶ Committee on the Rights of the Child, 54th Session, CRC/C/JPN/CO/3 (20 June 2010)