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JAPAN

Welcome to Japan?

The Landing Prevention Facility (*Jouriku Boushi Shisetsu* or LPF hereafter) was first drawn to Amnesty International's attention in June 2000 when two Tunisian male tourists were reportedly beaten by staff belonging to a private security agency X (not real name of the security agency) in Narita Airport. During their five day detention at the LPF, the two men were denied access to

Foreign nationals entering Japan may be at risk of ill-treatment by immigration authorities during interrogations at Special Examination Rooms and by private security guards in detention facilities located at Japanese ports of entry, including Narita Airport.

During the period after denial of entry into Japan and before they were issued "orders to leave" or issued deportation orders, foreign nationals have allegedly been detained in detention facilities located within the airport premises known as Landing Prevention Facilities (LPFs) or at an "Airport Rest House" outside the airport site. Amnesty International has found evidence of ill-treatment of detainees at LPFs. It forms part of a pattern of arbitrary denial of entry to foreign nationals and systematic detention of those denied entry - a process which falls short of international standards. Amnesty International has received reports of detained foreign nationals being forced to pay for their "room and board" and for being guarded by private security agencies that operate the LPFs. Foreign nationals have allegedly been strip-searched, beaten or denied food by security guards at these facilities if they have

been unwilling to pay. The LPFs have detention cells that have no windows and there have been reports of foreign nationals being detained in these cells for several weeks without sunlight¹ and not being allowed to exercise.

Asylum-seekers have also had their requests for asylum rejected with no or inadequate consideration of the serious risk to their lives they face on deportation. These asylum seekers have been denied access to a fair and satisfactory asylum procedure; they are frequently not allowed access to interpreters and lawyers. Furthermore, they are forced to sign documents in languages they do not understand and of the content of which they have not been adequately informed. These documents may include a document signed by the deportee waiving his or her rights to appeal against decisions made by the immigration officials such as denial of entry into Japan. Amnesty International believes that the lack of access to independent inspections and the secrecy that surround LPFs and other centres of detention in Japan make them fertile ground for human rights abuses. Detained foreign nationals in the LPFs or immigration detention centres are not informed adequately about their rights. In particular, they do not always have prompt access to a lawyer

¹ There have been instances when foreign nationals have been detained in the LPF for many months. For instance, in September 1997 an Iranian man who arrived in Narita Airport in transit to Canada, was found by immigration officials to possess a Canadian passport belonging to another person. He claimed that his life was in danger in Iran and applied for refugee status in April 1998. He was allegedly detained in the LPF for some seven months from September 1997 to April 1998 before he was transferred to the East Japan Immigration Centre in Ushiku. Immigration officials claimed that he could not be released as they could not identify his nationality.

or advice in a language they understand. The Japanese government should recognize the rights of people in detention to information, legal counsel, access to the outside world and adequate medical treatment. Those who had sought to contact United Nations High Commissioner for Refugees (UNHCR) have had their request turned down. In many cases, detainees at LPFs have been refused medical treatment by staff of security companies and by immigration officials. Decisions and actions of immigration officials and staff of security companies reveal a widespread lack of awareness of international human rights standards.

This report highlights Amnesty International's concerns at the procedure adopted by immigration authorities and the abuses within the LPFs. It documents examples of discrimination that have underlined the arbitrary denial of entry to Japan. The report details cases where foreign nationals, including asylum-seekers, have been denied entry to Japan and have been detained in detention facilities like the LPF and have been threatened with deportation. The report also highlights cases of ill-treatment suffered by foreign nationals in detention at the LPF in recent years. These incidents suggest that, in practice, Japan has failed to respect its obligations under international human rights standards.

Concerns about procedures adopted by immigration authorities and the abuses within Landing Prevention Facilities: falling short of international standards

Amnesty International is concerned

→ about reported ill-treatment in the course of interrogations and the process of deportation or exclusion of foreign nationals who are

denied entry to Japan and are detained at the LPF or at an 'Airport Rest House' outside the airport. Ill-treatment is alleged to have taken place during different stages of interrogations conducted by immigration authorities. Such treatment is alleged to have taken place during interrogations shortly after foreign nationals have landed in Narita airport and where the decision to deny entry to the foreign national is made. Additionally, ill-treatment has been alleged during interrogations held by immigration officials during subsequent detention of foreign nationals in the LPFs. These interrogations are allegedly held to force foreign nationals to sign documents waiving their rights to appeal against decisions by immigration authorities.² Ill-treatment of those in detention constitutes a violation of Articles 7 and 10 of the International Covenant of Civil and Political Rights (ICCPR)³

² Once the immigration officials confirm the decision to deny entry to Japan, foreign nationals are asked to sign a document which waives their rights to appeal against the decision of the immigration officials. *It appears that only if the foreign national signs this document, the "order to leave" can be issued. When the foreign nationals have shown unwillingness to sign the no-objection document, immigration officials have allegedly resorted to several interviews lasting many hours. There have been allegations that officers have threatened and intimidated foreign nationals to sign this document.*

³ Article 7 of the ICCPR states that, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment," while Article 10(1) of the ICCPR states that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

which Japan ratified in June 1979. The failure of the Japanese government to initiate a prompt and impartial investigation into these allegations constitutes a violation of Article 12 of the Convention against Torture⁴ which Japan acceded in June 1999. The ICCPR also carries with it a duty on states to ensure that complaints about torture or cruel, inhuman or degrading treatment must be investigated promptly and impartially by competent authorities;⁵

⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁵ Paragraph 14 of General Comment 20 by the Human Rights Committee states that complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective. In order to implement this, Paragraph 14 states that Article 7 of the ICCPR should be read in conjunction with article 2, paragraph 3 (of the ICCPR).

→ that there have been incidents where the immigration authorities have failed to provide adequate translation facilities while questioning foreign nationals in Special Examination Rooms at Narita Airport to determine their status. This failure to provide adequate interpretation facilities constitutes the non-observance of Principle 14 of the 1988 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles)⁶;

→ that some detainees at the LPF have been held incommunicado. They have often been denied access to their families in violation of Principles 16 (1)⁷ and 19⁸ of the Body of

⁶ Principle 14 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that "A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands information ... and to have assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest."

⁷ Principle 16 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that "Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention..."

⁸ According to Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, "A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world,

Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; they have also reportedly not been allowed to communicate with their consular or diplomatic missions in Japan or to contact representatives of the UN High Commissioner for Refugees (UNHCR) in contravention of Principle 16 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment⁹ and international standards for refugee determination. Detainees have also not been allowed to communicate with independent legal advisors in violation of Principle 17 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;¹⁰

subject to reasonable conditions and restrictions as specified by law or lawful regulations.”

⁹ Principle 16 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that “If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which he is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee under the protection of an intergovernmental organization.”

¹⁰ According to Principle 17 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, “(1) A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable

facilities for exercising it. (2) If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.”

- that detainees were only informed verbally by immigration officials at entry ports in Japan including Narita Airport about the refugee status determination process and that information on the procedure in Narita Airport was not available freely. Immigration officials informed an Amnesty International delegation in December 2000 that they only kept pamphlets containing information on the refugee status determination procedure in Japanese at Narita airport. It appears that detainees are not given any written information on the asylum procedure in Japan in a language that they can understand. The failure to provide adequate information about the rights of detainees in a language that they can understand constitutes non-observation of Principles 13¹¹ and 14 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- that many asylum-seekers are denied access to fair and satisfactory asylum procedures by the immigration authorities. Denial of access to a fair and satisfactory asylum procedure, to independent legal counsel and to the UNHCR may lead to

¹¹According to Principle 13 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, "Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail of himself of such rights."

refoulement. The principle of *non-refoulement* is enshrined in the 1951 Convention relating to the Status of Refugees¹¹ and the 1984 Convention against Torture,¹² to both of which Japan is a state party.

The law and practice of an arbitrary 'fast-track' detention-deportation procedure: providing opportunities for human rights abuses

The two Tunisian nationals mentioned above are among thousands of foreign nationals who are detained in the LPF at Narita Airport every year, prior to being deported on the next available flight of the same air carrier on which they had flown into Japan. Detention at the LPF, or at an "Airport Rest House", forms part of the procedure followed by Japanese authorities after foreign nationals are refused entry and before they are deported from Japan (the *Jouriku Boushi Gyomu* procedure).

¹¹Article 33 of the Refugee Convention defines state party's responsibility on *prohibition of expulsion or return* ("*refoulement*")

¹²Article 3 of the Convention against Torture states that

1. No State Party shall expel, return ("*refouler*") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

The legal framework for this procedure is provided for in the Immigration Control and Refugee Recognition Act (the ICRR Act). This Act provides for a Special Inquiry Officer to interview a foreign national once an Immigration Inspector finds that his or her documents to enter or depart do not conform with requirements of the Ministry of Justice Ordinance (Article 6(2) and 9(4) of the ICRR Act provides for this procedure). If the Special Inquiry Officer finds as a result of the interview that the foreign national does not meet conditions of landing (provided for in Article 7(1)), the officer has to inform the foreign national of this decision, and give reasons for that decision (Article 10(9)).

These interviews do not meet international standards, in particular denial of access to adequate interpretation facilities¹³ and have resulted in ill-treatment of foreign nationals. For example, there have been allegations that foreign nationals, some of whom may have been asylum-seekers, have not had access to adequate interpretation facilities during such interviews, which at times have lasted several hours.

¹³ Paragraph 14 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment as cited above in Footnote no.6, p.4.

In practice, after “the order to leave” is issued, these foreign nationals are handed over to the air carrier or shipping company which brought them to Japan. The air carrier or shipping company then assumes responsibility- in terms of security and expenses - to prevent entry of these foreign nationals into Japan and to ensure that they are transported out of Japan. To prevent escape and entry by these foreign nationals, air carriers or shipping companies have been known to detain them before their deportation at the LPF or at an “Airport Rest

→ In September 2001, Ali Ahmad, a 19 year old Afghan asylum-seeker, was yelled at by immigration officials during his detention. He was scared and felt that he should sign a document to be deported. He was intimidated by immigration officials and signed a document to be deported. He was later granted special permission to stay. (See Kamal case, page 12)

→ In March 1997, Ahmed, a Pakistani asylum-seeker, was subjected to several interviews where he claims that he was pushed, yelled at by immigration officials to sign a no-objection document. He alleges that immigration officials threatened him with beatings, but he steadfastly refused to sign the document. After at least a month's detention at the LPF and several months of subsequent detention at the East Japan Immigration Centre in Ushiku, Ahmed claims that he was again intimidated to sign the statement. He was allegedly told by immigration authorities that immediately after his signature, he would be deported. Though tired and fearful of his imminent deportation, he refused to sign. Unexpectedly, he was released by immigration officials and later granted special permission to stay.

House”.¹⁵ The legal responsibility of the detention facilities are divided between the government and air carriers. The immigration officials representing the government of Japan

¹⁵ It needs to be noted that if foreign nationals who have been denied entry have a valid visa issued by a Japanese consular officer, the Supervising Immigration Inspector can exempt the carrier from bearing all or part of the expense arising from the detention of the foreign national. (Article 59(3)). The state, more specifically the immigration

are legally responsible for the overall supervision of the LPFs, while the air carriers are legally responsible for transportation and the overall supervision of "Airport Rest Houses."¹⁶

Foreign nationals are frequently held incommunicado during their detention at the LPFs. They are not allowed access to their consular offices, or to register complaints with police if they have been ill-treated. Delegations that have been granted permission to visit the LPFs, including members of the Japanese Diet (National Assembly) and Amnesty International have not been permitted to meet and talk to the detainees.

→ In March 1997, Ahmed, an asylum-seeker from Pakistan, was allegedly not allowed to contact the UNHCR or Amnesty International during his detention at the LPF.

authorities, are responsible for the detention of foreign nationals at the LPF, and hence are responsible for the overall supervision of its functioning. In these cases, the air carriers are only responsible for transporting foreign nationals from - the Special Examination Rooms where immigration authorities have interviewed the foreign nationals, denied them entry - to the LPF and for transporting them from the LPF to the air carrier on the day of departure from Japan.

¹⁶ For example, if Airline AB is ordered to take asylum-seeker X back to country Y, Airline AB is responsible for the safety and security of X while transporting him to the LPF which is under the control of the immigration bureau of the Japanese government. Airline AB is also similarly responsible for X when he is being transported from the LPF to the air carrier on the day of his departure.

→ An Austrian national Johanna Schmidt was allegedly not allowed, despite repeated requests, to contact the Austrian embassy in Tokyo during her three-day detention at the LPF in July 2000. She was finally allowed to contact the Austrian embassy, only hours before her deportation from Japan.

→ As highlighted above, the two Tunisian men Thameur Hichem and Thameur Mouez were detained from 20 June 2000, but were not allowed to contact the Tunisian embassy in Tokyo. They were only allowed to contact their parents in Tunisia two days after being placed into detention. They were also not allowed to contact the police.

Concerns regarding private security companies

Private security companies have been contracted by air carriers to transport foreign nationals from Special Examination Rooms of the immigration authorities to their detention facilities and back from their detention facilities to the air carrier on the day of their flight. Private security companies also supervise these foreign nationals in their detention facilities, including at the LPF; they guard them round the clock to ensure that the foreign nationals are prevented from leaving the rooms and from entering Japan. Companies such as Security Agency X (not the real name of the company) try to make the foreign nationals pay the cost for their “accommodation”. It appears that when Security Agency X failed to receive the payments from foreign nationals, they asked the flight operator to reimburse the amounts owed.¹⁷

Up until the summer of 1999, Security Agency X was contracted by air carriers to transport foreign nationals and also supervise the security of the LPF at Narita Airport. The agency could ask foreign nationals to pay the costs for this accommodation during the period of their stay. When they did not pay, they were allegedly strip-searched. Force was allegedly used by the security company when foreign nationals protested and questioned these requests.

¹⁷ The immigration bureau reportedly passed an administrative order in September 2000 which indicated to air carriers not to ask the private security companies to collect fees from “detained” foreign nationals.

When Security Agency X lost the contract to be in charge of security at the LPF at Narita Airport, it still continued to be contracted by airline carriers to transport foreign nationals who had been denied entry into Japan from the Examination Room to the LPF and from the LPF to the air carrier when the foreign national was being deported. Its reduced security responsibilities had diminished opportunities for Security Agency X to force foreign nationals to pay during their detention at the LPF. Thameur Hichem and Thameur Mouez were beaten not inside the LPF but outside in a building located at the parking lot in Narita Airport when they showed unwillingness to pay up to the demands of the staff members of Security Agency X. When Amnesty International asked immigration officials about actions they had taken against Security Agency X, the officials stated that they had been satisfied with the reply from the security agency and that the company had done no wrong. No action had apparently been taken by the immigration authorities though they had admitted to Amnesty International that the LPF was under the overall supervision of the immigration authorities at Narita Airport. The lack of prompt and impartial investigation by the authorities into such allegations of ill-treatment contravenes Article 12 of the Convention against Torture.

The LPF in Narita Airport: a secret detention facility

Not much was known of the LPF until the case of the two Tunisian nationals became public. The LPF is used for the physical detention within the airport complex of those foreign nationals who are denied entry into Japan usually after they have been issued “orders to leave”.¹⁸ When an Amnesty International delegation was granted access to the LPF in December 2000, there were two facilities which were located in the administrative wing on the second floor of Terminal 2 of Narita Airport.¹⁹ The LPF in Narita Airport comprises at least two detention facilities, at least one is reserved for men and at least one facility is reserved exclusively for women detainees. According to Immigration officials questioned by

¹⁸ Immigration authorities informed Amnesty International that if there is no room in the LPF, foreigners were placed into what the authorities termed as “non-compulsory” detention, (though the “detainees” were not given much choice) at a Rest House near the airport.

¹⁹ According to testimonies given by former detainees, they had the impression that the LPF was located underground in the airport complex as there were no windows.

the Amnesty International delegation, a daily average of some seven persons were detained in the LPF. Both of the facilities in Narita Airport consisted of four windowless rooms.

In the room to which Amnesty International was allowed access, there were narrow benches (which former detainees have informed Amnesty International doubled up as beds) and large dust-bins. The room, which was in the LPF allocated to women, was not occupied by any detainees at that time. There were five benches in the room, possibly indicating that the room was meant for five detainees. The room was about 10 feet by 8 feet and 7 feet high and was the only room that was not behind a locked steel gate. All other rooms (three in the women's facility, and four rooms in the men's facility) were behind a locked steel gate which was guarded throughout the day by two guards on 12 hour shifts. The rooms were always locked, the keys were held by the guards. In cases of emergencies like sickness or fire in the room, detainees had no choice but to bang the door hard to raise alarm and catch the attention of the guards. A vertical glass window fitted into the door which enabled the guards to have a good view of the room. This meant that detainees were effectively denied privacy. The guard room, in turn, was locked. Detainees' luggage was kept separately in a room next to the guard room.

Despite requests, the Amnesty International delegation was not allowed to meet detainees. Amnesty International has been informed that two delegations of Japanese Diet (National Assembly) members were also denied access to those detained in the LPF at the time of their visits. The refusal to allow visits by qualified persons to places of detention constitutes a violation of Principle 29 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.²⁰

Discrimination on the basis of nationality

There appears to be a link between the denial of entry by immigration authorities, ill-treatment during questioning of entry or asylum applicants, detention at the LPF and the nationality of the person. There have been denials of entry on the basis of superficial

²⁰ Principle 29 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that "(1) In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment. (2) A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment..."

generalisations of persons belonging to certain countries revealing a xenophobic bias of immigration officials. A Colombian national, who was denied entry into Japan in October 1996, claimed to have been told by the Immigration official that “You don’t have to be in Japan. Only one out of five Colombians can enter Japan. Colombians are untrustworthy, selling drugs, involved in prostitution and robbery.” There have been, since 11 September 2001, several cases of asylum seekers being refused entry into Japan apparently because they are from particular countries, such as Afghanistan or the Middle East region. Most of them have been forced to sign documents facilitating their deportation with little regard paid to the *non-refoulement* principle enshrined in the 1951 Convention relating to the Status of Refugees (the Refugee Convention) and the Convention against Torture.

Fourteen asylum seekers from Afghanistan

After 11 September 2001, there appeared to be a concerted attempt by the Japanese authorities to refuse permission for Afghan nationals to enter Japan. By 30 April 2002, Amnesty International received credible albeit unconfirmed reports that at least 14 Afghan asylum-seekers had been denied entry into Japan at Narita Airport. The immigration authorities allegedly transferred them to the East Japan Immigration Centre in Ushiku after detaining them at the LPF in Narita Airport²¹ from several days to several weeks. Their claims for refugee status were all rejected and deportation orders were issued. In May 2002, it appears nearly all Afghan asylum seekers in Tokyo have been granted “provisional release.”

Ali Ahmad, 19 year old asylum seeker

²¹ Some of the 14 Afghan asylum-seekers were transferred first to Jyujyo Immigration Centre before they were finally detained in the East Japan Immigration Centre in Ushiku.

In September 2001, a 19 year-old Afghan national, Ali Ahmad, a member of the minority Shia community, was detained at the LPF in Kansai Airport in Osaka after his application to enter Japan had been rejected. His claims for asylum were rejected, and an "order to leave (Japan)" was issued within two days of rejection of his entry. Ali Ahmad was a member of Hezb-e-Wahdat and had been involved in fighting against the Taliban forces. He was then transferred to an Immigration detention room within Kansai Airport for another 15 days. During his detention at the LPF in Kansai Airport, he was interviewed three times by immigration officials. According to Ali Ahmad's testimony, during interviews, the officials yelled at him. He was so scared that he feared physical violence and so he signed all documents that he was asked to, including a document that waived his rights to appeal against the decision of the immigration officials.

Following interventions by a lawyer and his friends who were aware of his arrival and detention in Japan, the Osaka immigration officials at Kansai Airport issued an annulment of the deportation order on 18 February 2002, five months after the first deportation order had been issued. He was also granted "provisional release" the same day. The detention has had a physical effect on Ali Ahmad: he claims that he lost as much as 35 kilograms in the first three months of detention.

Kamal, Kurdish child asylum seeker

A 16 year old Kurdish minor, Kamal²², was refused permission to enter Japan on 23 December 2000 and detained at the LPF in Kansai Airport. Immigration officials had denied that children were detained at the LPF²³ when the Amnesty International delegation met with them in December of that year. Kamal had sought asylum on entry, but was refused. He stated

²² Not his real name, which has been withheld to protect his security.

²³ It appears that there have been other incidences when minors have been detained in the LPF. In July 1998, two Iranian girls, one aged 8 years and the other aged 13 years, were allegedly detained at the LPF in Narita Airport for one night. They were travelling from Germany on travel documents for refugees issued by the German government to meet their uncle in Tokyo. The immigration authorities denied them entry to Japan for not carrying Iranian passports.

that immigration officers shouted at him in interviews. Kamal says that he was so scared and feared beatings following the yelling he received from the immigration officers, that he felt forced to sign a document that waived his rights to appeal against the decision of the immigration officials. Despite being a minor he was detained for 2 nights in a room at the LPF with two other asylum-seekers. He was transferred to another room for another two days where he was held alone. He claims that his meals consisted of a piece of bread, yoghurt, tea and a small cake. There was no breakfast and the first meal of the day was delivered in the afternoon. On 27 December, he left the LPF when he was suddenly granted “provisional release.”²⁴

Hasan Cikan, Kurdish asylum seeker

²⁴ A “provisional release” is issued to an asylum-seeker who is released from detention at LPFs or Immigration Detention Centres. This release does not indicate that the Japanese authorities have accepted the asylum-seeker as a refugee or granted him or her asylum. The release of the asylum-seeker is conditional on the decision of the Japanese immigration authorities considering his or her asylum application. If the result is negative, the asylum-seeker is detained in an Immigration Detention Centre prior to his or her deportation.

Hasan Cikan and another Kurdish asylum seeker²⁵ landed in Narita Airport on 20 February 2001 after fleeing from Turkey where they faced risk of detention and torture. In an open letter to Japanese authorities,²⁶ Amnesty International had expressed fears that if Hasan Cikan was forcibly returned to Turkey, he could face torture and ill-treatment.²⁷ Hasan Cikan and his companion were reportedly questioned by immigration authorities at Narita airport with the help of a translator of non-Kurdish ethnicity but who was of Turkish nationality. The two men felt unable to answer the questions given the political sensitivity of their situation in Turkey. Both men were not allowed to enter Japan. Their applications to enter Japan were rejected. The two men were apparently asked to sign a document, on 23 February 2001, waiving their right to appeal against the decision of immigration officials, but both men refused. They applied for refugee status on 27 February 2001 and, after representations by lawyers, the immigration authorities agreed to process their applications. Hasan Cikan and his companion were detained at the LPF in Narita Airport between 20 February and 27 February 2001. Hasan Cikan finally received "Special Permission for Residence", but his companion was forcibly returned to Turkey.

²⁵ Name withheld to protect his identity.

²⁶ Japan: Open Letter to the Minister of Justice Komura Masahiko: Kurdish asylum seekers face deportation to Turkey where they are at risk of being detained and torture (TG ASA 22/2001.01)

²⁷ Hasan Cikan had earlier left Japan of his own will in 1999 partly because his earlier application to seek asylum had not complied with the requirement to file an application within 60 days - "the 60 day rule" - partly because he could not handle the emotional stress of waiting for a long time. After returning to Turkey, he was detained by Turkish gendarmerie in October 1999 on charges of raising funds in Japan and sending money to the armed opposition group Kurdistan Workers' Party (PKK). While in detention in Turkey, he claims that he was beaten, that he was hit on the head with a gun and that as a result of the beatings, his teeth were broken. He was released conditionally but was questioned by the State Security Court in Adana in December 1999 and February 2000. He had apparently been required to report to the law enforcement authorities in Gaziantep (Turkey) once every month. Hasan Cikan had been reportedly warned by the Turkish authorities that if he did not observe the rules of his provisional release, he risked imprisonment of not less than three years.

Ahmed²⁸, Pakistani national

Ahmed, a political activist belonging to the minority Ahmadi community fled to Japan from Pakistan fearing that his life was in danger on hearing that an arrest warrant had been issued by the Pakistani authorities. On reaching Narita Airport in early March 1997, he destroyed his passport and sought asylum. He was questioned by the immigration officials for hours, but permission to enter Japan was refused and he was detained in the LPF in Narita Airport for at least one month. Before being detained, he was searched thoroughly by three people at the LPF.

²⁸ *Name withheld to protect his identity.*

According to Ahmed, when he was first detained in the LPF, there were five Chinese detainees who were deported shortly afterwards. He claims that detainees were punished if they complained about conditions.²⁹ As the rooms were windowless and the door was locked, Ahmed often felt sick when fellow-detainees smoked cigarettes. He did not see the sun or the sky during his entire period of detention in the LPF. There was no consideration of his religious sensitivities as Ahmed, a Muslim, was served meals with pork. He reports that he was on occasion threatened, pushed and shoved by Immigration officers and security staff in the LPF. He was declined permission to shave in the LPF, and had to use the one shirt and pair of trousers that he had brought with him from Pakistan. He was transferred from the LPF to the East Japan Immigration Centre in Ushiku and finally released in December 1997. Shortly after his release in January 1999, he was diagnosed as suffering from Post Traumatic Stress Disorder (PTSD). For more than two years after his release, he suffered from lack of sleep, nightmares and acute headaches for which he has had to take medication. He continues to live in Japan after being granted special permission to stay.

Zia³⁰, Rohingya asylum-seeker

Zia, a Myanmar national belonging to the minority Rohingya community, reached Narita Airport on 29 March 1998. He was in great fear that he would be deported at very short notice. Zia had fled to Japan as he feared imprisonment, torture and ill-treatment from Myanmar law enforcement authorities. He had been a student activist, and had previously been interrogated, tortured and ill-treated and detained twice by Myanmar police. He claims that he was questioned by immigration authorities at Narita Airport for more than four hours by between two to four officials. They spoke very little English, and shouted and gestured threateningly at him. He was denied permission to enter Japan, and detained at the LPF. He was interviewed for two or three days by immigration officers with an interpreter, a Japanese

²⁹According to Ahmed's testimony, many of the foreign nationals he saw at the LPF and who were deported were Chinese nationals. He said that he had shared his detention room with many foreign nationals, most of them were deported in less than a week. The LPF observed a strict regime where everything had to be requested from the guards, even drinking water. Ahmed claims he saw a Chinese detainee who, for complaining too loudly, was kicked by four or five guards and hit on his head with a water jug so badly that his head was bleeding. As there were no medical facilities in the LPF, the Chinese national was left bleeding for almost three hours before he was taken outside for medical care.

³⁰Not his real name which has been withheld to protect his security.

national, who was not fluent in the Burmese language, and who was unable to interpret adequately. This resulted in confusion during the interrogation. He applied for refugee status on 2 April of that year. The day after applying for refugee status, he was allowed access to a lawyer. The lawyer had been informed by friends of Zia who knew of his arrival and who guessed at his predicament when they could not find him.

Zia was detained in the LPF for more than three weeks. According to his testimony, the food was very inadequate. He had to pay \$812 for the detention.³¹ Zia likened the LPF to a tomb which he believed was located at the basement. There was no fresh air as the Facility had no windows and the room he was detained in was always locked. He was allowed to take a ten-minute shower once every week. He had headaches and fever but he was not given medicines for his illness. There appeared to be no medical facilities in the LPF.

According to Zia's testimony, he claimed that he was escorted openly handcuffed through the airport by security guards while being taken out for interviews. The interviews were conducted by immigration officials in special examination rooms located in the Narita airport complex away from the LPF. During interviews with immigration officials, Zia reported that he was alone except for an interpreter.

Zia also claimed that a letter that he had written to a Member of Parliament in Japan was censored. Immigration officials objected to a couple of sentences that he had written expressing his incomprehension as to why he was treated "like a criminal." After three or four days, an immigration official told him that the letter could not be sent unless the offending sentences were deleted.

Zia was later transferred to the East Japan Immigration Centre for some seven months before he was provisionally released. He appears to suffer from PTSD.³²

³¹According to Zia, he had seen guards - initially two, then four - strip-search a South Asian man. The guards then kicked the South Asian man when he maintained that he had no money to pay the LPF authorities. He was beaten till he paid the cash. In another instance Zia claimed that following the refusal of cash payment as demanded by the LPF security staff, a Guinean man was deprived of food by the LPF authorities for the five days he shared the room with Zia. It was made very clear that if he did not pay, he would not get food.

³² When an Amnesty International delegation met Zia in December 2000, he looked pale, he was shivering despite wearing several layers of clothing. He also had visible

Ill-treatment of foreign nationals carrying valid travel documents

Foreign nationals like Thameur Hichem and Tharmeur Mouez who were carrying legal documentation to visit Japan, but were arbitrarily denied entry and detained in the LPFs in Narita and other airports, may face the risk of ill-treatment at the hands of immigration officials or staff of private security companies who operate LPFs or are responsible for the transportation of foreign nationals denied entry into Japan from the special examination rooms to their “detention centres” such as the LPF and “Airport Rest House” and from these “detention centres” to the air carrier when the foreign national is deported.

Hadi Kermani, Danish national

In its report Japan: Ill-treatment of Foreigners (AI Index: ASA 22/09/97), Amnesty International highlighted the case of Hadi Kermani (not his real name), a Danish national who was detained in the LPF or what was then described as a “transit detention centre” (which is now known as the LPF) from 11 to 13 February 1996. Hadi had to stay for two days in the LPF and was forced to pay US\$260. He was refused entry into Japan because the immigration inspector suspected that he was carrying a false passport. He was badly beaten when he refused to sign documents that stated that he was trying to enter Japan illegally. As a result of this assault, Hadi claimed that his left eye became bruised and swollen, his left cheek was injured and he suffered muscular injury in his legs. The assault took place in front of other immigration officers who did not intervene to stop it. He was also denied permission to contact the Danish Embassy in Japan and was forced to leave Japan without being able to contact the Danish embassy. Hadi stated that he had seen a number of other detainees being physically abused by the immigration authorities. Hadi suffered more difficulties as his passport was stamped “false” on every page in red ink by the Japanese authorities. He was subsequently sent to Malaysia where he spent eleven days in a crowded and unhygienic cell in Kuala Lumpur Airport before being finally sent back to Denmark on 24 October.

changes in his moods and he did not have a long attention span. At times, he appeared animated and then he would seem to switch off completely.

Summary of Recommendations

Observation of international standards

Amnesty International urges the Japanese government to

- implement all provisions of the ICCPR, the Convention against Torture, the 1951 Refugee Convention, which are conventions to which Japan is a state party;
- observe the Convention on the Rights of the Child - a convention to which Japan is a state party - to ensure that asylum seekers below 18 years of age are not detained in the LPF with adults, and that the best interests of the child are the primary consideration in all decisions regarding the child's welfare;
- incorporate provisions of the ICCPR and Convention against Torture in domestic legislation;
- prioritize compliance with Article 7 of the ICCPR which states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" and Article 10 (1) of the ICCPR which states "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person";
- ensure prompt and full implementation of Article 12 of the Convention against Torture which states that "Each state party shall ensure that its competent authorities proceed to a prompt and impartial investigation, whenever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction";
- ratify the Optional Protocol to the ICCPR and declare Japan's acceptance of Article 22 of the Convention against Torture. By doing so Japan would ensure that, in addition to the safeguards provided by Japanese domestic procedures, the UN Human Rights Committee could consider appeals by people who complain that they have suffered human rights violations in Japan. While not a substitute for domestic complaints mechanisms, the Optional Protocol provides an added safeguard and by ratifying it, Japan would show its willingness to be accountable for compliance with international human rights standards.
- comply with its obligation to respect the principle of *non-refoulement*. The principle of *non-refoulement*, which is a principle of customary international law, is enshrined in Article 33 of the Refugee Convention and Article 3 of the Convention against Torture. While Amnesty International recognizes that every state has a right to control its immigration rules, giving effect to the right to seek and enjoy asylum in accordance with Article 14 of the 1948

Universal Declaration of Human Rights is fundamental to giving effect to the principle of *non-refoulement*.³³

➤ ensure no foreign nationals undergoing immigration procedures are subject to arbitrary detention in violation of Article 9(1) of the ICCPR; as a practical and additional safeguard, detainees should be entitled to challenge the legality of the detention in accordance with the provisions of Article 9(4) of the ICCPR;³⁴

Implementation of independent enquiries into allegations of human rights abuses and provision for an effective complaints mechanism

The Japanese government should:

➤ implement systematic, prompt and impartial enquiries into allegations of human rights violations reported in the context of entry and deportation procedures. Such investigations should be independent of government authorities, in particular immigration authorities and private security companies;

➤ ensure that there is provision for an effective, independent and confidential complaints mechanism for foreigners held in the LPF and “Airport Rest House”. There is an urgent need for the strengthening of procedures to investigate complaints, provide compensation to victims and bring human rights violators to justice. Such steps would be in accordance with Article 2(3) of the ICCPR, which requires Japan to provide for an effective remedy for any person whose rights or freedoms are violated;

➤ ensure that the detainees are not penalised or discriminated against for making a complaint.

Ensure implementation of national law and international standards for foreign nationals in any form of detention

³³ The Government of Japan clearly recognized this by its adoption of the Declaration of State Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees on 13 December 2001, namely operative paragraph 2.

³⁴ Article 9(4) of the ICCPR states that “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”

Amnesty International urges the Japanese government to:

➤ ensure that foreign nationals in any form of detention are promptly informed, in a language they understand, of all their rights under domestic law and under international standards, including the right to lodge complaints about their treatment and to apply for asylum. They should

- have unhindered access to a lawyer from the day they are taken into detention;
- be granted an opportunity to seek advice from their embassy or consulate without undue delay;
- be made fully aware of the refugee status determination procedure in Japan, and given application forms in a language that they can understand, at all ports of entry to Japan.
- be allowed to contact non-governmental organizations and representatives of the UNHCR;

➤ ensure that detention of asylum-seekers and refugees only take place in accordance with national law and international standards.³⁵ This includes

- not penalising refugees and asylum-seekers solely by reason of their illegal entry or presence, as required by Article 31 of the Refugee Convention;
- it should only be exercised out of necessity in the individual case;
- it should be done in a non-discriminatory manner;
- the detention of asylum-seekers must be subject to prompt, automatic and regular independent judicial or administrative review;

³⁵ See for instance the 1999 UNHCR Guidelines on applicable Criteria and Standards relating to the detention of asylum-seekers, the revised Summary Conclusions on Article 31 of the 1951 Convention relating to the Status of Refugees from the Geneva Expert Roundtable 8-9 November 2001 available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=PROTECTION&page=PROTECT&id=3bf4ef474> and Deliberation No.5 on the situation of immigrants and asylum-seekers of the Working Group on Arbitrary Detention (E/CN.4/2000/4, annex II).

- it may only be resorted to for reasons set out in Conclusion No.44³⁶ of the Executive Committee of the UNHCR's programme (EXCOM);³⁷
- there is a presumption against detention, and when assessing this account should be taken whether the detention is reasonable and proportional to the objectives achieved and it should only be resorted to for a minimal period;

- permit regular, independent, unrestricted and unannounced investigations of the LPF and "Airport Rest House" used as detention centres by inspectors appointed by independent national bodies and representatives of international bodies, including NGOs;
- allow such independent Inspectors to communicate in private with detainees, and without the presence of immigration or other officials or staff of security companies.
- ensure that foreign nationals denied liberty under any form of detention are provided with the services of independent and qualified interpreters and translators. No one denied liberty under any form of detention should be asked to sign a document that he or she does not fully understand.
- improve access to medical care by ensuring that qualified medical staff are available to deal with complaints on request of foreign nationals in any form of detention. They should also be permitted access to psychiatric and counselling services;
- observe *Article 6 of the Code of Conduct for Law Enforcement Officials* which states that "Law enforcement officials shall ensure the full protection of the health of persons in their

³⁶ From EXCOM Conclusion No.44: "If necessary, detention may be resorted to only on grounds prescribed by law to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum-seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order."

³⁷ Japan is a member of the EXCOM, an intergovernmental body of 57 states (August 2001). EXCOM conclusions on international protection of refugees are regarded as authoritative in the field of refugee rights.

custody and, in particular, shall take immediate action to secure medical attention whenever required”;

➤ give specialist training to medical practitioners who treat detainees to enable them to promptly and effectively identify and treat the particular medical problems (both physical and psychological) that detainees are likely to experience.

Improve training of immigration officials and staff of private security companies

Amnesty International calls on the Japanese government to:

- improve the training of officials and staff of security companies in human rights issues;
- ensure that immigration officials are properly trained to recognise anyone who may be at risk of human rights violations if turned away and to refer them to an independent and expert authority.
- ensure that all asylum seekers are referred to a central refugee status determination authority for processing of their claims;
- ensure, as an essential step in ensuring access to a fair and satisfactory asylum procedure, that all officials involved in interviewing asylum-seekers are adequately trained. Such training should include examination of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, the 1951 Refugee Convention as well as all relevant international human rights standards;
- provide training to immigration officials and the staff of security companies so that they are particularly aware of the need to guard against racist and/or xenophobic behaviour. For example, they should be made aware of Japan’s international obligations under the International Convention on the Elimination of All Forms of Racial Discrimination;
- ensure that Immigration officials and security companies are made aware that any form of torture or ill-treatment is a criminal act.

Amnesty International believes that the implementation of these recommendations would go a long way towards ensuring Japan’s compliance with international human rights standards.