

JAPAN

Japan is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights, but not to its First or Second Optional Protocols. Asylum seekers filed 216 applications for asylum in 2000.¹ In 2001, 353 asylum seekers applied for asylum; of those, only 26 were granted asylum.² During 2001 the percentage of asylum seekers in detention reached levels well above those in other industrialized countries, with the exception of Australia, though actual numbers of detained asylum seekers are lower in Japan because of the relatively low number of asylum seekers reaching Japan.³

Immigration Officers may provide asylum seekers with permission to land to claim asylum. This is exceptionally rare, with only two such cases in five years. This provision was initially implemented for Indochinese boat people, and has not been used widely in a decade. As a result, there has reportedly been an increase in smuggling, particularly of Chinese asylum seekers. Further, after admission, asylum seekers do not have any status and are not able to obtain an alien registration card or identification card. This means that they cannot work or obtain social welfare including health insurance.⁴

1997 amendments to the Immigration Control and Refugee Recognition Act provide that any alien arriving at a port of entry without valid documents must be detained at an immigration detention facility. There are no exceptions to the policy of mandatory detention, and no distinction is made for aliens who have expressed a desire to apply for asylum.⁵ While immigration examiners can subsequently grant provisional release based on factors such as the strength of an asylum seeker's claim, his/her financial situation or character, refugee advocates report that immigration examiners often deny provisional

¹ U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2001 at 139, *available at* <http://preview.refuges.org/world/worldmain.htm> (Immigration and Refugee Services of America 2001) [hereinafter USCR WORLD REFUGEE SURVEY 2001].

² U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2002 at 126, *available at* <http://www.refugees.org/WRS2002>. (Immigration and Refugee Services of America 2002) [hereinafter USCR WORLD REFUGEE SURVEY 2002]; *Japan: Asylum, Migration News*, April 2002, Vol. 9, No. 4, *available at* http://migration.ucdavis.edu/mn/Archive_MN/apr_2002-16mn.html (last accessed May 17, 2002).

³ USCR WORLD REFUGEE SURVEY 2002, *supra* note 2, at 126.

⁴ Interview with Eri Ishikawa, Japan Association for Refugees, in Geneva, Switzerland (Sept. 24, 2001) [hereinafter Japan Association for Refugees Interview].

⁵ IMMIGRATION CONTROL AND REFUGEE RECOGNITION ACT (provisional translation), Japan Ministry of Justice, *available at* <http://www.moj.go.jp/ENGLISH/IB/ib-20.html> (last accessed Aug. 29, 2002); USCR WORLD REFUGEE SURVEY 2002, *supra* note 2, at 126.

release until the asylum seeker has been detained for months or one year.⁶ According to a 2002 report by Amnesty International, a daily average of seven persons are detained in airport detention facilities in Narita Airport alone.⁷ Asylum seekers are detained until they are granted provisional release, which usually is not granted until after one year in detention. During this time, they are detained in detention facilities on the airport premises known as Landing Prevention Facilities or at Airport Rest Houses near the airport site.⁸ In practice, very few asylum seekers make their claim at the airport; most are smuggled in and make a claim after entry. Asylum seekers who apply in-country are not detained during the initial decision-making process, but are detained during the appeal if the initial decision on the asylum claim is negative. These asylum seekers are detained on the same day that their claim is initially rejected, and are told the reasons for detention.⁹

Is there independent review of the decision to detain? Yes, but not meaningful.

The Refugee Recognition Act does not provide for any independent review of the decision to detain, which is made by a Special Inquiry Officer. The Act provides for a Special Inquiry Officer to interview a foreign national once an Immigration Inspector finds his or her documents to enter or depart do not conform with requirements of the Ministry of Justice Ordinance. If a detained alien raises a refugee claim, immigration inspectors who investigate the claim (who are not independent) may make a recommendation for provisional release.¹⁰ An NGO and the media have, however, reported that refugees are not always given prompt access to the asylum procedure or adequate interpretation facilities, and may remain in detention for long periods of time.¹¹

Once entry is denied on the basis of the interview, the Special Inquiry Officer issues an “order to leave” Japan, which can only be implemented once the asylum seeker signs a document waiving her rights to appeal against the decision of the immigration officials. There have been allegations that officers have threatened asylum seekers, in some cases with physical force, to sign the document.¹² In practice, once an “order to leave” is

⁶ USCR WORLD REFUGEE SURVEY 2002, *supra* note 2, at 126.

⁷ AMNESTY INTERNATIONAL, WELCOME TO JAPAN? (May 17, 2002), *available at* <http://web.amnesty.org/ai.nsf/Index/asa220022002?open&Of=COUNTRIES\JAPAN> (last accessed Aug. 29, 2002).

⁸ *Id.*

⁹ Japan Association for Refugees Interview, *supra* note 4.

¹⁰ USCR WORLD REFUGEE SURVEY 2002, *supra* note 2, at 126.

¹¹ AMNESTY INTERNATIONAL, WELCOME TO JAPAN?, *supra* note 7; USCR WORLD REFUGEE SURVEY 2002, *supra* note 2, at 126-27.

¹² AMNESTY INTERNATIONAL, WELCOME TO JAPAN?, *supra* note 7.

issued, the alien falls under the responsibility of the air carrier or shipping company which brought them to Japan. The air carrier or shipping company is then responsible for detaining the alien and paying for security and other necessary expenses.¹³ Asylum seekers have reportedly been forced, sometimes through beatings, to pay for their accommodation.¹⁴

Asylum seekers can make a claim to a regional court for review of detention or can make a habeas corpus claim. Japanese NGOs report that they have never heard of a successful appeal of detention through either of these routes.¹⁵

Are there limits on period of detention? Not generally; in some cases, 60 days.

The Refugee Recognition Act does not provide for any limits on the period of detention effected at an airport. Detention to prevent absconding is limited to thirty days, which may be extended by a Special Inquiry Officer for an additional thirty days.¹⁶ Detention to investigate and inspect whether a violation of immigration law has taken place is limited to sixty days.¹⁷

In practice, asylum seekers are detained for at least a year before they are granted provisional release. However, once deportation has been ordered, asylum seekers can be detained indefinitely.¹⁸

Is there periodic review of detention? No.

The Refugee Recognition Act does not provide for any review of detention. An asylum seeker could make an unlimited number of applications for habeas corpus relief, but it has been reported that no such application has ever been granted.¹⁹

Is there access to government-funded free legal aid? Very limited.

The Japan Legal Aid Association reports that it provided legal aid to 12 people under its “refugee aid” program in 1999.²⁰ The Legal Aid Association is an implementing partner

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Japan Association for Refugees Interview, *supra* note 4.

¹⁶ IMMIGRATION CONTROL AND REFUGEE RECOGNITION ACT, Art. 41, *supra* note 5.

¹⁷ Japan Association for Refugees Interview, *supra* note 4.

¹⁸ *Id.*

¹⁹ *Id.*

of the UNHCR, and its funds come both from the UNHCR and the government. The funds cannot be use for foreigner overstays, and are only available in severe cases. The Association is currently looking for private funding, and is not sure it will be able to continue due to financial constraints.²¹

Alternatives to detention: Japan has a reporting system but its availability is limited. After one year of detention, asylum seekers can be released and report to an immigration center each month. Overstayers can also avail themselves of this option. However, they must post a bond of up to three million yen (approximately \$25,000).²²

Vulnerable groups: There are no programs to address the needs of vulnerable groups, including minors. At least one child asylum seeker was reportedly detained at an airport detention facility.²³ Each case is dealt with on an exceptional basis, which may be generous but reportedly has an equal chance of failing to meet international standards.²⁴

²⁰ JAPAN LEGAL AID SOCIETY, The Official Homepage of the Japan Legal Aid Society, visited March 11, 2002, <http://www.jlaa.or.jp/English/system/index.html>.

²¹ Japan Association for Refugees Interview, *supra* note 4.

²² *Id.*

²³ AMNESTY INTERNATIONAL, WELCOME TO JAPAN?, *supra* note 7.

²⁴ Japan Association for Refugees Interview, *supra* note 4.