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Open the Door -- Japan's Policy of Exclusion of Refugees (Part 2)

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By Iwasaki Atsuko

The first part of this series reporting Japan's restrictive immigration policy, revealed the cruel treatment Kurdish and Afghani asylum seekers received at the hands of the Ministry of Justice as they applied for refugee status. The second and final part of this series provides an in-depth analysis of the attitudes creating these structural barriers.

New Amendments: Bringing Neither Transparency Nor Independence

Japan is not poor. It is also a leading international aid donor. In 2004 Japan contributed $81.7 million to the UNHCR, the second largest amount after the United States. It finds it easy to give money but difficult to accept people. For example, between 1982, when Japan started to recognise asylum seekers in line with the 1951 Convention, and 2004, Japan received 3,544 applications for refugee status but granted refugee status to only 330. During the 1990s, Japan granted asylum on average just once or twice a year. Although the number has increased gradually since then, in 2004, it still only admitted 15 refugees, a figure itself augmented by successful appeals. In the same year, the UK accepted 12,925 refugees, the US, 21,148, and France 15,866.

As a result, according to 2004 UNHCR data, Japan ranks an embarrassing 98 th in refugee acceptance worldwide. Among the top 30 industrialised countries, it ranks last. When measured by gross domestic product, and using figures for 1998-2002, it was even lower at 126 th, and by population, it was 139 th among 163 countries (see tables below). Over 600 Turkish Kurds have applied for refugee status since 1982, but not one has been accepted. Elsewhere, the acceptance rate for Kurdish asylum seekers is markedly different. In 2001, according to a 2005 *Newsweek* article, it was 19 percent in Germany, 33 percent in Switzerland and 77 percent in Canada.

The MOJ defends its record, stating that few people really want to come to Japan. "At first, the number of asylum applications to Japan was small, perhaps because of the uniqueness of language, culture and distance from their original countries," said Okabe Choichiro, a press assistant manager of the MOJ Immigration Bureau. "For anyone who can – and wants to – apply for asylum here, we observe the law. When viewed by recognition rate, Japan's record is not necessarily low," he said.

A staff member of an NGO that supports asylum seekers in Tokyo also noted, "It is too simple just to mention the number of refugee recognitions. Japan does not have a long history of accepting refugees. It differs from European countries that do and from 'immigrant states' such as the US and Australia. Most ordinary Japanese might hesitate to have foreigners as neighbours," she said. "We should not forget the feelings of ordinary people. We need to improve our feelings toward refugees gradually. If we go too fast, it may make it difficult for refugees to settle in Japan."

But a quarter century has passed since Japan's 1981 ratification of the 1951 Convention. The progress is too slow.

Ohashi Takeshi, a lawyer who supports asylum seekers, said, "The refugee recognition ratio is nonsense. Airport immigration officers prevent a large number of foreigners from entering Japan and deport them. For example, more than one hundred Turks are rejected at Japanese airports every year. This would include potential asylum seekers." Amnesty International's 2002 report " *Japan: Welcome to Japan?*" sharply criticised official policy. Asylum seekers have been denied entry to Japan, and when allowed in have been denied access to a fair and satisfactory asylum procedure. Furthermore, many have been forced to sign documents in languages they do not understand and whose content has not been adequately explained. According to the report, these documents may include a statement waiving the right to appeal decisions made by the immigration officials.

Mr Ohashi also pointed out that a number of potential asylum seekers are reluctant to apply for refugee status, because they know that Japan rarely accepts refugees. "To apply for refugee status often means an immediate threat to personal well being," he said. If the ministry rejects asylum status, failed applicants have to report to the Immigration Bureau every month to renew their provisional release even though appeals or trials against the MOJ's decisions are pending. Worries about deportation and detention are all too real. "Actually, it is safer for them to overstay, because it lowers the chances that the Immigration Bureau will find them."

Moreover, the refugee status determination procedure itself has serious problems. Concerned lawyers and scholars point out that the whole procedure lacks the transparency of due process and of independence from the politics. They also note that because the same immigration officers tasked with preventing foreigners from illegally entering Japan also judge asylum status, they can rarely make distinctions between the two based on human rights.

Responding to criticism, the Japanese government amended its Immigration Control and Refugee Recognition Act (ICRRA) in 2004 for the first time in its 23-year history. The amended measures have been in force since May 2005. The main points of the amended act include the abolition of the 60-day time limit to apply for asylum, the introduction of "Permission for Provisional Stay" pending the outcome of the asylum procedure, and the reform of the appeal process through the introduction of "Refugee Adjudication Counsellors (RAC)" in the review process.

Watanabe Shogo, a representative lawyer of the National Refugee Legal Team Association (NRLTA), welcomed the reform. "Since third parties have joined the process, the procedure has the possibility of improvement." But he was alarmed that, depending on circumstances, the reform could actually be worse for those seeking refugee statuses. "The amended ICRRA guarantees neither independence nor transparency of the determination procedure, the most criticized aspects of the old law."

The reform act established the RAC system within the appeal process. What this means is that 19 counsellors from the public will examine appeals. But the MOJ itself has appointed all counsellors and these can only give recommendations to the MOJ. They lack decision-making powers. Additionally, considering their task, one might expect such counsellors to have a basic knowledge of refugee law, but few do. "I doubt whether these counsellors can guarantee asylum appeal impartiality," Mr Watanabe said. In Australia, lawyers who specialize in refugee and immigration law and possess cross-cultural communication skills fill these positions, not government employees. In most Western countries, such as in the UK, France and Germany, the appeal institution is independent from the authority that passes first judgement upon asylum applications. Worse, even during the appeal process, the MOJ is not obligated to explain in any detail its initial reasons for rejecting asylum applications.

As for the 'Permission for Provisional Stay' designation, it is limited to asylum seekers who have applied for asylum within 6 months of arrival and who have come 'directly' from a territory where their lives, physical security or physical freedom was threatened. It is very difficult for most asylum seekers to fulfil

these criteria. In fact, from May 2005 until the end of June 2005, only 35 qualified among 292 applicants.

History: A gate open for some, closed for most

Behind the closed refugee policy, a history of accepting refugees slanted towards national interest emerges contrary to the perception that Japan does not have much experience in accepting refugees. From the 5th century, large numbers of Koreans, victims of wars between competing states, fled the Korean peninsula to Japan, according to Homma Hiroshi, a professor of law at Hosei University. Given the fact that the Korean peninsula was more developed than Japan, many were assimilated well and made valuable cultural and productive contributions.

Japan continued to accept both immigrants and refugees from neighbouring lands, until the Tokugawa closed Japan to outsiders in the years 1600-1868. This action was taken ostensibly to protect the country from Christianity and from invasion by Western powers in the 17th century. In the late 19th century, Japan's reformist Meiji government opened Japan once more to the outside world. But a closed-society mentality, nurtured during the Tokugawa era, persisted at the grassroots level, according to Professor Homma.

Japan did accept White Russian refugees after WWI and Jewish refugees during WWII. However, those accepted tended to be the wealthy or intellectual elite. After the Vietnam War, the government accepted around 10,000 ' Indochina refugees' for resettlement between 1978 and 1984. This was done by cabinet decision under immense American pressure. But it proved to be an exception rather than the beginning of a new openness. Professor Homma concluded, "In 1981, Japan ratified the 1951 Convention, but closed attitudes towards foreigners have not changed, nor has accepting asylum seekers regardless of national interests."

Rikkyo University social science professor Miyajima Takashi explained, "Western countries try to distinguish between refugees and immigrant workers, even though this does not always work in practise. Those countries try to treat refugee issues as a matter of human rights, not a foreign worker problem reflecting national economic interests." However, Japan's inclination is to follow these interests. Furthermore, "Recognition of refugees means that Japan acknowledges that the countries of origin are dictatorships or anti-democratic, which Japan hesitates to do."

Miyajima also noted that few Japanese have ever sought political asylum, In Japan dissidents had to choose between prison and recantation, and to flee abroad was seen as 'betrayal'. In this perspective one can see why many asylum seekers in Japan are viewed with disdain. "Japanese may doubt that defection is a justifiable action," Professor Miyajima said.

Popular images of refugees in Japan are dominated by media portrayals of precarious refugee camps in Africa, sadly leading to misplaced biases that a refugee is, in Miyajima's words, "poor, dirty and having a weak existence without the right of protection under international laws." "The Japanese public is often confused by the semantic distinctions among the words 'refugee', 'immigrant', 'armed refugee' and 'economic refugee and tend to label all refugees negatively." Other reasons against accepting immigrants emphasise the economic costs of granting asylum, which Professor Miyajima disputed. "Those opponents only talk about welfare and housing costs without considering the refugees' contribution to Japan's economy. It does not make sense."

Other observers see nationalism and xenophobia behind Japan's asylum policy. These reach down to the level of popular prejudice. Support groups report that asylum seekers often encounter housing and job discrimination. Such attitudes have distinct racial bias overtones, according to Tsutsui Shiho, a secretary-general of the Japan Association for Refugees, an NGO which supports asylum seekers. "There are too many walls," she said.

Kato Takashi, a professor of social science at Seikei University, said, "The myth of Japan as 'mono-ethnic and mono-culture' ... still pervades Japanese society and discourages multiculturalism. Sixty years have passed since World War II. We need to look again at our country, whether it opens up to the world, and whether we are open to new people and new ideas or not."

The Future: An awakening of international responsibility

In recent years, small victories have been won. Although between 1982 and 1996 the MOJ prevailed in all court actions brought against it by disappointed asylum seekers, since 1997 several of its decisions have been overturned. A breakthrough came in October 1997 when for the first time the Nagoya District Court reversed the MOJ's rejection of a Pakistani national's application for asylum. In March 2002, the Tokyo District Court determined that the detention of a number of Afghans was illegal. Asylum seekers won six rulings against the MOJ in 2003, ten in 2004 in district courts, and in June 2005, the Osaka High Court overturned the MOJ's rejection of a Burmese asylum seeker and admitted him as a refugee. This was the first time a high court had overturned a government decision. Ali Jan, a Hazara asylum seeker whose case was described in part one, won in the Tokyo District Court in November 2005, although the MOJ immediately appealed to a High Court.

The continuing efforts of lawyers and asylum seekers to bring about change are significant. K, a 41-year-old Burmese asylum seeker, sued the Japanese government in Tokyo District Court in April 2005 claiming compensation for mental and physical pains suffered in a detention centre. He received a residence permit from the MOJ in March 2005, after the MOJ withdrew its deportation order the same month. Before that, he spent eighteen months in detention. "Why does democratic Japan do these things? I can't understand why it doesn't accept refugees even though it contributes so much money to the UNHCR. I want Japan to practice democracy and observe human rights," he emphasised.

Arakaki Osamu, an associate professor of International Relations at Shigakukan University, explained. "We have to place refugee issues within a larger context that includes poverty, peace reconciliation and conflicts During WWII, too many countries failed to open their doors to Jewish refugees, a terrible thing."

He continued, "If Japan is awarded a permanent seat on the UN Security Council it will place our country in a good position to act as a bridge between Asian and Western countries. Therefore Japan should take the lead in setting standards over refugee issues in Asia. For example, during the Afghan War, Japan should have established a program to help Afghan refugees in Japan; it should have offered the refugees further educational possibilities and professional training and thus do something for Afghanistan's future, instead of seizing and deporting its distressed nationals."

Some Japanese fear that, if too many people flee North Korea or China and seek asylum, it might threaten social stability, like the bombing outrages on London transport in July 2005. To this, Dr Arakaki countered, "In the Cold War, refugees could have been used as political means by powers. But asylum seekers themselves have not 'militarized' or 'terrorized'. Asylum seekers in some places might become radicalised through poverty and discrimination in the host country. It is very important to help asylum seekers once they have been accepted."" Ishikawa Eri, a senior researcher of the Japan Association for Refugees also said, "International society prepares special measures in preparation for an outbreak of refugees. We should consider separately cases of individuals and of massive flows."

Allan Mackey, the former president of the International Association of Refugee Law Judges summed up: "In 1951, the international community established a refugee convention. Its purpose was to allow distressed people to escape persecution, for reasons of race, religion, nationality, and membership in a particular social or political group by providing protection."

The 1951 convention is right based, describing what rights a host country should extend to refugees. There is also an important clause, which prevents states from opting out once they have signed on. It is thus wrong to conflate the international surrogate protection issues of asylum with those of domestic immigration policy, which a country can enact statutes and amend as it sees fit, too far. While there might be some terminological overlap, this can lead to confusion in many countries and that is regrettable,"" he said.

Interview

Meryll Dean ,professor and head of the law department at Oxford Brookes University and specialist in Japanese law

Japan should act responsibly in the international community

The problem of Japanese refugee recognition status procedures is a matter of politics as well as of law.

The issue of Chinese asylum seekers demonstrates this dramatically. China is the third largest refugee producing country in the world. Although Japan is a close neighbour, it has accepted only three Chinese refugees in 23 years. None of these were adherents of the Falun Gong sect, although many other countries, since 1999, have accorded such individuals' refugee status.

Moreover, in conducting research I have found what appears to be a gentlemen's agreement between the Coast Guards of China and Japan. Under informal arrangement, any Chinese coming, without permission, by boat to Japan, will be automatically returned to the Chinese authorities.

This could conceivably include asylum seekers and thus would go against the *non-refoulement* principle. Because China never takes back failed asylum seekers, they face pretty certain death. But this does not matter so much to Japan where officials often seek to placate China and are always worried about immigration.

Apparently, in the event that the UNHCR grants mandated refugee status to asylum seekers, Japan will ask that organisation to find a third country for those individuals to settle in rather than accept them in Japan. One ought to ask why a country with the world's second largest economy seeks to pass responsibility onto others. Japan does make large monetary contributions to international organisations but when it comes to dealing with people and having them live in Japan it is far less willing to do its share. Other Asian countries have contributed far more in this respect.

How one helps refugees reflects the way one respects human rights. Japan needs to examine its full obligations under international law and recognise that several of its actions in the past have fallen well short of those obligations.

Japan amended its ICRRA statute last year. That was a good move, but I don't believe the lack of transparency and accountability of the refugee recognition status procedure has been addressed. Japan needs to revise the refugee law again, and bring it up to 21 st century standards.

Japan would prefer to deal with refugees at a distance, through financial aid. It does not really want them inside Japan. What do exist in Japan are xenophobia and a lack of respect for human rights. With Japan seeking a permanent Security Council stea, now is a good time for the international community to apply pressure on Japan for a more humane refugee policy.

Tables

Contributions to 2004 UNHCR programmes (in United States Dollars)

situation as at 31 December 2004

	Donor	Contributions
1	United States of America	302,252,199
2	Japan	81,751,782
3	European Commission	80,520,350
4	Netherlands	78,979,855
5	Sweden	60,835,788

Source: UNHCR 'Contributions to 2004 UNHCR programmes'

How host countries rank in granting of refugee status (1998-2002)

When measured by host country gross domestic product

Japan	126
Germany	51
United States of America	58
United Kingdom	74
Netherlands	76

When measured in terms of host country territorial size (per 1,000 Square km)

Japan	112
Netherlands	8
Germany	14
United Kingdom	29
United States of America	68

When measured by host country population size (per 1,000)

Japan	139
Germany	31

Source: UNHCR Statistical Year Book 2002

Asylum applications and refugee status determination by country of asylum, 2004.

Source: UNHCR '2004 Global Refugee Trends and Asylum Levels' and 'Trends in Industrialized Countries, 2004'

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Netherlands	32
United Kingdom	56
United States of America	67