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£JAPAN

@Fear for the safety of 11 Burmese denied refugee status

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On 17 November 11 applications for asylum were turned down by the Japanese Government on the sole grounds that they had been submitted too late. The Ministry of Justice took one year and 11 months to come to this decision, without considering the substance of the applications. The applicants are nationals of Myanmar (Burma) who Amnesty International believes may face arbitrary detention and torture if they are returned to Myanmar.

The 11 whose applications were rejected are: Kyaw Soe Moe, Myo Myint Htut, Kyaw Zaw, Than Htay, Banya Zaw, Khin Maung Zaw, Gong Aung, Win Myint Oo, Tin Kyi, Nyi Nyi Than and Maung Maung Thin¹. Amnesty International believes that the Japanese Government has failed to abide by its international obligations towards these asylum seekers by denying them access to a fair and satisfactory procedure for assessing the merits of their claims. It is also concerned that other asylum seekers may now be rejected for submitting late applications, regardless of the risks of human rights violations they face in their countries of origin.

Under the Immigration Control and Refugee Recognition Act, applications for asylum "must be submitted within 60 days after the day the person landed in Japan". The time limit may be waived in "unavoidable circumstances", but the Japanese authorities have restricted this to cases where it was physically impossible to lodge an application for asylum. Amnesty International knows of cases where immigration offices in Japan have refused even to register an application if it was made after expiry of the 60-day limit. In the case of the 11 Burmese, it is clear that the authorities have used the 60-day rule to reject their applications without considering the substance of the claim. The Ministry of Justice took almost two years to come to this decision. Amnesty International has interviewed a number of the Burmese who

¹Two other Burmese also applied for asylum in late 1992 and their applications are still pending.

have applied for asylum and believes that there is a substantial risk that they could risk arbitrary detention and torture if returned to Myanmar.

According to unofficial estimates there are over 7,000 Burmese living "illegally" in Japan. It is impossible to estimate accurately how many of these people fear returning to Myanmar for political reasons. However the Burmese Association in Japan has registered some 1,000 members who would be at risk of human rights violations if returned to Myanmar, given that the Burmese Association in Japan is opposed to the current government in Myanmar and is affiliated to other prominent Burmese opposition groups abroad. In addition, many other nationals of Myanmar who are not members of this association are reported to have participated in demonstrations in Japan against the military government in Myanmar, a fact that means they would also be at risk of human rights violations if they were returned to Myanmar. The Myanmar Embassy in Tokyo is said to have prepared a "blacklist" with the names of over 500 Burmese living in Japan.

In spite of the large numbers of Burmese in Japan at risk of human rights violations if returned to Myanmar, only 38 have submitted applications for asylum since 1992. Burmese who are "illegally" resident in Japan and who fear returning to Myanmar are often reluctant to apply for asylum to the Japanese authorities. Amnesty International has been told that many Burmese are afraid that if they apply for asylum the Japanese authorities may notify the Myanmar Embassy of this fact and they fear that members of their families in Myanmar will suffer reprisals. Many Burmese living "illegally" in Japan fear that if they report themselves to the immigration authorities for the purpose of applying for refugee status, they will be detained and deported to Myanmar.

The 11 Burmese were so afraid to exercise their right to apply for asylum that in September 1992 they petitioned the Human Rights Committee of the Japan Federation of Bar Associations (JFBA) asking for the "protection" and assistance of the JFBA in submitting asylum applications. Amnesty International understands that they were unwilling to approach the immigration authorities on their own, despite their clear right under Japanese law to do so.

In December 1992 with the assistance of the JFBA the 11 submitted applications for asylum to the Ministry of Justice and in July 1993 they also submitted a written explanation for the delay in making their applications. Their lawyers, however, were told that the authorities would have to review these reasons before deciding whether or not to consider the applications and that unless there were "unavoidable circumstances" to explain the delay in applying, the substance of the claims would not be considered. When the 11 applicants were called for interview, in September 1993, their lawyers were not allowed to be present.

On 17 November 1994, almost two years after the applications had been submitted, they were rejected by the Immigration Department of the Ministry of Justice on a point of procedure. The 11 were notified that their application had been made "after passing of the period provided for in Article 61(2), paragraph 2 of the Immigration Control and Refugee Recognition Act". No further explanation was given.

Japan is a signatory to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and as such has expressly undertaken certain obligations towards refugees and asylum-seekers. Article 33 of the Convention states that:

"No contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account

of his race, religion, nationality, membership of a particular social group or political opinion."

The government's rigid application of the 60-day rule is a violation of internationally agreed standards. The Executive Committee of the Programme of the United Nations High Commissioner for Refugees (UNHCR) has stated that:

"While asylum-seekers may be required to submit their asylum request within a certain time limit, failure to do so, or the non-fulfilment of other formal requirements, should not lead to an asylum request being excluded from consideration.

The 11 Burmese have filed an "objection" [appeal] to the Ministry of Justice. If their appeal is rejected they face deportation to Myanmar where they risk grave human rights violations.

On a number of occasions Amnesty International has expressed concern to the Japanese Government about the inadequacies of its asylum procedure and has urged the government to ensure that all asylum-seekers arriving in Japan have access to a fair and satisfactory procedure for assessing their claims. It has urged the government to modify the 60-day rule so that in no case should failure to meet time limits in itself lead to a refusal to consider the substance of the claim. Amnesty International's concerns are described in two reports: *Japan, inadequate protection for refugees and asylum seekers (ASA 22/01/93)*, issued in May 1993 and *Japan, asylum seekers still at risk (ASA 22/01/94)*, issued in January 1994

RECOMMENDED ACTION

Please send appeals on behalf of the 11 Burmese who face deportation from Japan:

- ◆ expressing concern that the Japanese Government has rejected their applications for asylum on a procedural point, without assessing the substance of their claims;
- ◆ urging the government not to return them to Myanmar where they risk human rights violations.

Appeals to:

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Mr Mizukami Yoichiro, Director
Refugee Recognition Department
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This appeal has been sent to KOTARAN coordinators and to Refugee Coordinators.

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