# Proposals on Refugee Status Recognition System and Status of Refugee Applicants in Japan

February 21, 2014
Japan Federation of Bar Associations

This opinion paper is published by Japan Federation of Bar Associations (the "**Associations**") to propose solutions for issues surrounding the current refugee status recognition system in Japan.

The Associations have published several opinions[1] that call for the improvement of refugee recognition system, before and after the amendment of the Immigration Control and Refugee Recognition Act (the "**Act**") in May 2005, which implemented certain reforms to the system.

Recently a special committee was set up to review the refugee recognition system, under the Sixth Immigration Policy Discussion Panel, a private advisory panel of Minister of Justice, and started discussion towards further restructuring of the system. In keeping with such development, the Associations wants to point out the remaining issues and make proposals in this paper, through analysis and review of the current situation under the amended Act.

## Proposals

### Proposal 1 Measures to be Taken for an Appropriate and Prompt Refugee Status Recognition

1 On Whole Procedure including First Instance

(1) Establishment of organization for carrying out appropriate refugee status recognition

The refugee status determination (the "RSD") procedures by a third-party organization, independent from government agencies having jurisdictions over the immigration control and foreign policy, and free from any political and diplomatic considerations, should be established. For this purpose, experts called "RSD Officers" who are skilled in the research of information on

[1] All are found on the website of the Associations.
(a) *Opinion Paper Towards Improvement of Refugee Recognition Procedures* (October 23, 2002)
(b) *Opinion Paper on Bill to Amend Refugee Recognition Procedures* (March 24, 2003)
(c) *Opinion Paper on Bill to Amend Part of the Immigration Control and Refugee Recognition Act (submitted by the government on February 27, 2004)* (March 25, 2004)
(d) *Opinion on Amendment of Part of the Ordinance for Enforcement of the Immigration Control and Refugee Recognition Act* (March 17, 2005)
(e) *Opinion Paper on New Refugee Status Recognition System* (October 17, 2006)
(f) *Opinion Aiming at the Improvement of Support for the Lives of Refugee Applicants* (June 18, 2009)

countries of origin, as well as credibility assessment and refugee status determination by international standards, should be appointed and trained on a continuous basis.

(2) Securing transparency and objectivity in the RSD Procedures

(i) Fairness and transparency should be secured by officially announcing the concrete criteria for refugee status determination.

(ii) The reason for the refugee status recognition should be disclosed in detail. Further detailed explanation should be given where the refugee status is denied;

(iii) Information and materials used for the refugee examination should be disclosed in their entirety;

(iv) Tangible criteria for granting the special permission to stay on humanitarian grounds (so-called "complementary forms of protection", the "SPS") should be disclosed, whereby fairness and transparency in the decision should be secured. In other words, it should be clearly set forth in laws and ordinances that SPS should be granted to the people who are prohibited to be deported to their country of origin according to human rights treaties other than the Convention Relating to the Status of Refugees (the "Refugee Convention"). In addition, criteria should also be established for cases requiring humanitarian considerations other than the above.

(3) Increase in procedural rights of applicants for the RSD Procedures (the "**Refugee Applicants**" or the "**Applicants**")

(i) The entire process of interviews by a Refugee Inquirer, oral opinion statements and the inquiry session during the Objection procedure should be video/voice-recorded, and, immediately after the completion of the process, such records should be made available to the Applicant without restrictions;

(ii) Opportunities to give rebuttal or explanation should be offered at least as to important evidences which may probably be disadvantageous to the Applicant;

(iii) Status of a legal counsel acting as an attorney should be adequately recognized, and his/her attendance at the interviews should be permitted as rights of the Applicants and the attorney;

(iv) Sufficient materials should be kept at a resource center established for collecting information on countries of origin (the "COI"), and such materials should be made available to the Applicants.

(4) Offer of protection to people in vulnerable situations during the RSD Procedures

Special consideration for people in vulnerable situations, including children, females, elderly people, mentally and physically disabled people and torture victims, should be clearly identified in relevant laws, and especially, at interviews. Attendance of an attorney, a physician, clinical psychologist or other experts, as well as any person who the Applicant relies on, should be allowed.

(5) Securing of quality of interpretation during the RSD

Quality of interpreters should be secured on an institutional base by introducing measure such as public qualification system for the interpreters.

(6) Promotion of rapid RSD

While the time required for the RSD should be shortened, measure such as limiting the number of times of application or simplifying the review process should not be applied without careful consideration.

If the refugee status cannot be determined during the average processing period due to any unavoidable reason, the Applicant should, in advance, be notified to that effect and the approximate expecting period for the process.

2 Objection Procedure

(1) Securing of transparency and independence in the selection of Refugee Examination Counselors (the "RECs")

The RECs should be appointed by a committee newly established for the selection of RECs, upon the criteria for the selection being clarified and publicly announced.

(2) Information disclosure concerning duty of RECs

(i) The number of cases processed and recognized by a REC should be disclosed;

(ii) Opinions of RECs, whether majority or minority, should be disclosed in their entirety;

(iii) Procedures for the allocation of cases to RECs should be disclosed, whereby fairness in such allocation should be ensured.

(3) Reducing the backlog of Objection cases

(i) The backlog of Objection cases should be reduced promptly by fundamentally reviewing

the RECs' processing system, such as increasing the number of RECs significantly or appointing full-time RECs;

(ii) Refugee status should be determined within two (2) months following the submission by the RECs of their opinions to Minister of Justice, and, upon such determination, the detail thereof should be notified to the Applicant without delay.

(4) Establishing expertise of RECs

The RECs should be granted training opportunities by officers from the Office of the United Nations High Commissioner for Refugees (UNHCR) or other researchers on continuous basis, and opportunities should be expanded where examples of opinion papers by past RECs or judicial precedents can be studied.

(5) Respecting RECs' opinion for recognition

Minister of Justice should not change its practice of respecting the RECs' opinion for recognition.

**Proposal 2 Status of Applicants, Detention and Deportation**

1 Status of Applicants

(1) Restriction on working

The provisions and practice of the Ordinance for Enforcement of the Act (the "**Ordinance**") should be amended to allow for the Applicants to work without resident status (such as those granted Permission for Provisional Stay (the "PPS") or Provisional Release (the "PR")) after six months from the Application.

(2) Financial aid

The government's financial aid program should be extended to strengthen the support for the livelihood of the Applicants, and operated in a sustainable and stable manner based on the legal grounds, instead of as a non-statutory operation as it is now.

(3) Legal aid

The government should provide the legal aid for the proceedings of the refugee status application (the "**Application**"), the Objection procedure and the litigation against denial of recognition of refugee status, regardless of whether the Applicant has any legitimate resident status or not.

(4) Permission for Provisional Stay (PPS)

The current interpretation and practice for the reasons for disqualifying foreign nationals from PPS (such as stipulating requirements such as the Application must be lodged within six month after landing, and there is no likelihood of fleeing) should be revised, so that the PPS will be in principle permitted.

2 Detention and Deportation of Applicants

(1) Detention

The Alternatives to Detention system (the "**ATD**"), which the pilot project was conducted between April 2012 to March 2014, should be utilized more actively to avoid detention of the Applicants as far as possible.

(2) Deportation

Execution of a deportation order should be expressly prohibited where the deportation order (or denial of refugee status recognition) is still challengeable or the case is pending at the competent court.

3 Application for Refugee Status at Port of Entry/Departure

(1) Providing information and advice to apply for landing permission for temporary refuge at the port of entry/departure

Officers at the port of entry/departure (e.g. the immigration inspectors) should be statutorily required to inform the RSD system to the foreign nationals who in some way have expressed the intention to seek asylum in Japan. The practice and judging criteria to permit the landing permission for temporary refuge should be reviewed to expand the scope of the permissible cases. Furthermore, upon landing the asylum seekers should be advised to apply for the refugee status, in addition to the landing permission for temporary refuge.

(2) Detention and RSD at port of entry/departure

Current interpretation and practice relating to the necessity and appropriateness of detention of the Applicants at the port of entry/departure should be reviewed. Detention should be avoided as far as possible, by utilizing ATD or other measures.

**Proposal 3 Status of Those Who are Recognized as Refugee (the "Recognized Refugees"), and Those Granted Resident status under Special Permission to Stay based on Humanitarian Grounds (the " SPS Holders")**

## 1 Status of the Recognized Refugees

(1) Recognized Refugees should be statutorily provided with the education (including high-level education), vocational training and clothes, food and housing, for the period and extent that enable them to build foundation for living and social activities in Japan.

(2) Integration of family of the Recognized Refugees must be adequately ensured, in light of the purposes of the covenants such as the International Covenant on Civil and Political Rights (the "ICCPR", Article 23) and the Convention on the Rights of the Child (the "CRC", Articles 9 and 10). For that, special consideration should be made so that each family member can obtain visa to Japan, and obtain and maintain the resident status in Japan.

(3) For acquisition of nationality (naturalization) by the Recognized Refugees, the officers who receive the applications (regional Legal Affairs Bureau) should be made well aware of the provisions and the purpose of Article 34 of the Refugee Convention (that requires facilitated and expedited procedures with minimum charges and cost), and should not fail to comply with it. In the mid and long run, the relevant provisions in the Nationality Act should be reviewed.

## 2 Status of SPS Holders

(1) The status of SPS Holders is in most cases the resident status of Designated Activities. However, the rules should be revised so that, if they live in Japan for a certain number of years (including the period before the status is granted), in principle their resident status can be changed to Long Term Residents.

(2) The SPS Holders should be assured of the status and rights similar to those granted to the Recognized Refugees to the extent possible, including eligibility for various social security programs, in light of their quasi-refugee status.

## Background

To explain the background on which the Associations are making the above 33 proposals, we want to start by looking at how the RSD system is currently operated in Japan.

## Introduction

1 Number and Rate of Refugee Status Recognition and SPS on Humanitarian Grounds

(1) Number and recent trend of Applications

The following table shows the number of the Applications and those that have been processed (the "**First Instance Procedure**" or "**FI** "), and of the Objectionz and those that have been processed in Japan, for seven years after the new refugee status recognition system was implemented under the amended Act (from 2006 to 2012).

| | First Instance Procedure | | | | Objection Procedure | | | | Total (First Instance Procedure and Objection Procedure) | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Application (a) | Processed (b) | Recognized (c) | Recognition Rate ((d)=(c)/(b)) | Filed (e) | Processed (f) | Recognized (g) | Recognition Rate ((h)=(g)/(f)) | Total processed[2] ((i) = (b) + (f)) | Total Recognized ((j) = (c) + (g)) | Total Recognition Rate ((k) = (j)/(i)) |
| **2006** | 954 | 459 | 22 | 4.8% | 340 | 172 | 12 | 7.0% | 631 | 34 | 5.4% |
| **2007** | 816 | 544 | 37 | 6.8% | 362 | 221 | 4 | 1.8% | 765 | 41 | 5.4% |
| **2008** | 1599 | 918 | 40 | 4.4% | 429 | 351 | 17 | 4.8% | 1269 | 57 | 4.5% |
| **2009** | 1388 | 1848 | 22 | 1.2% | 1156 | 308 | 8 | 2.6% | 2156 | 30 | 1.4% |
| **2010** | 1202 | 1455 | 26 | 1.8% | 859 | 451 | 14 | 3.1% | 1906 | 40 | 2.1% |
| **2011** | 1867 | 2119 | 7 | 0.3% | 1719 | 880 | 13 | 1.5% | 2999 | 20 | 0.7% |
| **2012** | 2545 | 2198 | 5 | 0.2% | 1738 | 996 | 13 | 1.3% | 3194 | 18 | 0.6% |

The rate of the number of the Recognized Refugees (158) to the total processed number (First Instance Procedure and Objection Procedure) was only 0.6% (more precisely, 0.56%) in 2012, marking the lowest recognition rate in the recent years.

Among the First Instance Applications, 573 applicants (approximately 23%) had made Application in the past (the "**Re-application**")[3].

(2) Number (in 2012) and recent trend of the SPS on Humanitarian Grounds

[2] Total processed number of the First Instant Procedure and the Objection Procedure
[3] The rate of the Re-application to the number of the Objections is not disclosed.

In 2012, the number of the SPS on Humanitarian Grounds [4] was 112 (breakdown between those permitted during the First Instance Procedure and after filing the Objection is not disclosed). The overall rate of the Refugee Recognition and SPS on Humanitarian Grounds (130 (112 plus 18 (number of the Recognized Refugees)) to the total processed number (3,194) was 4.1%.

| | Total processed number ((i)) in the above table | Number of Special Permission to Stay on Humanitarian Grounds ((l)) | Rate of Special Permission to Stay on Humanitarian Grounds ((m)=(l)/)i)) | Total asylum number ((n)= (j) + (l)) | Total asylum rate ((o)=(n)/(i)) |
|---|---|---|---|---|---|
| **2006** | 631 | 53 | 8.4% | 87 | 13.8% |
| **2007** | 765 | 88 | 11.5% | 129 | 16.9% |
| **2008** | 1269 | 360 | 28.4% | 417 | 32.9% |
| **2009** | 2156 | 501 | 23.2% | 531 | 24.6% |
| **2010** | 1906 | 363 | 19.0% | 403 | 21.1% |
| **2011** | 2999 | 248 | 8.3% | 268 | 8.9% |
| **2012** | 3194 | 112 | 3.5% | 130 | 4.1% |

The number of SPS on Humanitarian Grounds peaked out in 2009 at 502. As mentioned above, while the number of the Applications has been flat or slightly increasing as a whole, the number and the rate of SPS on Humanitarian Grounds have been falling sharply.

Besides, it should be noted that the foreign nationals permitted to live in Japan under SPS on Humanitarian Grounds includes the following persons: (a) those granted the resident status as "spouse of a Japanese" or "spouse of a permanent resident" primarily based on the marriage with a Japanese or a foreign resident, and (b) those temporarily granted the resident status only for the travelling purpose, as they were not given protection by the Japanese government but were accepted by a third country (e.g. Canada and New Zealand).

(3) Judicial rulings for denial of recognition of refugee status and follow-up

There have been at least 20 cases where through the litigation to revoke or confirm the nullity of denial of refugee status, judicial ruling was made to confirm the refugee status (See Appendix 2).

However, it has been reported that in some cases, even after such judicial ruling (e.g. revocation of the denial), the Minister of Justice did not recognize the refugee status of the relevant foreign

[4] These persons have not been recognized as refugee, but are granted a mid- and long-term resident status (e.g. resident status of Designated Activities) by SPS on Humanitarian Grounds. See Article 61-2-2, Paragraph 1 of the Act. It is regarded as a type of so-called "complementary forms of protection".

national nor give a residence status by granting the SPS on Humanitarian Grounds.

(4) Refugee recognition rate in other countries

The following table shows the refugee recognition rates in other countries in 2012 (mainly on administration level) compared to the above situation in Japan (with the refugee recognition rate of 0.6%)[5].

Japan also marks the substantially lower numbers than other G7 countries, in terms of the number of the refugees staying in the country, as well as its rate to GDP per capita, total population or land area.

| | In Procedure | Processed | | | | | Rate* | |
|---|---|---|---|---|---|---|---|---|
| | | Refugees defined in Refugee Convention | Complementary forms of protection | Denied | Withdrawn | Total | Refugee recognition rate (%) | Asylum recognition rate (%) |
| Total in the world | | 210,061 | 50,662 | 428,318 | 205,221 | 904,056 | | |
| Japan | FI | 5 | 60 | 2,083 | 110 | 2,258 | 0.2 | 3.0 |
| | Appeal | 13 | 52 | 790 | 193 | 1,048 | 1.5 | 7.6 |
| Korea | Administration | 60 | 31 | 375 | 375 | 837 | 12.9 | 19.5 |
| Australia | FI | 5,245 | 0 | 6,150 | 534 | 11,929 | 46.0 | 46.0 |
| | Appeal | 3,122 | 0 | 3,293 | 223 | 6,638 | 48.7 | 48.7 |
| New | FI | 91 | 0 | 235 | 0 | 326 | 27.9 | 27.9 |
| Zealand | Appeal | 66 | 0 | 71 | 15 | 152 | 48.2 | 48.2 |
| France | FI | 3,133 | 1,185 | 41,617 | 0 | 45,935 | 6.8 | 9.4 |
| Germany | New | 8,072 | 5,706 | 29,431 | 5,454 | 48,663 | 18.7 | 31.9 |
| | Resumption | 692 | 2,670 | 1,269 | 8,532 | 13,163 | 14.9 | 72.6 |
| Italy | FI | 1,917 | 6,627 | 13,898 | 0 | 22,442 | 8.5 | 38.1 |
| UK | FI | 6,522 | 1,250 | 13,216 | 3,157 | 24,145 | 31.1 | 37.0 |
| | Appeal | 2,192 | 0 | 5,447 | 590 | 8,229 | 28.7 | 28.7 |
| | Resumption | 13 | 30 | 30 | 90 | 163 | 17.8 | 58.9 |
| Canada | FI | 10,294 | 0 | 14,448 | 4,697 | 29,439 | 41.6 | 41.6 |
| US | IN* | 14,350 | 0 | 1,120 | 22,742 | 38,212 | 92.8 | 92.8 |
| | EO* | 10,918 | 0 | 9,211 | 24,223 | 44,352 | 54.2 | 54.2 |

* IN (number of cases) represents the U.S. Citizenship and Immigration Services of the United States Department of Homeland Security, which examines the asylum procedures in the United States. EO (number of persons) represents the Executive Office for Immigration Review of the

[5] Source: *UNHCR Global Trend 2012*

United States Department of Justice, which examines the asylum procedure taken under the written deportation order.

* Each rate is calculated by the UNHCR.

## 2 Organization and System for Examination

### (1) First Instance examination

For the examination in the First Instance Procedure, the Refugee Inquirers are in charge of the administration work relating to the refugee status recognition.

The Refugee Inquirers accept the Applications, examine each case by conducting interviews and by other means, and then report to the Director of the relevant regional Immigration Bureau with the case summary and other necessary documents[6].

The Refugee Inquirers, who play an essential role in the First Instance Procedures, are appointed from immigration inspectors with a certain rank or higher.[7]. There has been concern over the shortage of the Refugee Inquirers, insufficient training opportunities, tendency to put more emphasis on immigration control rather than refugee status recognition, and lack of expertise on the refugee status recognition practice[8]. While some improvement has been seen with respect to the number of Refugee Inquirers and training, the above mentioned issue regarding the conflicting interests with the immigration control and lack of expertise remain to be solved.

In addition, there are some problems with respect to the procedures after the above-described reporting by the Refugee Inquirers. When the Director of the relevant regional Immigration Bureau receives the report, it must transmit the summary together with a set of all the relevant records, and will receive the Minister's notice on the disposition through the Immigration Bureau of the Ministry of Justice. The process from transmission to disposition has been criticized as extremely non-transparent, and this problem remains to be solved.

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[6] The procedures described in this section are in the *Refugee Status Recognition Administration Manual* published by the Ministry of Justice.

[7] The Refugee Inquirers are the immigration inspectors appointed by the Minister of Justice, to examine the facts that are relevant for the refugee status recognition (Article 2, Item 12-2 of the Act). They are appointed from the Immigration Inspectors in the fourth or a higher grade in the remuneration list (i) of the administrative posts in the Appended Table 1 of the Act on Salary of Regular Service Positions. (*Instruction to Appoint Supervising Immigration Inspector, Special Inquiry Officer and Refugee Inquirer, as well as Immigration Inspector and Refugee Inquirer that Conduct Hearing*)

[8] See Japan Federation of Bar Associations (October 23, 2002), *Opinion Paper towards Reform of Refugee Recognition System*.

(2) Examination of Objection

Since the implementation of the new Recognition Procedures in May 2005, while the Immigration Bureau of the Ministry of Justice remains the competent authority, the RECs have become involved in the Objection procedure as a third party, with the aim to increase fairness, neutrality and transparency of the process.

The RECs will be appointed by Minister of Justice from the persons who are of character and capable of making fair decisions on the Objections, and have the relevant academic knowledge and experience about the law or international affairs (Article 61-2-10 of the Act). As has been pointed out for years, the process and criteria for appointing the RECs are not disclosed, apart from a certain number of those recommended by the UNHCR and the Associations[9].

There are 75 RECs as of December 12, 2013, who work on a part-time basis for two years (Article 61-2-10, Paragraph 4; Re-election is not prohibited). The remuneration is only the daily allowance for attending the oral opinion statement and interrogation, which is 22,900 yen per day.

The secretariat office for examination of the Objections is in the regional Immigration Bureau and the members are composed entirely of the officers of the Bureau. It provides training as well as relevant materials or information, and assigns the cases to the RECs.

In the examination of the Objections, in principle the oral opinion statement and interrogation are held, and the RECs observe the procedures (Article 61-2-9, Paragraphs 5 and 6). Under the current practice, the RECs form a group of three fixed members, who meet up about once in two weeks in the afternoon of a particular day of the week, attend one or two cases of oral opinion statement and interrogation, and submit the opinion to Minister of Justice (Paragraph 3 of the said Article).

Previously the Minister of Justice always made the same judgment as the majority opinion of the RECs. This has been described in the annual Press Release of the Immigration Bureau of the Ministry of Justice on the number of the Recognized Refugees, as "Minister of Justice has not made a different decision than the refugee examination counselors (or a majority thereof)". However, in 2013, there were cases reported where the Minister did not recognize the applicants as refugees, whom all or a majority of the RECs recognized as refugees[10].

3 Processing Period and Status during the Period

[9] See Japan Federation of Bar Associations (October 17, 2006), *Opinion Paper on New Refugee Status Recognition System*

[10] Japan Lawyers Network for Refugees (December 16, 2013), *Statement on the Minister of Justice's Recent Decision that is Different from Refugee Examination Counselors,* and the press conference by Sadakazu Tanigaki, Minister of Justice, on December 17, 2013

(1) Average processing period

According to the Ministry of Justice, the average processing period for the First Instance of the RSD Procedure disposed between July and September 2013 was 5.9 months[11].

On the other hand, the average processing period of the Objection was 779 days in 2012, i.e. well over two years[12]. Although the number of the RECs have substantially increased to the level described in 2 (2), the Objections filed have far outnumbered the cases processed for years as shown in the table in 1 (1), and a noticeable number of the Objections are pending.

(2) Permission for Provisional Stay(PPS)

The PPS has been established to secure the legal status of the Refugee Applicants without resident status, by permitting provisional stay in Japan to the Applicants who do not fall under any of the items under Article 61-2-4, Paragraph 1 of the Act.

According to the Ministry of Justice, 701 applications for PPS were disposed in 2012, of which 74 cases (persons) were permitted. Main reasons for rejection were the lapse of six months after landing (410 cases) and the completion of dispatch of the written deportation order (310 cases) (including duplicate counting of the cases that are rejected on multiple reasons).

(3) Living situation during the Application process

In cases where the Refugee Applicants held the "short-term" resident status at the time of Application, the status may be changed to the renewable Designated Activities resident status (without permission for work). After six months from the Application, Designated Activities resident status will be renewed, and then they will be allowed to work if they obtain from the Ministry of Justice the permission to engage in the non-qualified activities.

On the other hand, in the case of the Refugee Applicants who do not have the resident status, even if the above PPS is obtained, working is prohibited because people without residence status are prohibited to engage in "activities to operate business that generates income or to receive remuneration" (Article 56-2, Paragraph 3, Item 3 of the Ordinance). Moreover, in practice, foreign nationals who are accorded PR are prohibited or restricted from working(although it is not expressly stipulated).

The Ministry of Foreign Affairs is, with the aim to assist the Refugee Applicants living in poverty, and following the recommendation by the Report from Inspection of Refugee Related

[11] Ministry of Justice, *Publication of Processing Period of Refugee Status Recognition Procedure* http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri03_00029.html

[12] Internal document of the Ministry of Justice obtained through the information disclosure request system

Administration (published by the Administrative Inspection Bureau of the Administration Management Agency in July 1982), operating the financial aid program via Refugee Assistance Headquarters of the Foundation for the Welfare and Education of the Asian People (the "**RHQ**")[13]. However, the program cannot always receive the consistent or stable budget for its operation.

(4) Legal aid for Refugee Applicants

National Legal Service Act excludes administrative procedures from the subject of the legal aid, and limits the beneficiaries of assistance to "Japanese nationals or persons who have an address and legally lives in Japan" (Article 30, Paragraph 2, Item 2 of the said Act).

Accordingly, all the Application procedures (both the First Instance Procedures and the Objections) are now out of the scope of the civil legal aid, and so are the litigations against denial of refugee status, except for a limited number of foreign nationals who have a resident status.

In light of such situation, currently the Associations and UNHCR are funding the legal aid service for foreign nationals seeking refugee status, outsourcing the actual operation to Japan Legal Support Center, in accordance with Article 30, Paragraph 2 of the said Act[14].

(5) Detention and deportation

For the Refugee Applicants who did not have resident status or the PPS at the time of the Application, deportation will be suspended but detention will not be, while the Application procedure is being processed (Article 61-2-6 of the Act). To those who are filing litigation against denial of residential status, neither the PPS nor the suspension of deportation will be applied[15]. Actually it is up to the Immigration Bureau's decision whether the Applicants who have not received PPS will be detained or accorded the PR. In the case of the foreign nationals who have been charged with overstaying or other causes and have made the Application after detention, it is unlikely that the will obtain PPS and it is anticipated that their RSD procedure will proceed while being detained.

In relation to the deportation, there was a case of forced deportation on October 29, 2009 of a Myanmar national, against the person's intention, who had expressed the intention to file litigation before its deadline[16]. There are also cases where deportation was carried out immediately after

[13] Since 1995, the financial aid (expenses for living, housing and medical care) has been provided to the Refugee Applicants whom RHQ regards as living in poverty. However, the amount of the aid supplied (e.g. 1,500 yen per day as living expenses) is lower than the allowance under the statutory public assistance for Japanese nationals.

[14] UNHCR is contributing 1.5 million yen annually to this legal aid service.

[15] To suspend the deportation, execution of the deportation part of the written deportation order must be suspended in accordance with Article 25 of the Administrative Case Litigation Act.

[16] Protest Note dated November 4, 2009 by the group of lawyers defending Myanmar refugees

the rejection or dismissal of the Objection. On this point, there has been a modest improvement of the situation, as the Immigration Bureau which is under the Ministry of Justice (MOJ) and the Associations have come to an agreement on September 9, 2010 that, for certain cases where an attorney is filing or preparing an administrative or other relevant litigation on behalf of the Applicants, the Bureau will notify the deportation date to the attorney at least two months before the scheduled deportation.

(6) Status of Asylum Seekers at the port of entry/departure

The numbers of the Applications upon landing at the port of entry/departure were 35 in 2011, 74 in 2012, and 101 out of 2,545 Refugee Applicants in 2013, which have been increasing but still remain at a low level. One of the causes may be that the relevant regional Immigration Bureau (e.g. the Bureau's airport branch) is not properly providing the foreign nationals seeking asylum with the opportunities to make the Application at the airports, although it now posts the information about the refugee support organizations at Narita Airport.

When the Asylum Seekers express at the port of entry/departure their intention to seek asylum, in practice, they are directed to take the procedure to apply for "landing permission for temporary refuge" instead of the usual landing procedure (Article 18-2 of the Act). The requirements for the landing permission for temporary refuge includes the strict criteria under the Act such as the high probability to be regarded as refugee ("A person who has entered Japan for any of the reasons prescribed in Article 1, Paragraph A-(2) of the Refugee Convention or other reasons equivalent to them, after fleeing from a territory where his/her life, body or physical freedom were threatened", Article 18-2, Paragraph 1, Item 1 of the Act). Therefore, although every year there is dozens of Applications, only a few or zero case is permitted.

If the landing permission for temporary refuge is not permitted, the Asylum Seekers will be refused to land, and be subject to deportation procedures if they do not leave voluntarily. As the application for the landing permission for temporary refuge is a different procedure from the Application and must be made separately, there is no statutory assurance that the Principle of Non-refoulement (Article 33 of the Refugee Convention, which prohibits deportation to the territories where the person's life or freedom would be threatened) will be applied. While both the landing permission for temporary refuge and the Applications are systems to seek asylum for which the Refugee Applicants can apply, many of the Applicants to the former, when rejected, return to the home country without making the Application. Even if the Applicant does not return to the home country and makes the Application, the Asylum Seekers who failed to obtain landing permission for temporary refuge will not receive proper resident status and will unlikely be granted PPS. This means that such Asylum Seekers must proceed with the RSD Procedures while being treated as an illegal resident.

4 Difference between Refugee Status Recognition and SPS on Humanitarian Grounds

(1) Judgment criteria

While judgment of the eligibility for refugee status under the Refugee Convention is purely a confirmation of facts and does not have an element of discretion[17], the SPS on Humanitarian Grounds are given on a discretionary basis, without any procedural assurance. In particular, with respect to the Objection, previously Minister of Justice had respected all the opinions of the RECs (See 2 (2) above), but on the judgment whether to grant SPS on Humanitarian Grounds, the opinions of the Counselors are not always respected.

(2) Non-refoulement principle

While the above mentioned Principle of Non-refoulement (Article 33 of the Refuge Convention) clearly applies to the Recognized Refugees, it is not clear whether it also applies to the SPS Holders, and making their status unstable.

(3) Resident status

While the Recognized Refugees are granted the resident status of the "Long Term Resident", SPS Holders are only qualified for resident status of "Designated Activities" unless they have lived in Japan for over 10 years.

Those with the Designated Activities resident status have difficulty in receiving the financial aid or bringing over their family members to Japan, as well as other disadvantages such as being excluded from the benefits granted to the Recognized Refugees (e.g. reduced requirement (Article 61-2-10 of the Act) for receiving permission for permanent residence (Article 22 of the Act)).

(4) Requirement for naturalization

In light of Article 34 of the Refugee Convention, the Recognized Refugees are exempted from the condition for naturalization that requires living in Japan for five years (Article 5, Paragraph 1, Item 1 of the Nationality Act).

On the other hand, for naturalization to Japan the SPS Holders (Article 61-2-2, Paragraph 2 of the Act) must have lived in Japan for five years. Furthermore, the Legal Affairs Bureau that handles the administration process for naturalization regards the past record of irregular stay in Japan as a negative factor for the requirement of "being a person of good conduct" (Article 5,

[17] Page 28 of UNHCR, *Refugee Recognition Criteria Handbook*; Each Contracting State can decide the refugee recognition criteria, but there is no difference among countries in that "refugee" means the people defined in Article 1, Paragraph A of the Refugee Convention (Article 2, Paragraph 3-2 of the Act), and that the refugee recognition process itself is confirmation of facts.

Paragraph 3 of the Nationality Act). Accordingly, there are many cases where even five years of residence after receiving the SPS on Humanitarian Grounds are considered insufficient.

(5) Application of law

While the applicable law for the Recognized Refugees will be the law of the country of asylum, which is Japanese law (Article 12 f the Refugee Convention), the applicable law for the SPS Holders remains the laws of their home country. This may cause problems such as in the cases of marriage; the person may not be able to present the necessary document as stipulated in the laws of the country, leading to the unacceptance of the marriage in Japan.

(6) Condition for permanent residence

To obtain permission for permanent residence, the Act requires that the "foreign national must have sufficient asset or skills to make an independent living" (Article 22, Paragraph 2, Item 2 of the Act). However, this requirement is waived for the Recognized Refugees (Article 61-2-11 of the Act).

In contrast, the SPS Holders have more difficulty to become a permanent resident, because they have to satisfy the above requirement. The requirement of "being a person of good conduct" (Article 22, Paragraph 2, Item1 of the Act) may also cause a problem as it does in the case of naturalization.

(7) Travel documents

Travel documents for refugees (Article 28 of the Refugee Convention, Schedule thereto and Article 61-2-12 of the Act) are not issued to the persons other than the Recognized Refugees, i.e. not to the SPS Holders.

## Concrete Proposal

### Proposal 1 Measures to be Taken for an Appropriate and Prompt Refugee Status Recognition

1 On All Procedures including First Instance

(1) Establishment of organization for carrying out appropriate refugee status recognition

*RSD Procedures by a third-party organization, independent from government agencies having jurisdictions over the immigration control and foreign policy, and free from any political and diplomatic considerations, should be established. For this purpose, experts called "RSD Officers" who are skilled in the research of COI, as well as credibility assessment and RSD by international standards, should be appointed and trained on a continuous basis.*

[Current Status and Issues to be Addressed]

Primarily, the purpose of the RSD Procedures is to recognize and protect refugees in Japan so that the Japanese government, as a party state to the Refugee Convention, may implement the Convention in a proper manner. Therefore, the RSD Procedures are essentially different form the immigration control and resident status management (the "Immigration Control Procedures") in terms of their respective purposes.

Currently, since the RSD Procedures and the Immigration Control Procedures are both handled by the same organizations (i.e. Ministry of Justice (Immigration Bureau) and its subdivisions) (see Article 4, Items 32 through 34 and Article 21 of Ministry of Justice Establishment Act), there is a risk of deviating from the intended purpose of the refugee examination, that is, to recognize every refugee, due to putting a higher priority in preventing illegal immigration to or landing in Japan, or in eliminating illegal workers by those who misuse the refugee application. In particular, the Refugee Inquirers are not granted substantial right of determining the refugee status, and, Immigration Bureau under the reign of Ministry of Justice actually makes the conclusive decision. However, in the Ministry of Justice and the Immigration Bureau, such conclusive decisions are likely to be rendered by people including those who are currently or have until recently been involved in immigration control affairs. Accordingly, it must be said that it is highly likely that Recognition Procedures are at the risk of being distorted by the involvement of the border administration perspective or by a political judgment.

A Refugee Inquirer is appointed from the immigration inspectors[18], and normally, after a couple of

[18] See *Instruction to Appoint Supervising Immigration Inspectors, Special Inquiry Officers and Refugee Inquirers, as well as Immigration Inspectors and Refugee Inquirers that Conduct Hearings* (Instruction Number 1 of Ministry of Justice dated January 6, 2001)

years' service, will be transferred again to a position in a different department taking charge of the Immigration Control Procedures. With such appointments, it is difficult to foster expertise in research of COI, ensuring the due process for the Applicant and assessing his/her credibility (see 1 (3)), as well as making a judgment on whether he/she satisfies the requirements for being recognized as a "refugee," such as "being persecuted" or having "well-founded fear" (Article 1 of Refugee Convention, Article 2, Item 3-2 of the Act), which needs sophisticated and elaborate skills. As a result, many Refugee Inquirers have limited experience in the Recognition Procedures, and, accordingly, they are carrying out the examinations without sufficient knowledge.

In this regard, in order to adequately recognize the refugees, it is fundamentally necessary to establish the RSD Procedures by a third-party organization independent from government agencies having jurisdictions over the immigration control and foreign policy, and free from any political and diplomatic considerations, as pointed out by the Associations in the past.

In addition, in establishing the aforementioned new third-party organization, it should be necessary to appoint and foster, on a continuous basis, the RSD Officers with expertise, considering the complexity and particularity in the RSD Procedures, as mentioned above.

Actually, the process of RSD is not disclosed, and this hinders making a judgment on whether or not the RSD Procedures are carried out in an appropriate manner. Accordingly, a concrete process of judgment and determination from the application until the RSD should be disclosed.

(2) Securing of transparency and objectivity in the RSD Procedures

(i) *Fairness and transparency in the judgment of eligibility for the refugee status should be secured by officially announcing the concrete criteria for the judgment;*

(ii) *The reason for the RSD should be disclosed specifically, and where the refugee status is denied, further detailed explanation therefor should be given;*

*(iii) Information and materials used for the refugee examination should be disclosed in their entirety;*

*(iv) Tangible criteria for granting of the SPS on Humanitarian Grounds (so-called "complementary forms of protection") should be disclosed, whereby fairness and transparency in the judgment should be secured. In other words, it should be clearly set forth in the laws and ordinances that SPS should be granted to people who are not allowed to be deported to their country according to conventions and other laws and ordinances relating to protection of human rights, other than the Refugee Convention. In addition, criteria should be established for cases requiring humanitarian considerations other than the above.*

[Current Status and Issues to be Addressed]

(i) Securing of transparency in the judgment of eligibility for the refugee status

In specific cases, whether the relevant Applicant is eligible for the "refugee" status or not should be judged based on the particular circumstance of such Applicant or of his/her country of origin. If, in the actual cases, such judgment is rendered without indicating any criteria used for the screening as for the eligibility for the refugee or factors taken into consideration upon giving the judgment, such judgment should inevitably be considered as lacking assurance to prevent decisions based on intuition or preconception/prejudgment. Obviously, this may make it difficult for the Applicant to make a sufficient claim or authentication. In the current RSD Procedures, no criterion for judgment is shown as to specific factors and degree of consideration thereof in carrying out the screening.

Therefore, at least as for the type of claims often made by the Applicants, the criteria for the RSD should be identified, by referring to the judicial precedents in each country or opinion of UNHCR, and then made available to the public. In this regard, "Operational Guidance Note" issued by the U.K. Border Agency according to the Applicants' countries of origin may be referenced[19]. It should be asserted that, through such identification and publishing of criteria, the transparency and predictability in judgment will be ensured, and the criteria will be verified by the RECs and other officials concerned, whereby the fairness can be secured.

(ii) Disclosure of reason for the RSD and the extent thereof

In practice, when in case of refugee recognition, there are no explanations of the reasons and only a recognition certificate is issued. This substantially prevents the verification of the determination process.

In order to assess whether or not the RSD Procedure is carried out in an objective and fair manner without the effect of political or diplomatic considerations, and, in what situation the refugee status is recognized and in what situation it is denied, verification of the respective cases would be indispensable. However, in the current practice, the reason is disclosed only where the application is denied. On the other hand, the reasons for accepting refugee status are unknown. Therefore, conducting such verification is not practicable. In addition, the explanation for the reason for denial of recognition is still insufficient, though it has become more specific than ever.

Given this situation, the reason for the RSD should be disclosed specifically, and where the refugee status is denied, further detailed explanation should be given. Among others, if the recognition is denied due to lack of credibility in the Applicant's statement, the concrete basis for

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http://www.bia.homeoffie.gov.uk.sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/

such denial should be disclosed. Though such situation may be improved under the existing legal infrastructure, amendment of laws and other measures are desirable for a stable operation for offering a guarantee under the current system.

(iii) Disclosure of information and materials as basis for the RSD

In the existing conditions, the Applicants cannot give any justification or bring any Objection against the RSD, since no basis for such determination are shown other than the statements given and materials submitted by the relevant Applicant. As for COI, what kind of material has been referred to is not made clear, and, therefore, it is difficult to bring Objections and give opinions.

Given this situation, all materials used for the RSD should be disclosed. It is desirable that this improvement would also be legislated so that the operation will be carried out in a stable manner.

(iv) Securing of transparency in the criteria for making judgments on SPS on Humanitarian Grounds

Currently, factors to be considered or criteria for the judgment are not prescribed at all as to on what situation the complementary forms of protection, such as SPS on Humanitarian Grounds, are granted. Given this, as well as making the determination of status of a "refugee," judgment for granting of residence permission should inevitably be considered as lacking assurance to prevent decisions based on intuition or preconception/prejudgment. Also, this may make it difficult for the Applicant to make a sufficient claim or authentication, in order to obtain the residence permission.

Article 53, Paragraph 3, Items 2 and 3 of the Act clearly sets out that any deportation to the countries designated in article 3, paragraph 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and those designated in article 15, paragraph 1 of The International Convention for the Protection of All Persons from Enforced Disappearances is prohibited. In addition to the above, cases in which complementary forms of protection (including the SPS) should be granted as consequence of deportation having been prohibited under the ICCPR, CRC and other conventions on human rights other than the Refugee Convention (see "Proposal for the Operation of Special Residence Permission" dated October 17, 2010, issued by the Associations) should be statutorily specified. Also, for cases where deportation is considered not to be desirable on humanitarian grounds, criteria therefor should be identified and all Refugee Inquirers and RECs concerned should be kept informed, so that the transparency and fairness in the judgment may be ensured.

(3) Increase in rights of Applicants in the RSD Procedures

*(i) The entire process of giving interviews by a Refugee Inquirer or oral opinion statements and* interrogation *during the Objection proceedings should be video/voice-recorded, and,*

*immediately after* the *completion of the process, such records should be made available to inspection and duplication by the Applicant without restrictions;*

*(ii) Opportunities* to *give rebuttal or explanation should be offered at least as to important evidences which may probably be disadvantageous to the Applicant;*

*(iii) Status of Attorneys acting behalf of the Applicants should be adequately recognized, and his/her* attendance *at the interviews should be permitted as right of the Applicants and the attorney;*

*(iv) Sufficient materials should be kept at a resource center established for collecting COI, and such materials should be made available to inspection and use by the Applicants.*

[Current Status and Issues to be Addressed]

(i) Visualization of interview process

Currently, process of interviews conducted by Refugee Inquirer, oral opinion statements and interrogation during the Objection proceedings are not subjected to video/voice-recordings. This means that there is no way to objectively prove the communications between the relevant Applicant and the Refugee Inquirer or other officials, or to prove inadequateness in the interpretation of the interpreter, if any, in case such proceedings would thereafter go into litigation. In many cases of RSD Procedures, the result would depend on whether the statements given by the Applicant are considered to be credible or not, and, therefore, objectively recording the statements is extremely important.

Amid the recent increasing demand for the visualization of criminal investigations, the same or more enhanced level of visualization is required for RSD Procedures. If the entire process of interviews and interrogations are video/voice-recorded and immediately and without any restrictions made available to the examination of parties concerned, issues pertaining to the procedures and misinterpretation or other problems may be identified and corrected at least after such interviews or interrogations. Hopefully, this may resolve any unnecessary misunderstandings or disputes over the credibility of the Applicant's statement, and whereby contribute to the improvement in the correctness or promotion of rapid RSD Procedures overall[20].

[20] In this context, Article 8, Paragraph 3 of Korean Refugee Act may serve as reference, which provides "Head of the administrative office or other relevant persons may video/voice-record the interview process when it considers necessary. Such video/voice-recording must not be rejected if it is requested by the refugee applicant." The Korean Immigration Control Act, which used to be the legal base for RSD, is said to have been drafted based on the Act in Japan. However, after Korea acceded to the Refugee Convention in 1992 and amended the Immigration Control Act, the private refugee support organizations took initiatives to claim the inadequacy of the refugee protection system in Korea and demand enactment of an independent refugee act, which led to promulgation of the independent Korean Refugee Act mentioned above in 2012. In light of such

(ii) Offer of opportunities for giving a rebuttal or explanation

Under the present circumstance, in determining whether the Applicant's statement is credible or not, it is often the case that the Applicant is not offered even an opportunity to give a rebuttal or explanation as to the backgrounds of the statement, its inconsistency with objective evidences or reasonableness of such statement or other issues, and receives an unfavorable decision.

However, this can lead to unexpected outcomes for the Applicant ant thus violates the procedural rights of the Applicants at RSD Procedures.

In addition, a decision without guaranteeing the Applicant with the opportunity to make an objection or demand for an explanation would result in misinterpretation of facts based on a false belief. This is a grave problem when pursuing adequate decisions.

In this regard, in "Assessment of Credibility in Refugee and Subsidiary Protection claims under the EU Qualification Directive: Judicial criteria and standards" (2013) issued by International Association of Refugee Law Judges (IARLJ), it is asserted that "Potentially negative material evidence, in respect of which a claimant is not afforded the opportunity for explanation or rebuttal, should not be taken into account in assessment of credibility" (so-called "Audi alteram partem" or "Equality of Arms ").

Accordingly, at least as to the material evidence involving an inconsistency or issue which may probably be a prejudice to the core element of assertion of the relevant Applicant, opportunity to give explanation or rebuttal should be offered.

(iii) Attendance of legal attorney

In the existing conditions, status of a legal counsel acting as an attorney in the First Instance Procedure is not adequately recognized and submission by him/her of the Application or his/her attendance at the interview is not permitted. Therefore, legal representations are actually limited to those relating to submission of documents, etc.[21]

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background, the provisions of Korean Refugee Act may serve as reference for considering possible improvement of the refugee related systems in Japan. Therefore we will quote its provisions for reference with respect to other items of this opinion paper.

[21] There are cases with respect to several Myanmar Applicants, where the Immigration Control Bureau had asked an Applicant or the body which he/she belonged to, to stop involving a legal counsel. (See Morning Edition of *Mainichi Shimbun* on January 20, 2011.)

However, interviews with refugees are made in a "special atmosphere"[22], where the Applicant's mental burden would be significant. That's why it may be important that an attorney attends the Applicant at interviews, pointing out if any oppressing question is given or any obvious misunderstanding or induction is made, or otherwise trying to maintain the Applicant's mental stability so that communications between the Applicant and the Refugee Inquirers are made smoothly. Further, participation by and involvement of a legal counsel, acting as an attorney, in the procedure in such early stage may contribute to the proper and efficient promotion of the Recognition Procedures through an adequate assertion and verification activities, which is expected, in the end, to contribute to shortening of the processing period.

Therefore, status of legal counsel, acting as an attorney, should be adequately recognized, including the benefit of his/her attendance at interviews in the First Instance Procedure.

In this regard, Article 12 of Korean Refugee Act should be referenced as setting out that "a refugee status applicant has the right to receive the assistance of an attorney".

(iv) Common use of information on countries of origin

Gathering COI is inevitable for the recognition of the refugee status. In addition, credibility of the statement of the Applicant may not be determined without COI.

In the current refugee recognition practices in Japan, though the Applicant bears all the responsibilities for verification of information, including the COI, usually it would be extremely difficult for an individual Applicant to collect such information by himself/herself. Further, there are obstacles in terms of language, where information gathering would be difficult even if an attorney acts for the Applicant, since most of such information is offered in English[23]. Lately, Ministry of Justice has started uploading translations of COI reports published by the U.K. Home Office and the U.S. State Department, but other COI is yet to be made available.

Therefore, sufficient materials should be kept at a resource center established for collecting COI, which should be made available to common inspection and use by the Applicants. This is feasible under the current legislation. Offering of sufficient COI may be helpful for shortening of the

[22] Judgment on April 26, 2012 by Tokyo High Court (for Case 228,(*Gyou-ko*) 2010) says "When you consider the fact that the refugee examination process carried out using an interpreter, in a special atmosphere and without accompanying a legal counsel, as well as the concern of the applicant about the advert subsequences that he/she may suffer because of his/her statements during the process if the refugee status is denied, even if the content of the statements may have gradually changed to some extent, it does not immediately deny the credibility of the appellant's statement in relation to the essential part mentioned above."

[23] Article 62 of the Ordinance: "When any material to be submitted to the Minister of Justice, the director of a regional immigration bureau, or an immigration inspector pursuant to the provisions of the Immigration Control Act or this Ordinance is written in a foreign language, a translation thereof shall be attached thereto."

screening period, as mentioned above, since the circumstance under which COI can be quickly obtained would enable a rapid judgment as to whether or not the statement of the Applicant is credible or the application thereof is well-supported.

(4) Offer of protection to people in a vulnerable condition during the Recognition Procedures

Special consideration for people in a vulnerable condition, including children, females, elderly people, mentally and physically disabled people and torture victims, should be clearly identified in relevant laws, and especially, at interviews, attendance of a physician, clinical psychologist or other experts, as well as a person who the Applicant relies on, should be allowed, in addition to an attorney.

[Current Status and Issues to be Addressed]

Taking part in interviews alone often imposes a psychological burden on mentally and physically disabled people, including those who have posttraumatic stress disorder (PTSD) which is an attribute not uncommon for the Applicants, or torture-victims, in addition to people deemed to be in a vulnerable condition, including children, females and elderly people. If such person gives an interview individually or without the attendance of a person of expertise, it may be highly possible that he/she cannot make a sufficient assertion and such situation would become a trigger for a further physical or mental disorder.

Currently, there exists no law or regulation, nor has such law or regulation operated in any manner, that requires the Recognition Procedures to pay a special consideration for the people in a vulnerable position, as mentioned above.

That is the reason why it should be admitted that, for children, females, elderly people, mentally and physically disabled people and torture-victims or other people requiring a special consideration, a physician, clinical psychologist or other expert, in addition to an attorney or guardian therefor, capable of monitoring the Applicant's mental or physical conditions and, if necessary, offering an aid, attends the interviews. Attendance of such expert would be helpful to secure and maintain the mental stability of the Applicant, and contribute to ensuring the validity, fairness and accuracy in the process of the interviews[24]. In this regard, item 208 of "Handbook on Procedures and Criteria for Determining Refugee Status" issued by the UNHCR office (the "UNHCR Handbook") describes as follows and requires experts being involved, in respect of the Applicants with mental disability: "*The examiner should, in such cases, whenever possible, obtain expert medical advice. The medical report should provide information on the nature and degree of mental illness and should assess the applicant's ability to fulfil the requirements normally expected of an applicant in presenting his case (see paragraph 205 (a) above). The conclusions*

[24] Article 13 of Korea Refugee Act: "The refugee examiners may, upon request of a refugee status applicant, permit attendance of the person trusted by the applicants, to the extent that it is not deemed to impair fairness of the interview."

*of the medical report will determine the examiner's further approach."*

(5) Securing of quality of interpretation during the RSD Procedures

*A public qualification system for the interpreters should be introduced or quality of interpreters should otherwise be secured on a certain institutional base.*

[Current Status and Issues to be Addressed]

(i) Introduction of a public qualification system for the interpreters

As Japanese is not the first language for most of the Applicants, it is obvious that interpreters have an important function in the course of the RSD Procedures.
However, there is no qualification requirement for becoming an interpreter for the RSD Procedures, and ability or work behavior of the interpreters are not guaranteed in the current system. Any misinterpretation may cause the Applicant to misunderstand the question given or the Applicant's statement to be recorded incorrectly.

Needless to say, only a trivial misinterpretation may possibly affect the judgment for the credibility of the statement, which might result in affecting the RSD.

Accordingly, it should be the minimum entitlement to the Applicant to have interpretation by an interpreter whose ability is objectively ensured. On the other hand, use of such interpreter may enable the government to prevent a misjudgment and to secure the validity in making the determinations.

Actually, no qualification requirement for interpreters exists, as aforementioned, nor has any institutional base been established to secure the proper interpretation.

Therefore, it is an urgent matter to establish an institutional base for introducing a public qualification program for the interpreters or otherwise to objectively secure the quality of the interpreters[25].

(6) Promotion of Accelerated Recognition Procedures

*While the time required for the RSD should be shortened, measure such as limiting the number of times of application or simplifying the review process should not be applied without careful consideration.*

[25] Article 14 of Korea Refugee Act: "When a refugee status applicant is not able to express its intention adequately in the Korean language, Minister of Justice must make the interview interpreted by an interpreter which has the qualification prescribed by the Executive Order."

*If the refugee status cannot be determined during the average processing period due to any unavoidable reason, the Applicant should, in advance, be notified to that effect and the approximate expecting period for the process.*

[Current Status and Issues to be Addressed]

In the light of the period required for the existing Recognition Procedures, the average processing period from the refugee application to the determination of the refugee status in the First Instance Procedure, for example, for the period from April to June 2013, was 5.8 months (according to the announcement of Ministry of Justice). Meanwhile, though the average processing period from the refugee application in the First Instance Procedure to the Objection decision has not been disclosed, it has bee reported from the members of the Associations that there has been cases where the Applicant was not called up for the oral opinion even after two (2) to three (3) years from the commencement of the Objection proceedings.

In July 2010, Ministry of Justice specified the average processing period of the First Instance Recognition Procedure to be within six (6) months and has made efforts for achieving such target. However, in not a few cases, no decision was given, or even no interview was made, until the lapse of such six (6)-month period. During this period, the respective Applicants were put in an unstable situation without being informed of the timing of acceptance of the application, and, among others, Applicant who is an unofficial resident is forced to stay for a long time in a further vulnerable position.

In order to improve such situation, a request for Accelerated Recognition Procedure may be considered. However, the legality of Recognition Procedure itself should never be sacrificed. For example, the Applicant making the Re-application should have a due reason on the grounds of a change in the situation of his/her country of origin, condition of activities in Japan after the he/she came to Japan or any new discoveries, and, therefore, the application should not be restricted based on any insubstantial criteria such as number of applications made. Further, as to the Applicants incapable of preparing sufficient documents, any specific facts, as not stated in the Application form, are often brought to light through hearing and other procedures carried out by the Refugee Inquirer, and, therefore, the screening should not rely only on the documents. This is the reason why the process of screening should not be simplified by the aforementioned way.

In addition, increase in the number of Refugee Inquirers and Counselors may be considered, it should be noted, however, that, only with increase in the number of Refugee Inquirer or RECs, the situation would not be improved stably. Such increase should be implemented in parallel with other measures taken for securing the expertise of the Refugee Inquirers and RECs.

Given the discussions above, it should be necessary to carry out a measure for shortening the period of screening by specifying the average processing period for the Objection proceedings,

while securing the adequacy in the Recognition Procedures. In addition, since the lengthening of the procedures may be a serious factor to increase anxiety of the Applicant, the planning of, and the predictability in, the procedures should be ensured by an advance notice of the fact that the procedures cannot be completed within the average processing period and of the expected period for the completion[26].

2 Objection Proceedings

(1) Securing of transparency and independence in the selection of RECs

*The RECs should be appointed by a committee newly established for the selection of RECs, upon the criteria for the selection being clarified and publicly announced.*

[Current Status and Issues to *be* Addressed]

As of December 12, 2013, there are 75 RECs and the RECs are selected by the Minister of *Justice* (Article 61-2-10, Item 2 of the Act). According to the collateral resolution for the amendment of the Act at the time of establishment of the RECs system, recommendation of UNHCR and Associations became taken into consideration upon such selection, but the number of RECs so recommended has been limited, where most part of the selection has been made at the sole discretion of Minister of Justice.

Knowledge about refugee law including the Refugee Convention, as well as experiences in valuation and analysis of COI, acknowledgement of facts and judgment on the credibility are indispensable for the examination of the refugee status recognition. However, the procedure for the selection of the RECs is extremely uncertain under the current system where it is unclear that on what criteria Ministry of Justice judges the suitability of a candidate for a RECs, and whether a concrete standard for the selection of the RECs exists or not.

In the first place, the system in which Minister of Justice is vested a discretion for the selection of the RECs should be remedied, considering that Minister of Justice is the conclusive *decision*-maker in the First Instance Recognition Procedures and the Objection proceedings, and that the REC system was introduced for securing the effectiveness, fairness and neutrality in the Objection proceedings.

[26] Article 18, Paragraph 4 of Korean Refugee Act: "Decision on the matters such as refugee status recognition must be made within six months from the date of acceptance of the refugee application. However, such period may be extended for a prescribed period within six months, if there is an inevitable reason."
Article 18, Paragraph 5 of Korean Refugee Act: "If the period under the preceding Paragraph is extended pursuant to the proviso of the Paragraph, the extension must be notified to the relevant refugee status applicant not later than seven day prior to the expiry of the initial period."

Actually, positon of the RECs are occupied mostly by elderly people after the retirement age or people with other routine business, on the grounds that the burden borne by the RECs in terms of workload, time consumed for the screening and review would be substantial, in contrast to the amount of compensation to be paid. Otherwise, some researchers and lawyers who are more or less able to consume the time and money therein assume the duty of the RECs, on a volunteer basis.

Ideally, a candidate for the RECs should be a person with actual experience in the practice of the refugee status recognition at UNHCR or other organizations, however, in actual cases it would be difficult for such person to assume the REC's role, since the position is on a part-time basis and the working condition is not satisfactory.

Under the said situation that the selection process is uncertain and the candidate has to bear the extremely limited conditions to obtain the role of the REC, it cannot be expected that the RECs would be selected in an appropriate manner, and, therefore, it should be concluded that the existing REC system lacks the fairness and validity.

In this regard, item 25 of the Concluding Observations of the United Nations Human Rights Committee to the Japanese government as of October 3, 2008 (see Appendix <1> 4)), states, in respect of the independence of the RECs, that "It is also concerned that the possibility of filing an objection with Minister of Justice against a negative asylum decision does not constitute an independent review because the refugee examination counselors advising Minister upon review are not independently appointed and have no power to issue binding decisions. "

Further, paragraph 14 d) of Concluding Observations by the Committee against Torture to Japanese government as of August 3, 2007 (see Appendix <1>, 5)), states, in respect of the criteria for the selection of Counselors, that "The Committee is also concerned that the criteria for the appointment of third-party refugee adjudication counselors are not made public."

Considering the above, the independence of the RECs should be secured by an effort to clarify the selection criteria and establish the selection committee therefor, and the selection of the RECs should be made upon improving their working conditions.

(2) Information disclosure concerning duty of RECs

*(i) The number of cases processed and recognized by a REC should be disclosed;*

*(ii) Opinions of RECs,* whether *majority or minority, should be disclosed in their entirety;*

*(iii) Procedures for* the *allocation of cases to RECs should be disclosed, whereby fairness in such allocation should be ensured.*

[Current Status and Issues to be Addressed]

(i) Disclosure of the number of cases processed and recognized by a REC

Screening is carried out by a team consisting of three (3) RECs. However, under the present circumstance, it is not clear that how many cases have been dealt with, or how many opinions for the RSD have been given, by each REC, and, accordingly, it is difficult to assess the determination made by the respective REC. Whether or not there is any impartial judgment for the RSD according to each REC, or whether the decision given by each such REC is adequate or not, cannot be verified at all. As the REC system was introduced in order to secure the effectivity of the Objection proceedings, it should be obviously inevitable to review, on a continuous basis, if the fairness of the system is maintained, and, for this, disclosure of statistic figures showing the present status of judgment by each REC should be indispensable.

(ii) Disclosure of all majority and minority opinions of RECs

In the current practice, if the opinions are split within the team of three (3) RECs, the majority opinion is adopted. Even in such case, the relevant Applicant (the petitioner) is not informed of the entire opinions of the RECs, whether it is the majority or minority. Though the petitioner whose Objection has been dismissed or rejected is guaranteed an opportunity to dispute the decision in an administrative suite, if he/she does not have access to the minority opinion, he/she is not able to understand on what point(s) the opinions of the RECs split up on. Further, unless the petitioner grasps the majority opinions of RECs in their entirety, he/she is not able to understand in what point the major two (2) RECs put the value in making the determination.

As the disclosure of both majority and minority opinions of the RECs would be helpful to ensuring the fairness of the Objection l proceedings, and at the same time be deemed to offer a parity defense to the petitioner, as being a precondition for the lawsuit, ensuring of such disclosure would be important. This may thus contribute to materialization of the right to trial (Article 82 of the Constitution). Accordingly, both the majority and minority opinions should be disclosed, in their entirety.

(iii) Disclosure of procedures for the allocation of cases to RECs and ensuring of fairness therein

In the existing conditions, procedures and criteria by and on which the cases are allocated to each team of RECs are not clarified. Namely, it is unclear whether or not the case relating *to a specific country of origin is allocated to a specific team of* the RECs, or in the case of Re-application whether or not it is allocated again to the team having dealt with the relevant case in the past procedure.

In order to secure the fairness in the Objection proceedings, the allocation procedure should be

clarified and measures should be taken to systematically prevent the allocation made arbitrary by the secretariat office.

(3) Reducing the backlog of Objection cases

*(i) The backlog of Objection cases should be reduced promptly by fundamentally reviewing the RECs' processing system such as increasing the number of RECs significantly or appointing full-time RECs or other efforts of;*

*(ii) Refugee status should be determined approximately within two (2) months following the submission by the RECs of their opinions to Minister of Justice, and, upon such determination, the detail thereof should be notified to the petitioner without delay.*

[Current Status and Issues to be Addressed]

*(i) Fundamental review of the RECs' processing system and reduction of the backlog of Objection cases*

As mentioned in 2 (2) of "Preface," the number of RECs has been increased to 75 as of December 12, 2013, however, they are working on a part-time basis with the term of two (2) years' office, and give interrogations twice a month, on average, with compensation of 22,900 yen per day.

Normally, a team of RECs meets twice a month, and gives oral opinion statements and interrogations for two (2) cases each, usually taking three (3) to four (4) hours in total per day (recently, the frequency of the meeting seems to be increasing).

Amount of time consumed for the preparation for the interrogation in advance, or subsequent documentation of the opinions, other than the time used for the interrogation itself, seems to be substantially different according to the respective RECs. However, normally, it is assumed that significant time and efforts have been spent for the advance preparation, such as checking of case record or analysis of COI/ This will be followed by the inquiry session itself and the discussions after the said session and the documentation of their opinions. It should be said that the capacity of the RECs to process the cases is limited due to the current system.

As mentioned in 3 (1) of "Preface," taking into consideration that the a noticeable number of Objection cases remain unprocessed, which causes serious concern, and whereby the petitioners (the Applicants) have been put in an unstable situation for a long time and that the number of the Objection cases is still increasing, it is obvious that a fundamental reform of the REC system should be implemented urgently.

In this regard, in order to obtain an appropriate conclusion of the Objection proceeding in a

prompt manner, a significant increase in the number of the RECs may be one solution, however, as stated in 2 (1) above, under the existing conditions, lots of RECs have other routine business or are people after retiring from their respective jobs. In such system, the number of cases processed by a REC should be limited. Accordingly, the working conditions of the RECs should be improved or the RECs should be appointed on a full-time basis so that the environment in which each REC can concentrate on the examination may be secured.

(ii) Prompt determination of refugee status and notification thereof

Currently, there are many cases reported that the refugee status was determined long time after the REC submitted its opinion to Minister of Justice. Further, in many cases, it is reported that there is a considerable period of time between the date of the determination to the date on which such determination is notified.

The cause for the Objection cases remaining unprocessed to the serious extent seems to be, not only the matter of limitation on the system in which the RECs process the cases as mentioned above in connection with 2 (3) (1), but also the problem that Minister of Justice fails to make the RSD promptly after the submission of the RECs' opinions.

As seen above, delays in refugee status determination and notification thereof would force the petitioner to be in an unstable situation for a long time, and, therefore, the judgment should be rendered basically within two (2) months following the submission of the RECs' opinions and then notified in a prompt manner.

(4) Establishing expertise of RECs

*The RECs should have training opportunities by officers of UNHCR or other researchers on continuous basis, and* opportunities *should be expanded where examples of opinion papers by past RSDs or judicial precedents can be studied.*

[Current Status and Issues to be Addressed]

Since the Refugee Convention should be interpreted and applied globally in a unified manner, UNHCR, the operating and supervisory organization of the Convention, has issued the "UNHCR Handbook" and many other guidelines relating to the refugee status recognition.

Nonetheless, in carrying out the screening and making the RSD, in addition to being well versed in the guidelines such as the Handbook mentioned above, the up-to-date knowledge about the refugee law and experience in the refugee practice, such as evaluation and analysis of COI and recognition of facts, etc. should be indispensable.

If, in respect of a case of a Applicant originating from a specific country of origin which has

precedents in other jurisdictions, international criticisms may not be avoided when the judgement handed down by the Japanese courts are significantly different from those handed down in other relevant jurisdictions.. This is the reason why precedents from other jurisdictions should be referred to.

As seen above, since the RSD require the up-to-date knowledge and information as well as the high-level expertise, a continuous training should be extremely important.

As far as recognized by the JFBA so far, the number of cases in which RECs' decision for denial or dismissal of the Objection has been reversed in court has reached 22 (see Appendix <2>). It should be necessary to establish a structure in which an opportunity is given to analyze and review the point in which the judgments by RECs and the court differed, and the result of the said analysis and review may be reflected in the examination of the RECs.

(5) Respecting of RECs' opinion for recognition

*Minister of Justice should not change the practice of respecting the RECs' opinion for recognition.*

[Current Status and Issues to be Addressed]

The revision of the refugee status recognition system implemented in 2005, including the introduction of the REC system, was triggered by the growing demand for the reform directly caused by an incident in which a North-Korean family ran into Japanese Consulate in Shenyang, China. In other words, in the wake of the said incident, opinions against the Japanese Recognition Procedures with extremely low number and rate of recognition have rapidly increased, and resulted in the revision of the acts.

In discussions over the reform, at least as to the examination process for the Objection, among the recognition procedures, some insisted an independent third-party organization be established, and the JFBA also expressed the same opinion.

In consequence, though the form of Objection to Minister of Justice which is lodging an objection towards the Minister of Justice on her first instance decision, the revised law introduced the REC system as a form in which a third party is involved and secured the fairness and neutrality in the Objection proceedings by duly respecting the RECs' opinions.

In addition, though the government was recommended by the United Nations Human Rights Committee and the Committee against Torture, as referred to in Appendix <1>, that it should carry out the examination for the refugee status recognition by an independent third-party organization, the government has justified its stance of not establishing such organization by insisting that the fairness and neutrality of the program is maintained by the existing Counselor system. They have asserted that "Since the system of refugee examination counselors was

enforced in May 2005, there has been no case thus far in which Minister of Justice has made a decision that has deviated from the majority opinions presented by refugee examination counselors" (Comments by the Government of Japan concerning the inquiries of the Committee against Torture against the second government report).

Considering the backgrounds of the reform of the system, it is obvious that opinion of each REC, as a third party, should be respected to a maximum extent27.

Specifically, if a majority of a team of RECs supports the recognition of refugee status recognition (i.e. the Objection to be admitted), Minister of Justice should respect and defer to such opinion. Though Ministry of Justice had followed such practice until 2012, in 2013, as aforementioned, it overturned that operation and Minister of Justice persisted to the conclusion of denial of the refugee status, despite a majority opinion of RECs being in favour of the Applicant .

Given the purpose of the REC system, as discussed above, and the past explanations given to the organizations which monitor the implementation of the Convention, such change in the practice may possibly shake the foundation of the REC system. The operation designated upon the establishment of the system should be restored and the reason why Ministry of Justice maintained this time the conclusion of denial of recognition by changing/altering the operation should be explained in detail.

[27] Answer of Ministry of Justice Nozawa at the Legal Committee of the 159th Diet (House of Representatives) (May 21, 2004): "While Ministry of Justice is naturally in charge of the first instance examination, there are suggestions that the second examination be conducted by an independent third party institution, I guess with a view to ensure fairness, neutrality and transparency. That being said, the refugee examination counselors to be appointed should give us the adequate opinions which should remove the above concern. Under this new system, we expect that fairness, neutrality and transparency of the objection proceedings will be dramatically enhanced, through the input from multiple external experts and from various viewpoints. Therefore, I believe that from now on, there will be no problem even if the first and second examinations are carried out by the same institution". Answer of Ministry of Justice Nozawa at the Legal Committee of the 159th Diet (House of Representatives) (May 26, 2004): "I believe that the appointment of the refugee examination counselors is the most important part of this amendment of the Immigration Control and Refugee Recognition Act. As has been discussed, Minister of Justice appoints the counselors from those who have the academic knowledge and experience, and they review the records of the first instance examinations, directly conduct hearing of opinion or interrogation with the petitioner of objection, and provide opinions from various angles based on their specialist expertise. Therefore, it is natural that Minister of Justice respects their opinions and make determination."

## Proposal 2 Status of Applicants, Detention and Deportation

1 Status of Applicants

(1) Restrictions on working

*The provisions and practice of the Ordinance for Enforcement of the Act (the "**Ordinance**") should be amended to allow for the Applicants to work without resident status (such as those granted a Provisional Permission to stay (PPS) or provisional release(PR)) after six months from the Application.*

[Current Status and Issues to be Addressed]

As described in 3 (1) of Preface, while the average processing period of the First Instance Procedures is less than six months, that of the Objections was well over two years in 2012.

When the Applicants have the "short-term" resident status at the time of Application, the status may be changed and renewed to the Designated Activities resident status until the result of the Objection is informed, and working will be allowed after six months from the Application.

However, quite a few Applicants are living in poverty because of the following two reasons:
(a) They are not allowed to work pursuant to the relevant regulations (Article 56-2, Paragraph 3, Item 3 of the Ordinance in the case of those with permission for provisional stay, or by Article 49, Paragraph 3 and Article 48, Paragraph 2, Item 4, or by actual immigration control practice in the case of those with permission for PR).
(b) The financial aid is paid only for a short period and the amount is very limited.

In this respect, paragraph 25 of the Concluding observations to the Japanese government of the Human Rights Committee (October 3, 2008; see 4) of Appendix 1 attached at the end of this document) states "The Committee notes with concern that (skip) there are often substantial delays in the refugee recognition process during which applicants are not allowed to work and receive only limited social assistance.", and recommends that the government ensure access to employment for all the Asylum Seekers.

The JFBA also expressed the following view in the Opinion Aiming at the Improvement of Support for the Lives of Refugee Applicants (June 18, 2009) (the "**2009 Opinion**"); To enable the Applicants (including those in litigation that concerns refugee matters) earn a living in Japan, the prohibition on working should be lifted for the Applicants after six months from the filing date of the Application. In addition, the law should clearly state that the Applicants falling into the above category are allowed to work.

Accordingly, the JFBA recommends that the laws and regulations, as well as their interpretation,

should be amended to allow the Applicants who have not obtained the resident status to work after six months from *the* Application[28].

(2) Financial aid

*The government's financial aid program should be extended to strengthen the support for the livelihood of the Refugee Applicants, and operated in a sustainable and stable manner based on the legal grounds, instead of as a non-statutory operation as it is now.*

[Current Status and Issues to be Addressed]

As described in 3 (3) of Preface, the current financial aid program has been established in response to the Report of Results of Inspection of Refugee Administration (published by the Administrative Inspection Bureau of the Administration Management Agency in July 1982) that had pointed out the inadequate public support and budget for living support. However, as the system has no statutory grounds, it has not adapted to the rapid increase in the number of the Applicants.

The Applicants must apply to or have an interview at RHQ in Tokyo or Osaka to receive the allowance, and currently it takes a few months before actually receiving it. Therefore, NGO is providing support for their livelihood during the waiting period, both in terms of cost and human resource.

Further, exclusion of people whose case is pending at the court from the financial aid program is another issue to be solved, as well as the issue of prohibition of working.

In this context, the Committee on the Elimination of Racial Discrimination (CERD) states in the Concluding observations to the Japanese government (April 6, 2011; see 3) of Appendix 1) that it should " ensure that all asylum-seekers have the right, inter alia, to an adequate standard of living and medical care."

The JFBA has also required the followings to the Japanese government in its 2009 Opinion:

- to immediately secure a sufficient budget for financial aid to be provided in a continuous, stable, fair, and equitable manner
- to extend the period during which the Applicants are eligible to receive financial aid
- to provide the financial aid to the Applicants in litigation that concerns refugee matters as well
- to increase the amount of the financial aid available for the Applicants to a level at least equal to that of the welfare public assistance available for a Japanese citizen.

[28] Article 40, Paragraph 2 of Korean Refugee Act entitles the Minister of Justice to allow the refugee status applicants to work after six months from the application, in accordance with the President Order.

To solve the above issues, it is necessary to improve practice of the program through increasing the budget or streamlining the examination process, as well as to enhance the program's stability by making it a statutory system, because the scale has been limited by being a non-statutory operation.

(3) Legal aid

*The government* should *provide the legal aids for the proceedings of the refugee status application (the "**Application**"), Objection (the "**Objection**") and the litigation for denial of recognition of refugee status, regardless of whether the Applicant has any legitimate resident status or not.*

[Current Status and Issues to be Addressed]

Most of the Refugee Applicants have fled from the home country to escape persecution, with only clothes they are wearing, without passport or visa. However, under the legal aid system described in 3 (4) of Preface, most of them are out of scope of the civil legal aid.

To be granted refugee status, the foreign nationals must verify their experience in detail as well as the situation in the home country. For this purpose, it is material to receive the civil legal aid at the time of the Application.

As such, in light of the situation of the Refugee Applicants, although they desperately need the legal aid it is not provided by the government. Improvement in this respect is also required in paragraph 25 of the Concluding observations of the Human Rights Committee (dated October 3, 2008; see 4) of Appendix 1).

In most other countries, legal aid is provided to both refugee applicants and foreign nationals without legal status. Especially in most of the developed countries, refugees and asylum seekers are eligible to receive the legal aids[29].

(4) Permission for Provisional Stay (PPS)

*Current interpretation* and *practice for the reasons for disqualifying foreign nationals from PPS (such as the Application for refugee status after six months from landing, and likelihood of fleeing) should be reviewed, so that the PPS will be in principle permitted.*

[Current Status and Issues to be Addressed]

As described in 3 (2) of Preface, only 74 out of 701 applicants received permission for PPS in 2012. The reasons for the rejection for 410 applicants included that they had made the

[29] See Toyama, Futoshi (2002), "Foreigners and Legal Aid" *in Legal Aid in Japan - Fifty Years History and Issues*, Legal Aid Association

Application after six months from landing. In addition, there are quite a few Refugee Applicants who were rejected because of the likelihood of fleeing.

In the Opinion Paper on New Refugee Status Recognition System (published on October 17, 2006) ("**2006 Opinion**"), the Associations have asked for improvement in the practice of granting permissions for PPS. Looking at the above situation together with the purpose of the PPS system (stabilization of the legal status of the Refugee Applicants without legitimate resident status), we have to say that the system is not performing its expected role.

Accordingly, the interpretation and practice of "Application after six months of landing", as a reason for exclusion from receiving PPS, should be reviewed and amended, so that the PPS will be permitted more widely.

2 Detention and Deportation of Applicants

(1) Detention

*The Alternatives to Detention system ("**ATD**") that started in 2012 should be utilized more actively, to avoid detention of the Applicants as far as possible.*

[*Current* Status and Issues to be Addressed]

Under current immigration control practice, to be recognized as Refugee, the Applicants *must* collect the information of their home country and other information to prove the eligibility for refugee status. Accordingly, proceeding with the RSD Procedures under detention runs a risk to deny the refugee status to Applicants, who should have been recognized as refugee on account of the lack of sufficient proof.

One of the main reasons for non-permission for PR is the lack of ability to obtain the place of residence upon release. In particular, most of the Applicants who have had no connection with Japan before, such as the Applicants who made an application at the airport, are not able to obtain any housing or livelihood after they are released. In such cases, PR are not granted even if other requirements are satisfied, resulting in prolonged detention period. To avoid detention of such Applicants, adequate system or practice is necessary, which, with support from NGO or other entities (e.g. supply of shelters), actively grants PR.

With respect to such Alternative to Detention (ATD) measures, the Ministry of Justice, the Associations, and the Forum for Refugees Japan (FRJ) entered into a Memorandum of Understanding in 2012. Under the Memorandum, on a pilot basis, the Ministry of Justice (a) asked FRJ to supply shelters and other supports to the Applicants who were able to fulfill requirements of PR with exception to the obtaining a stable residence. (b)Upon securing the place of residence, the Ministry of Justice will grant the PR. However, there are only a limited

number of pilot cases so far since the start of the initiative.

To avoid detention of the Applicants for an unnecessarily long period, the number of the *pilot* cases should be increased, and the system should be a permanent system with proper budgetary provision.

In this context, it should be noted that the Committee against Torture recommended in paragraph 9 of Concluding Observations to the Japanese government (June 28, 2013; See 1) of Appendix 1) that the government should "ensure that the detention of asylum seekers is only used as a last resort, and when necessary, for the shortest period possible, and introduce a maximum period of detention pending deportation", and "utilize alternatives to detention as provided for in the Immigration Control and Refugee Recognition Act".

Accordingly, we recommend that ATD, which has been piloted since 2012, should be utilized more actively so as to avoid detention of the Refugee Applicants as far as possible, even for those who do not have the residence.

(2) Deportation

*Execution of a deportation order should be suspended where the deportation order (or denial of refugee status recognition) is still challengeable or the case is pending at the competent court.*

[Current Status *and* Issues to be Addressed]
As described in 3 (5) of Preface, there was a case where the Applicant was deported although he had expressed his intention to file a litigation, before the deadline of the filing. Such treatment was highly likely to constitute a violation of the Principle of Non-refoulement (Article 33 of the Refugee Convention, and Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), considering that the exercise of the right to file a litigation (which is guaranteed by Article 82 of the Constitution of Japan) is deemed as the final stage of the Recognition Procedures.

Further, as the Applicants are subject to the risk of deportation until the court order to stay the execution, some of the Applicants make the Re-application immediately after the Objection is rejected or dismissed.

The Immigration Control Bureau of the Ministry of Justice introduced from December 9, 2010 a notification system, under which a notification is given two-month before the scheduled deportation date of the forced deportee to the deportee's attorney who has submitted the request for the notification. However, if the deportation occurs before consultation with or engagement of an attorney, the system cannot be applied.

In this context, the above-mentioned Concluding Observations to the Japanese government of

the Committee against Torture (June 28, 2013) expresses concern about the "lack of effective implementation of article 53(3) of the Immigration Control and Refugee Recognition Act, which prohibits the removal of a person to any country where he or she may be subject to torture, as proscribed in article 3 of the Convention" (See 1) of Appendix 1). Further, the Concluding observations of the Human Rights Committee (October 3, 2008) also states that it "notes with concern that the 2006 Immigration Control and Refugee Recognition Act does not expressly prohibit the return of asylum seekers to a country where there is a risk of torture" and "it is concerned about reported cases where rejected asylum seekers have been deported before they could submit an objection against the negative decision on their application staying the execution of the deportation order". Based on such concern the Committee recommends that the Japanese government should "consider amending the Immigration Control and Refugee Recognition Act, with a view to explicitly prohibiting the return of asylum seekers to countries where there is a risk of torture or other ill-treatment" (See 4) of Appendix 1).

Therefore, at least, that the deporting of Applicants whose deportation order or denial of refugee status recognition is still challengeable through court procedures should be clearly prohibited by laws and regulations.

3 Application for Refugee Status at Port of Entry/Departure

(1) Providing information and advice to apply for landing permission for temporary refuge at the port of entry/departure

*Officials at a port of entry/departure (e.g. the immigration inspectors) should be statutorily required to inform the refugee status recognition system to the foreign nationals who in some way has expressed the intention to seek asylum in Japan. The practice and judging criteria to permit the landing permission for temporary refugee should be reviewed to expand the scope of the permissible cases. Furthermore, upon landing the asylum seekers should be encouraged to apply for the refugee status, in addition to an application for the landing permission for temporary refuge.*

[Current Status and Issues to be Addressed]

As described in 3 (6) of Preface, the number of the Applications upon landing at the port of entry/departure were very few, and there is a concern that the asylum seekers are not given adequate opportunity to make the Applications.

In addition, with respect to the landing permission for temporary refuge, as mentioned above, the number of cases permitted yearly are remains few. Even if a foreign national expresses the intention to seek asylum upon landing, the permission is not permitted in most cases. As the landing permission for temporary refuge is a provisional emergency measure to allow landing for the foreign nationals that may be recognized as refugee, proper practice should be such that it

should be given more widely.

Moreover, cases are reported where the asylum seekers were denied of their landing and were sent back to their home country, or were only given the opportunity to apply for the landing permission for temporary refuge and sent back upon its denial. Considering that those who made the Application are given the opportunity to receive future examination by the RECs, if a foreign national expresses the intention to seek asylum in some way at the port of entry/departure, the information on the RSD Procedures should be fully provided to him/her so that he/she is encouraged to make the Application at the same time as the application for landing permission for temporary refugee.

(2) Detention and Recognition Procedures at the port of entry/departure

*Current interpretation and practice relating to the necessity and appropriateness of detention of the Refugee Applicants at the port of entry/departure should be reviewed. Detention should be avoided as far as possible, by utilizing ATD or other measures.*

[Current Status and Issues to be *Addressed*]

When a Refugee Applicant arrives at the port of entry/departure he/she is not likely to have any connection to Japan, unless he/she has any relatives or there exists a community consist by peoples of his/her country. As such Applicants usually are incapable of obtaining stable residence in Japan, they may not be eligible for the landing permission for temporary refuge or PPS.

Detention of the Refugee Applicants should be avoided as it accompanies a serious problem from humanitarian point of view, and may harm the proper RSD Procedures. As mentioned above, the pilot ATD project has been running since 2012, with the aim to enable the Applicants at the airport who have no connection with Japan to avoid detention, by receiving provision of housing from NGO.

Currently the private sector bears all the expenses until the Refugee Applicants start receiving the financial aid. In the future, such expense should be budgeted and paid by the government, and the Applicants at the airport should not be detained in principle.

As mentioned above, in the case of the Refugee Application at the airport, legal residence status are usually not permitted and therefore the RSD is likely to proceed under detention. This situation makes it difficult for the Applicants to obtain adequate assistance. Furthermore, the interview may be processed too quickly as the whole procedure must be complete within the detention period under the Detention Order.

In connection with this, it should be noted that the recently published Paragraph 18 of General Comment No. 35 by the United Nations Human Rights Committee (Draft CCPR/C/107/R.3) states

that Asylum-seekers who unlawfully enter a State party's territory may be detained for a brief initial period in order to document their entry, record their claims, and determine their identity if it is in doubt. To detain them further while their claims are being resolved would be arbitrary absent particular reasons specific to the individual, such as an individualized likelihood of absconding, danger of crimes against others, or risk of acts against national security.

By utilizing the landing permission for temporary refuge, ATD and other measures, the RSD Procedures should be processed appropriately with only minimum detention.

## Proposal 3 Status of Those Who are Recognized as Refugee (the "Recognized Refugees"), and Those Granted Special Permission to Stay under Humanitarian Grounds (the "SPS Holders")

1 Status of the Recognized Refugees

*(1) The* Recognized *Refugees should be statutorily provided with the education (including high-level education), vocational training and clothes, food and housing, for the period and extent that enable them to build foundation for living and social activities in Japan.*

*(2) Integration of family of the Recognized Refugees must be adequately ensured, in light of the* purpose *of the ICCPR (Article 23) and the CRC (Articles 9 and 10). For that, special consideration should be made so that each family member can obtain visa to Japan, and obtain and maintain the resident status in Japan.*

*(3) For acquisition of nationality (naturalization) by the Recognized Refugees, the officers who receive the applications (regional Legal Affairs Bureau) should be made well aware of the provisions and the purpose of Article 34 of the Refugee Convention (that requires facilitated and expedited procedures with minimum charges and cost), and should not fail to comply with it. In the mid and long run, the relevant provisions in the Nationality Act should be reviewed.*

[Current Status and Issues to be Addressed]

(1) Status of *the* Recognized Refugees

Signatory States of the Refugee Convention are giving the Recognized Refugees the opportunities to receive various types of education and vocational training, as well as clothes, food and housing. The neighboring country Korea also started construction of the refugee support facilities pursuant to the Refugee Act enacted in July 2013[30].

In contrast, such support for the Recognized Refugees in Japan is not required by the Japanese laws and regulations. Actual support services are delegated to RHQ, for the budget, period and content that may not be sufficient. Therefore, we need to ensure that the services are provided for the adequate period and content with which they can build foundation for living and making social success in Japan.

(2) Integration of family of the Recognized Refugees

Integration of family of the Recognized Refugees must be ensured, in consideration of the purpose of the ICCPR (Article 23) and the CRC (Articles 9 and 10).

[30] See Fujiwara, Natsuhito (September 2012), "Enactment of Refugee Act in Korea" in *Foreign Law Enactment* Vol.253 P128-. Refer to Footnote 73 of the article on the construction of the refugee support facilities.

Iin principle the Recognized Refugees are granted a resident status of the Long Term Resident (same as the decendents of Japanese immigrants abroad and foreigner nationals who have lived in Japan for long time), in accordance with the Act and in practice.

As a result, if the Recognized Refugees want to bring over the family from abroad, the immigration control usually questions their financial resources, in the same way as it does to other holders of Long Term Resident status. Accordingly the Recognized Refugees who have not established the living foundation yet in Japan often find it difficult to obtain the eligibility certificate of residence staus for their family, and thus to bring them over to Japan.

This practice is apparently a detriment for family integration, and must be revised as soon as possible. When the Recognized Refugees want to bring over the family members for integration, the criteria for providing the above certificates or visa should be more relaxed than those applicable to other Long Term Residents, and this should be assured by the laws and regulations.

(3) Acquisition of Japanese nationality (naturalization) by the Recognized Refugees

Article 34 of the Refugee Convention requires the Signatory States to, as as the best extent possible, facilitate the naturalization process of the refugees, and make every effort to expedite naturalization proceedings and to reduce the charges and costs of such proceedings as much as possible.

However, in practice, when the Recognized Refugees want to apply for naturalization in the regional Legal Bureau, it is often rejected on pro forma reasons (i.e. past "illegal" entry or stay in Japan, short period of residence, and other unavoidable situations that have emerged in the process for the recognition of refugee status). We believe this is attributable to the lack of correct understanding of the provisions and purpose of Article 34 of the Refugee Convention.

Accordingly, the regional Legal Bureau should be made well aware of the requirements under the said Article, to ensure the practice in line with the purpose of the Article.

Further, as a fundamental measure, the relevant provisions of to the Nationality Act should be reviewed in light of the above requirements.

2 Status of Those Who have been SPS on Humanitarian grounds (SPS Holders)

*(1) The* status *of SPS Holders is in most cases the resident status of Designated Activities. However, the rules should be revised so that, if they live in Japan for a certain number of years (including the period before the status is granted), in principle their resident status can be changed to Long Term Resident.*

*(2) The SPS Holders should be assured of the status and rights similar to those granted to the Recognized Refugees to the extent possible, including eligibility for various social security programs, in light of their quasi-refugee status.*

[Current Status and Issues to be Addressed]

(1) Status of *Residents* under Humanitarian Consideration

In Japan, there are cases where the mid and long term resident status is granted to a foreign national by SPS on humanitarian grounds, even if the refugee status is denied. The number has reached a substantial level, more than ten times of the number of the Recognized Refugees.

Usually such foreign nationals receive the resident status of Long Term Residents or Designated Activities. As the status of Long Term Residents is granted only to the applicants who have lived in Japan for ten years or longer, most of the other SPS Holders are granted the status of Designated Activities[31].

Designated Activities are a special resident status provided for in Appendix 1-5 of the Act. As the scope of the activities are limited to those specified by Minister of Justice for each case[32], more restrictions are imposed for living in Japan than to the Long Term Resident.

Although the examination for granting the refugee status generally takes long time, the length of the period varies in case by case. Therefore, it is not reasonable that the status granted to SPS Holders caries from how long they lived in Japan (i.e. ten years or less). Therefore, more equitable treatment should be ensured, for example by allowing a change of the resident status to Long Term Resident for all the SPS Holders with Designated Activities, when he/she lived in Japan for ten years (including the period before the status of Designated Activities are granted).

(2) Elimination of *difference* between Recognized Refugees and SPS Holders as much as possible

As described in 4 (1) to (7) of Preface, the SPS Holders are subject to various disadvantages compared to the Recognized Refugees. This is especially notable in the case of the SPS Holders with the status of Designated Activities.

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[31] See *Refugee Status Recognition Administration Manual*, internal rule of the Ministry of Justice.
[32] Under the internal rule of the Ministry of Justice (*Refugee Status Recognition Administration Manual*), the activities such foreign nationals can engage in are, on condition that they live in Japan for some time because of the special situations in their country (in terms of nationality or permanent residence), limited to (a) the "activities conducted in the course of employment by the public or private organizations in Japan and for which remuneration is paid", or if they do not work, (b) "day-to-day activities other than the operation of business which generates income or the activities for which remuneration is paid".

It is not reasonable to have such difference between those with the status of the Long Term Resident and of Designated Activities. There should be a system implemented where the latter is eligible to the same social security program as the former .

Furthermore, it should be noted that the SPS Holders are those, although not having been regarded eligible for the refugee status based on the reason and extent of the persecution they had suffered from, which have been protected for humanitarian reason and thus should not be deported in consideration of their circumstances. Therefore, at least in light of their quasi-refugee status, they should receive a similar level of protection as we recommend in 1 (Status of the Recognized Refugees) of Proposal 3 above, to the extent possible.

**Appendix 1**

## Extracts from the Opinions and Reports of International Treaty Organizations regarding Refugee Status Recognition System in Japan

1) Extract from Concluding Observations by the Committee against Torture (May 29, 2013)

### C. Principal subjects of concern and recommendations

### Non-refoulement and detention pending deportation

9. The Committee expresses its concern about:
(a) The use of lengthy, and in some cases, indefinite detention for asylum seekers under a deportation order according to the Immigration Control and Refugee Recognition Act (ICRRA) as well as the lack of independent review of such detention decision;
(b) The restrictive use of alternatives to detention for asylum seekers;
(c) The lack of resources and authority of the Immigration Detention Facilities Visiting Committee to effectively discharge its mandate, as well as the appointment of its members by the Ministry of Justice and the Immigration Bureau;
(d) Detention of unaccompanied children in Child Consultation Centres, which are often overcrowded and lack resources for hiring interpreters;
(e) The lack of effective implementation of article 53(3) of the ICRRA, which prohibits the removal of a person to any country where he or she may be subject to torture, as proscribed in article 3 of the Convention (arts. 3, 11 and 16).

**In light of the previous recommendations made by the Committee (para. 14) as well as by the Special Rapporteur on the human rights of migrants, following his mission to Japan in 2011 (A/HRC/17/33/Add.3, para. 82), the State party should:**

**(a) Continue its efforts to bring all legislation and practices relating to the detention and deportation of immigrants or asylum seekers in line with the absolute principle of non-refoulement under article 3 of the Convention;**
**(b) Ensure that the detention of asylum seekers is only used as a last resort, and when necessary, for as short a period as possible, and introduce a maximum period of detention pending deportation;**
**(c) Further utilize alternatives to detention as provided for in the Immigration Control and Refugee Recognition Act;**
**(d) Strengthen the independence, authority and effectiveness of the Immigration Detention Facilities Visiting Committee, inter alia, by providing appropriate resources and authority to ensure effective monitoring detention centres and allowing them to receive and review**

**complaints from immigrants or asylum seekers in detention;**
**(e) Consider acceding to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Stateless.**

2) Extract from Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante to the Human Rights Council

**General background: the migration phenomenon in Japan**

7. With regard to refugees, since the ratification of the 1951 Convention relating to the Status of Refugees in 1981, the legislation provides for the recognition of refugees and granting of refugees status. However, in practice the Government is very reluctant to recognize refugees: in 2009, only 30 asylum-seekers were granted refugee status, while 501where given a permission to stay for humanitarian reasons.

3) Extract from Concluding Observations of the Committee on the Elimination of Racial Discrimination (April 6, 2010)

C. Concerns and Recommendations

23. The Committee notes with appreciation progress on the process of refugee status determination, but reiterates its concern that, according to some reports, different, preferential standards apply to asylum seekers from certain countries and that asylum seekers with different origins and in need of international protection have been forcibly returned to situations of risk. The Committee also expresses its concern over the problems recognized by refugees themselves including lack of proper access to asylum information, understanding about procedures, language/communication questions, and cultural disjunctions, including a lack of understanding by the public of refugee issues (art. 2, 5).

**The Committee reiterates its recommendation that the State party take the necessary measures to ensure standardized asylum procedures and equal entitlement to public services by all refugees. In this context, it also recommends that the State party ensure that all asylum -seekers have the right, inter alia, to an adequate standard of living an d medical care. The Committee also urges the State party to ensure, in accordance with article 5 (b), that no person will be forcibly returned to a country where there are substantial grounds for believing that his/her life or health may be put at risk. The Committee recommends that the State party seek cooperation with UNHCR in this regard.**

4) Extract from **Concluding observations of the Human Rights Committee** (October 30, 2008)

**C. Principal subjects of concern and recommendations**

25. The Committee notes with concern that the 2006 Immigration Control and Refugee Recognition Act does not expressly prohibit the return of asylum seekers to a country where there is a risk of torture, that the recognition rates for asylum seekers remain low in relation to the number of applications filed, and that there are often substantial delays in the refugee recognition process during which applicants are not allowed to work and receive only limited social assistance. It is also concerned that the possibility of filing an objection with the Minister of Justice against a negative asylum decision does not constitute an independent review because the refugee examination counselors advising the Minister upon review are not independently appointed and have no power to issue binding decisions. Lastly, it is concerned about reported cases where rejected asylum seekers have been deported before they could submit an objection against the negative decision on their application staying the execution of the deportation order. (arts. 7 and 13)

**The State party should consider amending the Immigration Control and Refugee Recognition Act, with a view to explicitly prohibiting the return of asylum seekers to countries where there is a risk of torture or other ill-treatment, and ensure that all asylum seekers have access to counsel, legal aid and an interpreter, as well as to adequate state-funded social assistance or employment during the entire length of proceedings. It should also establish an entirely independent appeal mechanism, including for applicants who are deemed to be "possible terrorists" by the Minister of Justice, and ensure that rejected applicants are not deported immediately after the conclusion of the administrative proceedings before they can submit an appeal against the negative asylum decision.**

5) Extract from Concluding Observations by the Committee against Torture (August 7, 2007)

Non-refoulement

14. The Committee is concerned that certain provisions in domestic law and practices of the State do not conform to article 3 of the Convention, and in particular*

(a) The 2006 Immigration Control and Refugee Recognition Act which does not expressly prohibit deportation to countries where there is a risk of torture; in addition, reviewing authorities do not systematically investigate the applicability of article 3;

(b) The lack of independent body to review the refugee recognition applications:

(c) The conditions of detention in landing prevention facilities and immigration detention centres, with numerous allegation s of violence, unlawful use of restraining devices during deportation, abuse, sexual harassment, lack of access to proper health care. In particular, the Committee is concerned that, so far, only one case in such detention center has been recognized as ill-treatment.

(d) The lack of an independent monitoring mechanism for immigration detention centres and landing prevention facilities, and in particular the lack of an independent agency to which detainees can complain about alleged violations by Immigration Bureau staff members. The Committee is also concerned that the criteria for the appointment of third-party refugee adjudication counsellors are not made public.

(e) The lack of an independent body to review decisions by immigration officials, in light of the fact that the Ministry of Justice does not allow refugee recognition applicants to select legal representatives at the first stage of application, and governmental legal assistance is de facto restricted for non-residents.

(g) The undue length of time asylum-seekers spend i n custody spend in custody between rejection of an asylum application and deportation, and in particular reports of cases of indefinite and long term detention;

(h) The strict character and limited effect of the provisional stay system adopted in the revised 2006 Immigration Law.
The State party should ensure that all measures and practices relating to the detention and deportation of immigrants are in full conformity with article 3 of the Convention. In particular, the State party should expressly prohibit deportation to countries where there are substantial grounds for believing that the individuals to be deported would be in danger of being subjected to torture, and should establish an independent body to review asylum applications. The State party should ensure due process in asylum applications and deportation proceedings and should establish without delay an independent authority to review complaints about treatment in immigration detention facilities. The State party should establish limits to the length of the detention period for persons awaiting deportation, in particular for vulnerable groups. and make public information concerning the requirement for detention after the issuance of a written deportation order.

## Appendix 2

List of cases where the Objections decision of denial or dismiss was later reversed at the court, and the eligibility for the refugee status was recognized

| | | | | | First Instance | | Objection | | | District Court | | High Court | | Month When Refugee Status was Recognized |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Country of Origin/Race | Male/ Female | Year of Birth | Arrival to Japan | Application | Rejection | Place of Interrogation | Date of Interrogation | Date of Rejection | Court and Case Number | Date of Judgment | Court and Case Number | Date of Judgment | |
| 1a | Myanmar/ Mon & Bamar | Male | 1971 | April 1996 | June 2004 | February 2005 | Tokyo | October 2005 | January 2006 | Tokyo District Court Cases 409&415, (*Gyou-u*) 2006 | January 16, 2008 | - | - | February 2008 |
| 1b | Myanmar/ Bamar | Female | 1966 | December 1996 | June 2004 | February 2005 | Tokyo | October 2005 | January 2006 | | | - | - | February 2008 |
| 2 | Myanmar/ Bamar | Male | 1967 | March 1998 | March 2005 | July 2005 | Tokyo | December 2005 | March 2006 | Tokyo District Court Case 491, (*Gyou-u*) 2006 | February 8, 2008 | Tokyo High Court Case 107, (*Gyou-ko*) 2008 | August 27, 2008 | October 2008 |
| 3 | Myanmar/ Chin | Male | 1951 | September 1992 | February 2005 | April 2005 | Tokyo | January 2006 | April 2006 | Tokyo District Court Case 408, (*Gyou-u*) 2005, and Case 274, (*Gyou-u*) 2006 | September 26, 2007 | Tokyo High Court Case 354, (*Gyou-ko*) 2007 | October 23, 2008 | December 2008 |
| 4 | Myanmar/ Bamar | Female | 1970 | November 1998 | March 2004 | April 2006 | Tokyo | February 2007 | April 2007 | Tokyo District Court Case 359, (*Gyou-u*) 2007 | August 22, 2008 | Tokyo High Court Case 320, (*Gyou-ko*) 2008 | February 19, 2009 | March 2009 |

| | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 5 | Myanmar/ Bamar | Male | 1968 | May 1997 | May 2004 | November 2005 | Tokyo | June 2006 | January 2007 | Tokyo District Court Case 486, (*Gyou-u*) 2007 | September 9, 2008 | Tokyo High Court Case 329, (*Gyou-ko*) 2008 | April 30, 2009 | August 2009 |
| 6a | Myanmar/ Shan | Female | 1969 | December 1999 | March 2004 | November 2005 | Tokyo | May 2006 | September 2006 | Tokyo District Court Cases 596 & 609, (*Gyou-u*) 2006, and Cases 115 & 116, (*Gyou-u*) 2007 | March 28, 2008 | Tokyo High Court Case 36, (*Gyou-u*) 2008 | May 27, 2009 | August 2009 |
| 6b | Myanmar/ Chinese | Male | 1968 | January 1999 | March 2004 | November 2005 | Tokyo | May 2006 | September 2006 | | | | May 27, 2009 | August 2009 |
| 7 | Myanmar/ Bamar | Male | 1967 | September 1998 | April 2004 | November 2005 | Tokyo | July 2006 | January 2007 | Tokyo District Court Case 328 (*Gyou-u*) 2006 | June 27, 2008 | Tokyo High Court Case 267, (*Gyou-ko*) 2008 | April 30, 2009 | August 2009 |
| 8 | Myanmar/ Bamar | Female | 1954 | October 1992 | July 2004 | April 2006 | Tokyo | May 2006 | April 2007 | Tokyo District Court Cases 649 & 650, (*Gyou-u*) 2007 | January 20, 2009 | Tokyo High Court Case 48, (*Gyou-ko*) 2009 | September 16, 2009 | November 2009 |
| 9a | Myanmar/ Bamar | Female | 1966 | February 1993 | June 2006 | August 2006 | Tokyo | July 2007 | October 2007 | Tokyo District Court Case 273, (*Gyou-u*) 2008 | January 29, 2010 | - | - | March 2010 |
| 9b | Myanmar/ Bamar | Male | 1948 | February 1992 | July 2006 | August 2006 | Tokyo | July 2007 | October 2007 | | | - | - | March 2010 |

| | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 10 | Myanmar/ Kachin | Male | 1972 | July 2004 | November 2005 | December 2005 | Tokyo | April 2006 | July 2006 | Fukuoka District Court Case 8, (*Gyou-u*) 2007 | March 8, 2010 | - | - | 2010 |
| 11 | Myanmar/ Rohingya | Male | 1968 | January 2006 | January 2006 | July 2006 | Tokyo | March 2007 | May 2007 | Tokyo District Court Case 493, (*Gyou-u*) 2007 | October 29, 2010 | - | - | December 2010 |
| 12 | Myanmar/ Rohingya | Male | 1979 | June 2006 | June 2006 | August 2006 | Omura | January 2007 | April 2007 | Tokyo District Court Case 493, (*Gyou-u*) 2007 | October 29, 2010 | - | - | December 2010 |
| 13 | Myanmar/ Chin | Female | 1980 | October 2005 | December 2005 | September 2007 | Tokyo | April 2008 | September 2008 | Tokyo District Court Case 126, (*Gyou-u*) 2009 | November 12, 2010 | - | - | December 2010 |
| 14 | Ethiopia | Female | Not known | July 2007 | July 2007 | August 2007 | Tokyo | Not known | December 2008 | Tokyo District Court Case 132, (*Gyou-u*) 2009 | October 1, 2010 | - | - | December 2010 |
| 15 | Myanmar/ Bamar | Male | 1978 | October 2002 | July 2006 | November 2007 | Osaka | April 2008 | February 2009 | Nagoya District Court Case 36, (*Gyou-u*) 2008 | December 13, 2010 | - | - | 2011 |
| 16 | Myanmar/ Rohingya | Male | 1986 | May 2006 | May 2006 | June 2006 | Omura | October 2006 | January 2007 | Fukuoka District Court Case 38, (*Gyou-u*) 2007 | April 22, 2010 | Fukuoka High Court Case 17, (*Gyou-u*) 2007 | March 24, 2011 | 2011 |

| | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 17 | Myanmar/ Rohingya | Male | 1969 | June 2006 | June 2006 | August 2006 | Omura | December 2006 | February 2007 | Tokyo District Court Case 45, (*Gyou-u*) 2007 | March 23, 2010 | Fukuoka High Court Case 13, (*Gyou-ko*) 2010 | April 28, 2011 | 2011 |
| 18 | Sri Lanka/Tamil | Male | 1960 | September 2006 | October 2006 | November 2006 | Baraki | March 2007 | May 2007 | Osaka District Court Case 146, (*Gyou-u*) 2007 | March 30, 2011 | - | - | Rejected again in November 2011, Special Residence Permission on the grounds of Humanitarian Consideration |
| 19 | Myanmar/ Chin | Female | 1980 | October 2003 | February 2005 | July 2007 | Tokyo | May 2008 | September 2008 | Tokyo District Court Case 144, (*Gyou-u*) 2009 | June 8, 2010 | Tokyo High Court Case 228, (*Gyou-ko*) 2010 | April 26, 2012 | May 2012 |
| 20 | Myanmar/ Chin | Male | 1976 | March 2006 | March 2006 | September 2008 | Tokyo | October 2009 | | Tokyo District Court Case 73, (*Gyou-u*) 2011 | April 13, 2012 | - | - | May 2012 |
| 21 | Uganda | Male | Not known | April 2006 | January 2009 | January 2009 | Tokyo | Not known | July 2010 | Osaka District Court Case 154, (*Gyou-ko*) 2009 | February 27, 2013 | Osaka High Court Case 54, (*Gyou-ko*) 2012 | February 27, 2013 | April 2013 |

| | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 22 | Myanmar/ Rohingya | Male | 1976 | May 2006 | May 2006 | June 2006 | Tokyo | April 2007 | October 2007 | Tokyo District Court Case 493, (*Gyou-u*) 2007 | October 29, 2010 | Tokyo High Court Case 397, (*Gyou-ko*) 2010 | September 12, 2012 | November 2012 |