UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report

Universal Periodic Review: *4th Cycle, 42nd Session*

JAPAN

I. BACKGROUND INFORMATION

Japan acceded to the *1951 Convention relating to the Status of Refugees* in 1981 and its *1967 Protocol* in 1982 (hereinafter jointly referred to as the *1951 Convention*). Japan has not yet acceded to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) nor to the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*). The *Immigration Control and Refugee Recognition Act* (*ICRRA)* provides for refugee status determination (RSD), conducted by the Immigration Services Agency (ISA), Ministry of Justice (MoJ).

Japan currently hosts over 19,150 persons of concern to UNHCR: refugees, asylum-seekers and stateless persons. The Government of Japan has provided protection for 4,204 individuals (1982 until the end of 2021), either by recognition of their refugee status (915 individuals) or through provision of humanitarian status (3,289 individuals), which is a form of complementary protection. Apart from that, 11,319 Indochinese refugees and their family members were allowed to settle in Japan from 1978 to 2005, and 9,836 of them remained in Japan as of the end of March 2019. In addition, since 2010, 200 refugees from Myanmar and other locations have been admitted in Japan through the Government's resettlement program. Through its scholarship program for higher education, the Government has also accommodated 131 Syrian refugee students and their families since 2017. The number of asylum applications lodged in 2021 was 2,413, remaining at a similar level to 2020, which is marked by a significant decrease attributed to the border closure and travel restrictions due to the pandemic. During the year, MoJ/ISA processed 6,150 cases (5,439 in 2020) and Recognized 74 persons (65 at first instance, 9 at second instance). Additionally, nine applicants were granted refugee status at the appeal level and 580 others were allowed to remain in Japan with humanitarian status. 544 individuals are registered by MoJ as stateless as of June 2021.[1]

In light of the political and security developments in Myanmar, Japan launched "emergency evacuation measures" to provide protection to persons from Myanmar in May 2021 by renewing residency permits and ensuring non-deportation, which was extended in April 2022. For humanitarian reasons Japan has undertaken similar measures for displaced persons from Afghanistan in August 2021 and Ukraine in March 2022.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Linked to 3rd cycle UPR recommendation no. 161.28: "Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (Costa Rica)"

[1] *Statistics Bureau, Ministry of Internal Affairs and Communications of Japan, Statistics on foreign residents*

UNHCR welcomes Japan's acceptance to follow-up on the above recommendation,[2] as well as their statement during the High-Level Segment on Statelessness (HLS) in December 2019, acknowledging statelessness as "an issue of great concern to us all" and expressing their support to UNHCR's efforts. UNHCR also commends that, as announced by MoJ in July 2021, MoJ conducted its first-ever survey on the nationality status of approximately 300 children born in Japan and registered as stateless with the ISA. ISA has taken concrete measures aimed at resolving their nationality status including by enhancing its counselling and coordination between relevant agencies.[3]

Linked to 3rd cycle UPR recommendation no. 161.213: "Ensure that the refugee status determination process is conducted in a fair, effective and transparent manner in line with international law (Kenya)"

UNHCR welcomes ISA's conclusion of the Memorandum of Cooperation (MoC) with UNHCR in July 2021, including new activities for UNHCR to provide comments to the ISA's document clarifying their interpretation of the refugee definition, and Case Studies on how RSD Officers conduct case examination. In this regard, UNHCR stands ready to work closely with and provide technical support to ISA to make the cooperation under the MoC substantive and sustainable in order to further enhance the quality of the RSD system. UNHCR also welcomes the Government's recent efforts to enhance the capacity building for ISA's officials involved in RSD and the Country of Origin Information (COI) research and compilation scheme.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 3rd cycle UPR recommendations

Issue 1: Statelessness

Linked to 3rd cycle UPR recommendation no. 161.28: "Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (Costa Rica)"

There are no accurate statistics available on stateless persons residing in Japan. In the absence of a Statelessness Determination Procedure (SDP), 544 lawful foreigners are registered by MoJ as stateless as of June 2021 based on MoJ's preliminary assessment.[4] This registration does not cover stateless persons without legal status among other things.

Although the *Nationality Act* contains Articles 2 (iii) and 8 (iv) or prevention/reduction of statelessness, the mechanism to ensure their applications needs to be strengthened.

Stateless persons (and individuals with undetermined nationality) without legal status can theoretically be detained for an indefinite period as statelessness is not an established criterion for regularizing the legal stay or granting provisional release from immigration detention facilities. Stateless persons without legal status do not have access to employment and social welfare benefits including national health insurance.

A Bill to amend the *Nationality Act* which is expected to be submitted in one of the upcoming Diet sessions entails an issue of interest coming under UNHCR's mandate to prevent statelessness. The amendment to the *Nationality Act*[5] arose in the context of the proposed amendments to the Civil Code as part of Japan's commendable efforts to reduce *mukosekisha* (Japanese nationals without family registry), which contribute to UNHCR's #IBelong campaign

[2] UN Human Rights Council, A/HRC/37/15/Add.1 (2018), p.3. Recommendation 161.28.
[3] UNHCR, #IBelong Campaign Update, July – September 2021, 20 October 2021
[4] *Statistics Bureau, Ministry of Internal Affairs and Communications of Japan*, Statistics on foreign residents
[5] p.6, MoJ Legislative Council (Legal Parentage Committee) Draft Outline of Amendments to the Civil Code (Legal System of Parentage) (1 February 2022) https://www.moj.go.jp/shingi1/shingi04900001_00120.html

to end statelessness by 2024[6]. UNHCR's interest relates to the provision likely to be proposed in the Bill under which MoJ Civil Affairs Bureau can "nullify" nationality when it discovers a lack of biological parentage between Japanese parents and children, even when such nullification results in statelessness and regardless of the time elapsed since the acquisition of nationality till the discovery. UNHCR understands that the nullification decisions would be taken at the discretion of an administrative authority without an independent review.[7] It is recommended that any amendment entails measures to prevent arbitrary deprivation of nationality prohibited under international law. In particular, it is recommended that the new provision does not apply when resulting in statelessness, and that "nullification" is considered to constitute a formal administrative disposition to withdraw nationality in order to ensure a due process including a right to effective remedy. It would be desirable that such withdrawal of nationality is subject to proportionality test and an appropriate limitation period.

Recommendations:
UNHCR recommends that the Government of Japan:

a) Take measures to avoid arbitrary deprivation of nationality, particularly by preventing statelessness and ensuring procedural safeguards, including in relation to the possible submission of the Bill to amend the *Nationality Act* to enable nullification of nationality;
b) Develop a Statelessness Determination Procedure to ensure the identification and protection of stateless persons; and
c) Develop a concrete plan for the accession to the *1954 Convention* and the *1961 Convention*.

Issue 2: <u>Detention of asylum-seekers and the use of alternatives to detention</u>

Linked to 3rd cycle UPR recommendation no. 161.115: <u>"Bring the prison and detention conditions in line with international human rights norms and standards, including the Nelson Mandela Rules (Denmark)"</u>

Despite the recent improvement achieved by the Government in avoiding detention of asylum-seekers in light of the COVID-19 situation, 19 asylum-seekers were in detention as of December 2021.[8] UNHCR continues to call on the Government to further improve its law and practice on detention of asylum-seekers.

The current *ICRRA* stipulates three types of alternatives to detention (ATD) (and temporary stay arrangements): Landing Permission for Temporary Refuge (LPTR) which may be granted to persons who seek asylum at airports; Permission for Provisional Stay (PPS); and Provisional Release (PR).[9] The approval rate for PPS is however low,[10] and the application of the criteria for PPS and PR is left to the discretion of ISA. In addition, no mechanism exists to screen and identify vulnerable individuals who may require special care, and the Government does not provide for any financial support to NGOs offering accommodation to asylum-seekers on provisional release.

The Bill to amend the *ICRRA* was submitted in February 2021 but the ruling party/GoJ decided not to pursue the Bill in May 2021, while the Bill is reportedly being considered for resubmission to the fall 2022 Diet session with or without modifications. While several parts of the Bill submitted in February 2021 were expected to strengthen the protection of asylum-

[6] Particularly Global Action 8 (Issue nationality documentation to those with entitlement to it) of #IBelong.
[7] p.48-49 of the material for the 19th meeting of the Working Group on the Civil Code (Legal System of Parentage) of the Legislative Council (held on 7 September 2021), "Reference Material 19: Consideration of Individual Points at Issue (3)" https://www.moj.go.jp/content/001355408.pdf?fbclid=IwAR2w5A9C7DBLDymOs_qIhU-EVE9d07-qSt3iUDUV6dUYb4DfgExVoptR7wo
[8] *Response No. 233 submitted to the House of Councillors by Mr. Shinzo Abe, Prime Minister of Japan*, available at: http://www.sangiin.go.jp/japanese/joho1/kousei/syuisyo/189/toup/t189233.pdf.
[9] PPS may be granted to asylum applicants when certain conditions are met and PR may be granted to foreigners detained by ISA, based on humanitarian considerations.
[10] According to MoJ, in 2021, 29 asylum-seekers out of 625 applicants for PPS were granted one.

seekers/refugees, a number of aspects raised serious concerns to UNHCR, which are summarized in its Comments dated 9 April 2021 (see also Issue 3 below)[11] or fall short of addressing the existing issues such as the amendments related to detention. The Bill proposed to introduce "*kanri-sochi measures*," whereby persons including asylum-seekers and stateless persons who have been issued with a detention/deportation order are placed outside detention under certain conditions, including the payment of a bond , and the supervision/support of private actors. Should the Bill be resubmitted in the future, it would be desirable that measures be taken to secure the means of livelihood of the persons concerned, including by granting the right to work or providing State-funded assistance. It is appropriate to address the issue of abscondment by proper case-management and other measures rather than the imposition of imprisonment and/or a fine. In addition, it is hoped that the existing alternatives to detention such as PPS be granted to a wider range of individuals, including by abolishing some of its restrictive criteria (such as having applied for RSD within six months of landing and not having been issued with a deportation order), and that LPTR and PR are granted in a more flexible manner. The maximum period of detention and prompt and periodic review of decisions to (continue to) detain by an independent judicial body should be established.

Recommendations:
UNHCR recommends that the Government of Japan:

a) Establish legal and policy frameworks to avoid the detention of asylum-seekers;
b) Use detention only as a last resort and consider alternatives to detention before a decision to detain is made;
c) Introduce a maximum period of immigration detention;
d) Utilize and expand the existing alternatives to detention, by establishing clear criteria in consideration of vulnerability of detainees and allocating sufficient government funding for necessary assistance, including accommodation needs; and
e) Establish mandatory and independent detention reviews, which include judicial safeguards.[12]

Issue 3: Fair and efficient asylum procedures

Linked to 3rd cycle UPR recommendation no. 161.213: "Ensure that the refugee status determination process is conducted in a fair, effective and transparent manner in line with international law (Kenya)"

RSD is currently conducted by ISA which covers issues related to immigration/border control and enforcement, while responsibilities over other issues related to refugees and asylum-seekers, such as livelihood and integration, are dispersed across different government agencies. Currently there is no independent RSD appeal body in Japan. Refugee Examination Counsellors (RECs) involved in appeal RSD are external professionals in different fields who do not necessarily have expertise in refugee law; and their opinions are not binding on ISA. A comprehensive asylum law/system, which covers the continuum of asylum in a holistic manner including reception/integration matters is yet to be introduced. Lack of systematic compilation/analysis of COI, the generally lengthy RSD procedures,[13] and the insufficient access to legal assistance/representation for asylum-seekers also remain a challenge.

In relation to the abovementioned Bill to amend the *ICRRA*, UNHCR raised its serious concerns in relation the lifting of the automatic suspensive effect of RSD applications on deportation for certain cases. The Bill proposed lifting of the suspensive effect for (i) subsequent asylum applicants (third time or more) who have not submitted "material constituting reasonable grounds," and (ii) those who have been sentenced to three years or more of imprisonment without a stay of execution in Japan and those that are determined as being suspected possibly

[11] "UNHCR Comments on the Bill for partial amendments to the Immigration Control and Refugee Recognition Act (ICRRA) submitted to the 204th Diet session" (9 April 2021). For details, please refer to the Comments and Executive Summary.
[12] Ibid.
[13] For example, the average processing time was 53.1 months in 2021 (32.2 and 20.9 months for the 1st and 2nd instances respectively), increased from 27.9 months in 2017.

to be or become involved in or facilitating terrorism, or violent, subversive or other similar activities. What concerns UNHCR the most is that item (ii) is applicable to persons *applying for asylum for the first time pending the first RSD interview at the first instance.* Further, item (ii) covers a broad range of activities, and its applicability is determined through the examination within ISA.

The UNHCR's position on lifting of automatic suspensive effect while pending the final asylum decisions is that it is undesirable as it increases the possibility of *refoulement*. In UNHCR's view the most effective way to address issues of abuse of the system is to invest resources in enhancing the quality, fairness and efficiency of the RSD system, where refugees are properly identified in a timely manner upon first-time applications. UNHCR strongly recommends that, if the *ICRRA* Bill is to be re-submitted, and if exceptions to the suspension of deportations were still to be made, they should be limited to truly exceptional cases, and never applied to first-time RSD applicants. In all such cases, due process should be in place allowing for appeals against decisions to lift suspension of deportations. With regard to subsequent applicants, rather than lifting of the suspensive effect, adopting an accelerated procedure or admissibility examination for subsequent applications to decide whether there are elements to justify re-examination of the merits of their claims itself may serve as a useful efficiency measure. This is however on the conditions including that such subsequent applications have been submitted upon proper examination on their merits and rejection, and that the criteria for admissibility are appropriately established/applied, with procedural safeguards including an effective remedy guaranteed.

Recommendations:
UNHCR recommends that the Government of Japan:

a) Adopt a comprehensive asylum law covering reception (including provision of legal assistance) and integration and establish a dedicated government agency independent of immigration authorities that consolidates asylum-related tasks (or in its absence make structural changes to upgrade the current entities responsible for refugee status determination/asylum);
b) Ensure effective remedy against negative first instance asylum decisions by establishing an independent appeal refugee status determination body. In its absence, maximize the independence and integrity of the current system involving Refugee Examination Counsellors by, for example, empowering them with additional refugee status determination training and establishing a Secretariat independent from the Immigration Services Agency;
c) Further enhance the quality, fairness and efficiency of the refugee status determination system including by investing further resources, where refugees are properly identified in a timely manner upon their first-time applications, with sufficient access to legal assistance and representation for asylum-seekers;
d) Ensuring non-refoulement, including in relation to the *Immigration Control and Refugee Recognition Act* Bill likely to be re-submitted:
   - If exceptions to the suspension of deportations were still to be made, they should be limited to truly exceptional cases, and not applied to first-time applicants for refugee status determination; and
   - For subsequent applications, on the condition including that the first-time applications have been properly examined on their merits and finally rejected, consider adopting an admissibility examination to decide whether there are elements to justify re-examination of the merits of their claims with procedural safeguards with a right to effective remedy.[14]

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[14] Please see the UNHCR Comments on the ICRRA amendment Bill (9 April 2021) at footnote 11.