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# £JAPAN

## @Inadequate protection for refugees and asylum-seekers

### 1.Introduction

As a signatory to the United Nations 1951 Convention and 1967 Protocol relating to the Status of Refugees, Japan has expressly undertaken certain international obligations towards refugees and asylum-seekers<sup>1</sup>. Foremost among these is the obligation not to return any person to a country where he or she risks serious human rights violations and, following from this, the obligation to identify which asylum-seekers are entitled to refugee status and protection against forcible return. This report describes a number of ways in which the Japanese Government has failed to abide by its international obligations towards refugees and asylum-seekers and, in particular, the government's failure to ensure that all asylum-seekers who reach Japanese territory have access to a fair and satisfactory procedure for assessing the merits of their claims.

Since Japan acceded to the 1951 Convention and 1967 Protocol in 1981, it has failed to fully abide by its obligations towards people arriving in Japan who need protection against forcible return to their countries of origin. Specifically, the government has not ensured that all people fleeing arbitrary arrest or detention, torture, or other serious threats to their life or personal safety, who arrive in Japan will have an opportunity to have their asylum claim considered. Even when people are allowed to submit a claim, they are put through a secretive and arbitrary process without due regard for their procedural rights or acknowledgement of the vulnerable position they find themselves in. Some people trying to claim asylum -- including people who were clearly, in Amnesty International's view, at risk of serious human rights violations in the countries they fled -- have been detained for months. Others whose applications were refused, even though they were clearly entitled to refugee status, have been kept in a legal limbo on visas which must be renewed each 30 days with the constant possibility of deportation hanging over them.

It is sometimes argued that the restrictive asylum policy and practice in Japan results from a reluctance by the Japanese Government to relax the normally stringent immigration rules for fear of an expected arrival of large numbers of refugees and asylum-seekers in Japan, which historically has not been a country of immigration. Amnesty International does not in any way question the general right of the Japanese Government to control the admission of non-nationals into Japanese territory, nor is the organization concerned with the general application of Japanese immigration policy, which is a matter outside its mandate. Rather, this report aims to measure the treatment accorded to refugees and asylum-seekers in Japan in light of Japan's international obligations; these obligations, in some cases, override the general right of states to control the admission of non-nationals. In this context it must be noted that the generous financial assistance provided by Japan to the Office of the United Nations High Commissioner for Refugees (UNHCR) and the decision taken in past years to resettle in Japan several thousands of Vietnamese refugees from refugee camps in other Asian countries are beyond the scope of this report, which deals solely with the obligations owed to those people who arrive in Japan and exercise their right

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<sup>1</sup>The two terms "refugees" and "asylum-seekers" are sometimes used interchangeably by some people. However, distinct obligations are owed to those who are making a claim for protection (asylum-seekers) and to those who are entitled to protection (refugees); this is in general the basis for distinguishing between the two groups throughout this report.

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to seek asylum there.

It may be the case that there are large numbers of people in countries neighbouring Japan who, given the serious and widespread human rights violations in their own countries, might be entitled to protection in Japan if they were to reach Japanese territory and claim asylum. However, such an argument cannot excuse Japan from fully honouring its international obligations. Many countries which have far fewer material and financial resources than Japan have provided refuge to tens of thousands of persons who have fled widespread and systematic human rights violations. Moreover, in Amnesty International's view, the real solution to the refugee "problem" is for the international community to bring pressure to bear on governments whose repressive practices force their citizens to flee abroad in search of protection and, so long as those practices persist, to offer protection to those in need. A more vigorous commitment by the Japanese Government to making human rights violations in other countries a key foreign policy concern, and a willingness to raise such violations with the governments of those states, is an indispensable component of a comprehensive refugee policy.

This report is based for the most part on information gathered by Amnesty International during a two-week visit to Japan in October 1992. During the visit Amnesty International met with government officials, lawyers, academics and many asylum-seekers and refugees. The report also draws heavily on the information, knowledge and experience gained over a number of years by members of the Japanese Section of Amnesty International who have been monitoring the treatment of asylum-seekers and refugees in Japan since Japan's accession to the 1951 Convention and 1967 Protocol in 1981. In accordance with the working rules of Amnesty International, the Japanese Section has the primary responsibility for refugee protection issues in Japan; the involvement of national sections in refugee concerns is an exception to the general rule whereby members of Amnesty International do not work on human rights concerns in their own countries.

## 2. Japanese asylum procedures: the legal framework and background

The basic principles of international law relating to refugees and asylum-seekers are set out in the 1951 Convention relating to the Status of Refugees. Under this Convention, individuals qualify as refugees if they are unwilling to return to their country of nationality or habitual residence "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion"<sup>2</sup>.

Article 33 of the 1951 Convention establishes the most fundamental international obligation owed by states to refugees:

"No Contracting State shall expel or return (*refouler*) 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."

This provision, commonly known as the obligation of *non-refoulement*, has become widely recognized as a norm of international law which applies to all countries, regardless of whether they are party to the 1951 Convention, and has been reflected since 1951 in a number of international standards and treaties<sup>3</sup>. While

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<sup>2</sup>Article 1 A (2) of the 1951 Convention.

<sup>3</sup>See for example Article 3 of the UN Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment; Amnesty International March 1993AI Index: ASA 22/01/93

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the 1951 Convention does not explicitly set out any rules regarding procedures for the determination of claims for asylum, it is recognized that states party to the Convention must establish some form of asylum procedure. According to the UNHCR, "It is obvious that, to enable States parties to the Convention and to the Protocol to implement their provisions, refugees have to be identified"<sup>4</sup>. Following from this, it is also clear that the asylum procedures must be fair and satisfactory so as to ensure that all those people who would be at risk if returned to the country they have fled are identified and offered protection.

When Japan acceded to the 1951 Convention in 1981 the immigration law was amended to bring Japanese law into line with the obligations it undertook, and a specific section of the new Japanese *Immigration Control and Refugee Recognition Act* was enacted to give effect to these obligations. This section, Chapter VII-2 of the new law (Articles 61-2 to 61-2-8), came into force at the beginning of 1982. The law provides that individuals in Japan are entitled to apply to the Minister of Justice for recognition as refugees. The government's official "Commentary on the Immigration Control and Refugee Recognition Act", states that "Those who can apply for...recognition of refugee status is restricted to the alien within the territory of Japan, whether his presence is legal or illegal". The law provides that such applications "must be submitted within sixty days after the day the person landed in Japan (or the day when he became aware of the fact that the circumstances under which he would become a refugee arose while he is in Japan)". However, this time limit shall not apply if there are "unavoidable circumstances." Persons refused refugee status are entitled to be given reasons for this refusal and may submit an appeal to the Minister of Justice within seven days.

The law does not specify in any detail what procedures should be followed in examining asylum applications. It provides that a "Refugee Inquirer", who is an employee of the immigration department which is under the jurisdiction of the Minister of Justice, is appointed to look into the facts as set out in the application and may request the person concerned to attend an interview and ask him or her questions, or request him or her to present documents relevant to the application. Further, the Minister of Justice or the Refugee Inquirer can seek information relevant to the application from other officials or public or private organizations.

Ministry of Justice officials informed Amnesty International that asylum-seekers are required to fill out an application form at a regional office of the immigration department. There are eight regional offices, but the majority of applications are dealt with at the Tokyo Regional Immigration Bureau ("Tokyo immigration office"). The Refugee Inquirer at the regional office conducts as many interviews with the claimant as are necessary to gather the required information. Also, claimants are asked to supply documentation to support their claim. When the claim is formally registered, the Refugee Recognition Department in the Ministry of Justice is notified and provides general information on the country of origin to the Refugee Inquirer. The Refugee Inquirer prepares a statement based on the information gathered, asks the asylum-seeker to sign it, and then sends it together with whatever documentation has been provided to the Refugee Recognition Department. The Refugee Inquirer and the Director of the regional immigration office will both attach their recommendations on the case. If the Refugee Recognition Department feels the information is insufficient, they may send it back to the Refugee Inquirer and further interviews may be required.

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Principle 5 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions; and Article 8 of the UN Declaration on the Protection of All Persons from Enforced Disappearance.

<sup>4</sup>*Handbook on Procedures and Criteria for Determining Refugee Status*, Office of the United Nations High Commissioner for Refugees, 1979, at p.45.

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### **Ministry of Justice Building, Tokyo**

The Refugee Recognition Department may seek information from the Ministry of Foreign Affairs on the claim. According to the Ministry of Foreign Affairs, they try to provide the Refugee Recognition Department with whatever general information they have which may be relevant on the country of origin of the asylum-seeker. Also, in individual cases they may seek confirmation of certain details or other information from the Japanese embassy in the country of origin. The embassy may get in touch with the authorities in the country of origin to confirm certain details on a case. According to the Ministry of Foreign Affairs, this is always done in a way to ensure the identity of the asylum-seeker is not disclosed; however, the Ministry of Foreign Affairs confirms that there are no guidelines for embassy staff to ensure that confidentiality is observed when undertaking such inquiries. The Ministry of Foreign Affairs "forms a view" on certain cases and may make this known to officials at the Refugee Recognition Department.

Once the Refugee Recognition Department has gathered all relevant information on the case, a decision is made concerning the claim. The Ministry of Justice officials Amnesty International met refused to disclose who actually takes this decision. They indicated that the law gives the power to the Minister of Justice, but although they agreed that in practice this power is delegated to (a) certain official(s) (although in rare cases the Minister of Justice himself might be consulted), they categorically refused to provide any information as to the identity of the actual decision maker(s). They also refused to say what weight or significance was attached to recommendations made by the Refugee Inquirer and the regional director; immigration officials at the Tokyo office indicated that their recommendations are not always followed, but refused to say how often this happened.

Although government officials refused to confirm it, Amnesty International received information that the body actually making the decision on each claim for refugee status is a committee of senior officials from various branches of the Ministry of Justice, including the Director of the Refugee Recognition

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Department and the heads of the Enforcement and Adjudication Divisions of the Immigration Department. Apparently, this committee meets to decide on each case and submits a recommendation to the Director-General of Immigration who formally endorses the committee's decision.

With regard to the appeal procedures, the Ministry of Justice indicated that although the law provides that the appeal is to the Minister of Justice, in practice any appeals filed are sent by the Refugee Recognition Department to the Adjudication Division of the Immigration Department. Again, Ministry of Justice officials refused to say which person or body actually takes the decision. Further interviews may be held with the applicant and normally such interviews are not conducted by the same Refugee Inquirer. They would not provide any further information concerning the appeal procedure except to say that of the 263 asylum-seekers who had appealed against a refusal of refugee status since the law was enacted, all 263 appeals were denied.

## 2.1 "Landing permission for temporary refuge"

Japanese law also provides that people arriving at a port-of-entry who are not otherwise admissible to Japan may be granted "landing for temporary refuge" for up to 180 days, if the immigration inspector at the port determines that the person "has entered Japan on the grounds provided for in Article 1A of the [1951 Convention] and other equivalent reasons thereto after fleeing from a territory which was feared to be harmful to his life, physical being or physical liberty" (Article 18-2). According to the government, this provision was put into the law to cover situations like that of the Vietnamese "boat people", many hundreds of whom arrived in Japanese waters in past years<sup>5</sup>. If implemented effectively, this provision should ensure protection against *refoulement* at the port-of-entry by allowing people fleeing for their safety to be admitted temporarily until it is safe for them to return home or, if they wish, to allow them to submit an application for asylum.

## 3. Refugees and asylum-seekers in Japan

Since Japan's accession to the 1951 Convention in 1981 fewer than 1,000 people have applied for asylum in Japan. As of August 1992, according to statistics provided by the government, 200 applicants (out of a total of 968) had been recognized as refugees, 557 claims had been rejected and the remaining claims had either been withdrawn or were still pending.<sup>6</sup> The government refused to tell Amnesty International the countries of origin of the applicants whose claims were accepted or rejected, arguing that withholding such information was necessary to protect the identity of the asylum applicants. However, unofficial sources report that 156 of the cases accepted (over 75%) were of Vietnamese refugees, and that the remainder included 23 Iranians, nine Afghans and three Burmese refugees.

However, Amnesty International believes that these statistics do not represent an accurate picture of the actual situation in Japan, because many hundreds of asylum-seekers have not formally applied for

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<sup>5</sup>The government's official commentary on this provision says: "The landing permission for temporary refuge is to the would-be refugees (not the person already recognized as a refugee) and therefore the reasons which has compelled the person concerned to leave the country are not restricted to those provided for in ... the Refugee Convention .... The specific situations originating from the war or the civil war may be included ... depending on the circumstances."

<sup>6</sup>Of the 200 cases accepted, 161 cases were accepted in the first three years (1982-84) after Japan's accession to the 1951 Convention.

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asylum, often because they perceive the asylum procedures as being unfair and likely to lead to their deportation, or because they have encountered obstacles set up by the government to deter applicants.

The following examples demonstrate the manner in which a number of asylum-seekers have been treated in Japan and point to the serious deficiencies in asylum policy and practice in Japan.

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### 3.1 Students and others from the People's Republic of China (PRC)

Following the brutal suppression of the pro-democracy movement in China in June 1989, many hundreds, perhaps thousands, of Chinese students who were in Japan on study-related visas feared returning to China; many of them had sympathized with the aims of the student protesters in China or were themselves members of political groups formed in Japan to support the pro-democracy movement. Also, in many cases, the students had participated in Japan in demonstrations against the suppression of the pro-democracy movement and feared that officials of the Chinese embassy in Japan had recorded these activities. There were at the time approximately 60,000 Chinese students in Japan on study-related visas; it is impossible to estimate accurately how many of these feared returning to China, but hundreds of them took part in demonstrations in Japan.

On 20 August 1992 the State Council of the People's Republic of China published a circular stating that Chinese students abroad, including those who "have joined anti-Chinese Government organizations or engaged in activities which jeopardize China's security, disgrace the country and undermine its interests", are "welcome" to return to China "as long as they withdraw from these organizations and discontinue their anti-government activities which run counter to the Chinese constitution and laws". Despite the apparent conciliatory tone of this circular, pro-democracy activists sent back or returning to China are still at risk of being detained on charges of violating provisions of the criminal law on entry and exit from China or on the protection of state secrets, or on charges of "counter-revolutionary crimes". They also risk administrative detention without charge or trial, which may in effect be imposed at the sole discretion of the police, for periods of up to four years. Several such cases are known to Amnesty International.

Japan, along with the other six countries who are members of the "G7" (Group of Seven Most Industrialized Countries), had pledged at the Paris Summit on 15 July 1989, in the wake of the repression which began on 4 June 1989 in Tiananmen Square, "... to extend the stays of those Chinese students who so desire". While other countries like Canada and Australia proceeded to enact measures allowing for the extended stay of Chinese students, the Japanese authorities consistently refused to recognize that any special measures were necessary for the students. They maintained that any decision to suspend expulsions of Chinese students would be made on a case-by-case basis. In a number of cases, the authorities refused to renew visas which were about to expire and individual Chinese students were told to return home, including some who had played a prominent part in the pro-democracy movement and were clearly at risk of serious human rights violations in China.



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### 3.1.1 The case of "J"

One Chinese national in Japan had been very active in the pro-democracy movement (he has asked not to be identified and is referred to here as "J"). He was a young researcher and was active in making speeches and leading demonstrations at his university in China after the death of Hu Yaobang, the former General Secretary of the Communist Party. J left China for Japan on 23 May 1989 on a five-month technical trainee visa but, in August 1989, received a letter from China warning that he should not return because he could be a victim of the wave of arrests that followed the massacre in Tiananmen Square. As his visa was due to expire in October 1989, he sought advice and assistance from a number of government officials, and clearly indicated when he spoke with them that he was afraid, for political reasons, to return home. He spoke to both the Refugee Division at the Ministry of Foreign Affairs and immigration officers at the Tokyo immigration office. In each case, J was either refused help or told he had no alternative but to return to China. He was never informed of the possibility of applying for asylum. At one point, with the assistance of his Japanese sponsor, he went to an immigration office to apply for an extension of his visa. On the form he clearly indicated that his reason for asking for the visa extension was his fear of political persecution if he returned to China. The application was registered and his passport was stamped "under application". He stayed "under application" until May 1990 when he was informed that he would have to return to China. With the help of a lawyer J learned of the possibility of applying for asylum and he submitted an application one day before he was supposed to leave Japan. He was interviewed by a Refugee Inquirer on 29 May 1990, but on 5 June 1990 J received a letter indicating that because of the 60-day rule his application would not be considered. Fearing that he would be returned to China, he finally managed, after some difficulty, to find a third country willing to admit him and he left Japan.

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### 3.1.2 The case of Zhao Nan

Zhao Nan is a 42-year-old citizen of the PRC who came to Japan on a study-related visa in September 1988. He was involved in the "Beijing Spring" pro-democracy movement in 1978-79 as a publisher of *Siwu Luntan* (5 April Tribune) and later served as editor of *Tansuo* (Exploration) (now banned) after the previous editor, Wei Jingsheng, was arrested<sup>7</sup>. As a result of these activities he was sent to a labour camp for two years from 1982 until 1984. He was allowed to go to Japan for language studies only after signing an undertaking to the authorities that he would not become involved in any political activities while abroad. However, in May 1989 he became active with a group of Chinese students in Kyoto, Osaka and Kobe who supported the pro-democracy movement led by students in China. In the wake of the Tiananmen Square massacre, Zhao Nan published numerous articles in both Japanese and Chinese periodicals criticizing the Chinese Government. In June 1990 he was appointed the president of the Japanese branch of the Federation for a Democratic China (FDC), a group set up in 1989 in Paris by Chinese exiles after the crackdown in June of that year. The FDC claims it is a non-violent political organization which is aimed at "building a democratic system in China". Since the establishment of the FDC in 1989 the Chinese authorities have on several occasions accused it of "undermining the interests and stability of the state" and stated that FDC members' activities were "violating the Chinese constitution".

Zhao Nan's student visa was due to expire in September 1990 and, with the consent of his school, he applied for a six-month extension which was refused on 25 October 1990; he received a stamp in his passport indicating that he had to leave Japan before 26 December 1990. At the immigration office on 25 October Zhao Nan clearly indicated to the immigration officer that he was afraid of returning to China because of his political activities and that he intended to apply for refugee status. Zhao's fear of returning to China had originally arisen in the wake of Tiananmen, but was reinforced in the summer of 1990 when he read about the testimony given by Xu Lin to the US Foreign Affairs Committee. Xu Lin had defected from the Chinese embassy in Washington and reported that the Chinese Government had instructed embassy staff to monitor Chinese students abroad, and indicated the punishments prominent activists would receive upon return to China. In September 1990 Zhao Nan was informed through contacts that his name was on a list of pro-democracy activists in Japan prepared by the Chinese Government. He formally applied for refugee status on 6 December 1990, but his application was refused on the grounds that he had not applied within 60 days of the date when circumstances arose which caused him to fear returning to China. In court documents on this case the government has argued that Zhao Nan should have applied when he read about Xu Lin's testimony or in September 1990 when he heard his name was on the list. The government has apparently ignored Zhao Nan's argument that he was forced to apply for asylum only when his visa extension was refused on 25 October (his 6 December application was within 60 days of that date), and that in any case he clearly indicated his fear of returning to China when he applied for the visa extension in September 1990. This case is still pending before the courts.

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<sup>7</sup>Wei Jingsheng is a prisoner of conscience; he was sentenced to 15 years' imprisonment in 1979.  
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## **Zhao Nan**

### 3.1.3 "Designated activities visa"

There were several other cases similar to these in 1989-90, and the government's apparent unwillingness to live up to its pledge made at the Paris Summit prompted a group of Japanese lawyers to organize themselves to work on behalf of the Chinese students whose visas had expired and who feared expulsion to China. Japanese law provides a "designated activities visa" (*tokutei katsudo*) for people who would not normally be permitted to stay but who, for humanitarian reasons, are allowed to do so<sup>8</sup>. A group of around 40 Chinese students, most of them members of the FDC branch in Japan, applied for this visa beginning in 1990 with the assistance of the lawyers group. The first "designated activities visa" was granted in June 1991 and since then 30 students have been granted the visa. The other cases are still under consideration. The "designated activities visa" is granted for six-month periods but to date, as far as Amnesty International is aware, there have been no problems in having it renewed.

While this visa does appear to grant the Chinese students effective protection against forcible return to China there is no guarantee that, since it is granted as an administrative measure, the government will not withdraw such visas before it is safe for the students to return. A further reason for misgivings is that the government has not formally recognized that granting a "designated activities visa" in these cases is based on an assessment that the person risks serious human rights violations if returned to China, although the lawyers who submitted the applications on behalf of the students indicate that these applications are largely devoted to documenting such risks. The "designated activities visa" requires the assistance of specialist lawyers to prepare the application and, moreover, it is likely that some Chinese students are unaware of the possibility of applying for it. For these reasons, it is an inadequate substitute for a formal recognition of refugee status and the lawyers involved in submitting these applications indicated they did so only because they felt it was pointless to submit asylum applications. Zhao Nan, who was granted a "designated activities visa" in September 1991 has nevertheless continued to pursue his claim for refugee status in the courts. When Amnesty International asked him why he did not simply accept the "designated activities visa" as sufficient he said:

"This visa was not set up to protect refugees and since it is an administrative procedure of the Ministry of Justice we are at their mercy. Political asylum is a standard all over the world, therefore my application for refugee status is logical and legal. Japan has an obligation to protect the rights of political refugees and because my application was turned down for extremely political and arbitrary reasons, I must keep on fighting not only for myself but for others

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<sup>8</sup>According to the official commentary on the visa, it is applied to "a person who engages in activities which belong to categories that shall not be generally permitted, but whose residence shall be specifically permitted under humanitarian and other special circumstances".

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after me. I believe my fight is meaningful as a protest against the Japanese Government's practices."

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### 3.1.4 The case of Hong Jianbing

Hong Jianbing arrived in Japan on 17 September 1990 as a member of an official delegation of the Chinese National Planning Board which was visiting the Electric Power Development Corporation in Japan. He had taken an active part in the pro-democracy movement in China from April to early June 1989. After the crackdown, he met clandestinely with others who had been involved and he assisted in printing anti-government material in June and August 1990. When he left China he had reason to believe that the authorities would soon learn of his activities and he had already decided to seek asylum in Japan. He explained to Amnesty International that on 1 October, after the other members of his delegation had returned to China, he told employees of the Japanese company which was sponsoring the visit that he wished to claim asylum. He was then visited by two officials of the Japanese Ministry of Foreign Affairs whom he told clearly that he wished to seek asylum in Japan. They questioned him for about twenty minutes regarding his political activities in China but told him that he had to return to China. The next morning several men came to Hong Jianbing's room, including one of the foreign ministry officials, and told him they would take him to the airport. They told Hong Jianbing that if he caused any problems they would phone the police. They put him into a taxi and put his luggage into the trunk. After a few minutes of travelling, Hong Jianbing jumped out of the taxi when it was stopped at a red light. He was followed by the two men accompanying him and, for about 30 minutes, they tried to persuade him to return to the taxi. When Hong Jianbing refused, they relented and told him he would be taken to an hotel. He went with them to the hotel where another, more senior, official from the Ministry of Foreign Affairs came to persuade him to go back to China. After he refused, he was left alone in his hotel room, although two officials remained in the room across the hall. Hong Jianbing telephoned the FDC office in Tokyo and with their help he left the hotel and a few days later, with the assistance of a lawyer, he applied for asylum. Despite his several clear statements to officials of the Ministry of Foreign Affairs that he wished to apply for asylum in Japan, at no point did they act on this or give him any advice or guidance on how to submit an application to the Ministry of Justice.

Hong Jianbing's application for recognition as a refugee was refused in April 1992, and his appeal was rejected in September 1992. The reasons given for this refusal were that there was a lack of evidence to substantiate his claim, and that he had failed to submit "concrete, documentary evidence". This refusal was made despite the fact that the UNHCR office in Tokyo had recognized him as a refugee and that Hong Jianbing had by then taken up prominent activities with the FDC in Japan. Furthermore, after the rejection of his asylum application his lawyer applied on his behalf for a "designated activities visa" which was refused in October 1992. Hong Jianbing has been told that he can apply for a short-term permission to remain in Japan but if it is refused he must return to China. Amnesty International believes that Hong Jianbing would be at risk of torture, arbitrary detention or other serious human rights violations if he is returned to China. The State Council decision of 20 August 1992 (described above) does not protect Hong Jianbing or any other student from prosecution for their peaceful political activities under provisions of the criminal law of the PRC. Peaceful government critics who, like Hong Jianbing, have been involved in producing and disseminating anti-government material have been sentenced to terms of up to life imprisonment on criminal charges such as "propagandizing for and inciting the overthrow of the political power of the dictatorship of the proletariat and the socialist system".

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**Hong Jianbing**

### 3.2 Nationals of Myanmar (Burma) "illegally" resident in Japan

According to unofficial estimates, there are some 4,700 nationals of Myanmar (Burma) who are "illegally" resident in Japan. Apparently, the vast majority of these entered Japan on tourist, work or study-related visas but, after the expiry of these visas, have not returned to Myanmar. It is impossible to estimate accurately how many of these people fear returning to Myanmar for political reasons, as opposed to those who wish to stay in Japan for other reasons. However, according to the head of the Burmese Association in Japan, Dr Win Naing, the vast majority of the Burmese entered Japan in the latter half of 1989, after the imposition of martial law in Myanmar in 1988 and the violent suppression of the pro-democracy movement which resulted in the killing of hundreds of unarmed civilians and the arbitrary detention of thousands of Burmese. Dr Win Naing's association has 569 registered members, all of whom would be at some risk of human rights violations if they were to return to Myanmar given that the association is an organization 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. The Burmese embassy in Tokyo is said to have prepared a "blacklist" with the names of over 500 Burmese living in Japan. Amnesty International is not able to confirm this, but the organization has received reports in the past that Burmese embassies do prepare such lists and military intelligence units of the Myanmar Government are known to be active in its embassies. In any case, any Burmese abroad who are members of organizations opposed to the Government of Myanmar would be exposed to a risk of serious human rights violations if they were returned to Myanmar.

The Burmese who are "illegally" resident in Japan and who fear returning to Myanmar are, for a number of reasons, reluctant to apply for asylum to the Japanese authorities. Amnesty International was told that many Burmese are afraid that if they apply for asylum the Japanese authorities may notify the Burmese embassy of this fact and they fear members of their families in Myanmar will suffer reprisals. Amnesty International interviewed one Burmese who had applied for asylum in Japan who alleged that his father in Myanmar was questioned by the police about his son's political activities two months after his asylum application was submitted to the Japanese authorities. Another Burmese who had applied for asylum also claims that the Burmese embassy had learned about the application. Amnesty International was also told that many of the Burmese living "illegally" in Japan fear that if they report themselves to the immigration authorities for the purposes of applying for refugee status they will be detained and deported to Myanmar. Amnesty International was informed by an unofficial source that 299 Burmese were deported in 1990 and 187 in 1991; it was not possible to confirm this information, nor to ascertain how many of the reported deportations were direct to Myanmar or to Thailand or other third countries.

In the absence of official statistics or confirmation, it is difficult to substantiate reports that "illegal" Burmese are deported, or that the embassy somehow learns of their applications for asylum. Nevertheless, it is significant that in September 1992 a group of 14 Burmese "illegally" in Japan were so afraid to exercise their right to apply for asylum that 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. The 14 were unwilling to approach the immigration authorities on their own, despite their clear right under Japanese law to submit such applications even if their presence in Japan is "illegal". Besides these 14 (all but one of whom have now submitted asylum applications) Amnesty International knows of only seven Burmese who have applied for asylum, three of whom have been granted asylum. The three accepted were all related to one case; Dr Win Naing and two family

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members applied for asylum in June 1989 and received a positive response in March 1992.



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### 3.3 Iranian asylum-seekers

In 1988, a group of 22 Iranian asylum-seekers formed an organization called "Kanoon" to seek protection for Iranian asylum-seekers in Japan because they believed that refugee cases were decided in an unfair and arbitrary manner. The leaders of this group told Amnesty International that in 1988 there were approximately 600 Iranians in Japan who wished to seek asylum, but apparently a far lower number had actually submitted applications. The members of "Kanoon" appealed to international organizations and conducted demonstrations at the UNHCR office in Tokyo to draw attention to their concerns.

The Iranian asylum-seekers with whom Amnesty International spoke had all been recognized as refugees by the UNHCR, but all of them had been refused refugee status by the Japanese Government. One of them, Siros Rahiman, arrived in Japan in 1988 on a false passport. He claims that this was the only way he had been able to leave Iran. He went to the immigration office to apply for asylum shortly after his arrival, but at that time he was not allowed to fill in an asylum application and instead was immediately detained. He spent almost 18 months in detention, during which time an asylum application was considered. He was granted "provisional release" (*kari homen*) in 1989; this status is generally given to those who are in detention awaiting deportation and has been granted to a number of Iranian and other asylum-seekers whose applications for asylum have been rejected but who refuse to return home voluntarily. Provisional release is only granted after a bond is posted and the person concerned is required to remain within a specified prefecture. Furthermore, provisional release stamps usually only last 30 days, and therefore must be continually renewed. When the asylum-seekers report to the immigration office at the end of every 30-day period, they are liable to be re-detained. For example, Hosseh Lahiji, who applied for asylum in 1984, spent two and a half years in detention, then spent the next two and a half years on provisional release. When he went one month to receive his 30-day stamp he was detained again, for no apparent reason, for three months. The Iranian asylum-seekers report that when they go each month to receive the 30-day stamp they are often subject to pressure from the immigration officials to return to Iran; some of them claim that they have been routinely threatened with deportation to Iran. Furthermore, on the "Certificate of Alien Registration" document which must be carried by all non-nationals, under the heading "Status of Residence" there is no entry or, in some cases, the words "no status" for people on provisional release.

Most of the Iranian asylum-seekers Amnesty International met had been accepted for resettlement as refugees by the embassy in Tokyo of a third country, sometimes after years of living on provisional release in Japan and in constant fear of being deported.

### 3.4 Members of the Ahmadiyya community from Pakistan

Amnesty International interviewed several Ahmadis in Japan about their experiences of the Japanese asylum procedures. The Ahmadis, a religious minority group who consider themselves to be Muslims, face increasingly severe discrimination and persecution in Pakistan and provisions of the Pakistan Penal Code make it a criminal offence for Ahmadis to profess, practise and preach their faith. Members of the Ahmadiyya community in Pakistan have been sentenced to prison terms solely for the peaceful exercise of their religious beliefs. Since mid-1991 when the Pakistan Penal Code was amended to make the death penalty mandatory for the offence of "defiling" the name of the Prophet Mohammed, Ahmadis making reference to the Prophet Mohammed have been arrested, facing the death penalty on conviction. There are reportedly about 150 Ahmadis in Japan, about 80 of whom have applied for asylum; 35 have reportedly

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had their applications cases rejected and the rest are pending.

Many Ahmadis whose asylum claims are rejected have been treated in a manner similar to the Iranians; they have been detained after their asylum claims were rejected and later granted provisional release. A number of Ahmadis were taken into detention when they went to the immigration office and received notice of the rejection of their asylum claim. Others, including Maqsood Ahmad Anjun, Daud Ahmad and Anees Ahmad were all ordered deported and, although they were challenging in the courts the refusal to grant them refugee status, they were detained and advised by their lawyers that release was unlikely. Eventually they decided to return to Pakistan and run the risk of imprisonment there rather than remain in indefinite detention in Japan.

### 3.5 Nationals of the People's Republic of China who arrive by boat

In recent years, there has been an upsurge in the number of Chinese "illegal immigrants" who arrive in Japanese coastal waters on boats that usually start their voyage from Fuxian Province in China. Apparently, many of them pay large sums of money to professional "smugglers" who arrange for their illegal departure from China. The information available to Amnesty International suggests that many of these people are not asylum-seekers but are attempting to enter Japan for the purposes of seeking better employment opportunities. However, the government treats these cases in a special and particularly secretive way, denying the Chinese any access to lawyers or others who might assist them and so there is no way of ensuring that any among them who might have fled China for political reasons have an opportunity to have their asylum claims considered. In the past few years hundreds of Chinese have been deported back to China after arriving on boats in Japan; apparently, the Japanese Government has concluded an arrangement with the Chinese authorities under which the Chinese send ships from China to pick up the deportees in Japan.

#### 3.5.1 The case of Lin Guizhen

Lin Guizhen arrived in Japan on 27 September 1989 along with 231 other nationals of the PRC aboard a boat which had departed from Fuxian Province. They were all detained upon arrival in Japan and transferred to the Omura Detention Centre where they were held pending deportation to China. The detention centre is near Nagasaki, in Kyushu, and is used to detain "illegal" Chinese who arrive by boat and also Vietnamese asylum-seekers who have been "screened out" under the special procedures for Vietnamese conducted with the participation of UNHCR<sup>9</sup>. On 10 October 1989 Lin Guizhen was by chance filmed by a television crew who were preparing a documentary on the "illegal" Chinese detained at Omura. She clearly indicated in the film footage that she feared to return to China for political reasons and wanted to obtain asylum in Japan.

The documentary was broadcast on 5 November 1989 and lawyers from the Human Rights Committee of the Fukuoka Bar Association were contacted by members of the public who had seen the broadcast and

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<sup>9</sup>These procedures were established under the Comprehensive Plan of Action (CPA) adopted by the international community at the International Conference on Indochinese Refugees in Geneva in June 1989. The CPA provides that all people fleeing Viet Nam and arriving in the so-called "first asylum" countries of Asia after June 1989 must be "screened" to establish their refugee status.

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were concerned about Lin Guizhen's fate. The lawyers contacted the Omura Detention Centre and asked for permission to meet with her; this request was refused on a number of occasions over a period of five weeks. On one occasion, the lawyers went to Omura Detention Centre to try and see her but they were told that she had refused to meet with them, an allegation Lin Guizhen herself later strenuously denied. The UNHCR office in Tokyo first learned of the case on 30 November 1989 when one of the lawyers involved wrote to them asking UNHCR to intervene with the authorities on Lin Guizhen's behalf; she was interviewed by UNHCR on 8 December 1989. The UNHCR interview was conducted in Fukuoka Regional Immigration Bureau, about a two-hour drive from the Omura Detention Centre; she was brought there for the interview. This was a departure from the normal practice that UNHCR staff interview asylum-seekers at the Omura Detention Centre. The UNHCR office told Amnesty International that they do not know why the interview was held at Fukuoka. An immigration officer was present throughout the UNHCR interview. According to the UNHCR, during the interview Lin Guizhen indicated that she wanted to return to China, and UNHCR wrote to the Minister of Justice on 11 April 1990 saying: "From the elements presented by Lin Guizhen at interview on 8 December 1989, UNHCR has made no positive determination on this case".

### **Lin Guizhen**

Lawyers were finally permitted to meet with Lin Guizhen on 15 December 1989 and after long negotiations with the Ministry of Justice in Tokyo. She told the lawyers that she had informed a number of officials on several occasions during her detention that she wished to apply for asylum, but that she was repeatedly told that she "had no right to be in Japan" and would be deported. Lin Guizhen said she was never given any information prior to that meeting with the lawyers about applying for asylum or the procedures to be followed. Later, in court proceedings, immigration officers testified that they did not know that Lin Guizhen wished to claim asylum, although the television program in which she clearly indicated this intention was broadcast nationally. The lawyers submitted an application for refugee status on 20 December 1989.

A deportation order had already been issued against Lin Guizhen before she applied for refugee status and

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her lawyers challenged in the courts both the deportation order and the refusal to grant asylum. In August 1991, despite the fact that the appeal against the refusal to grant asylum was still being considered by the courts, and against the protests of her lawyers and human rights organizations, Lin Guizhen was forcibly returned to China. The Tokyo office of UNHCR informed the Minister of Justice on the day before her deportation that it would be "more just an approach" to await the court decisions before deporting her. In an interview with a journalist a few days after Lin Guizhen's deportation, the UN High Commissioner for Refugees, Sadako Ogata, in response to questions on the case, stated that "We, the UNHCR, expect that deportation of asylum-seekers should not be executed as long as the legal process is still in progress".

Lin Guizhen was arrested on her return to China and sentenced to two years "re-education through labour". She has since been released.

#### 3.5.2The "Daiyu 1" case

On 25 October 1992 a fishing boat, the "Daiyu 1", was towed into Yokohama harbour with 142 citizens of the PRC on board. They were apparently trying to sail to the United States, but had to be taken under tow by the Japanese Coast Guard after an altercation with a Japanese fishing boat. The 142 were at first not allowed off the boat, although later they were moved to a warehouse in the port. They were not allowed access to lawyers who asked to meet with them nor to other interested people including a member of the Diet (Japan's parliament). The Japanese Section of Amnesty International wrote to the Ministry of Justice on 31 October asking that the Chinese be given individual interviews to determine if any among them were at risk of serious human rights violations if returned to China, but the government refused to conduct such interviews and indeed, from the start, was negotiating with the Chinese authorities to arrange for their return to China. Some journalists who were allowed on board the boat reported that the Chinese they interviewed had said that they had left China in search of better economic prospects in other countries. However, a television crew which used its own boat to approach the "Daiyu 1" when it was in the port filmed some of the Chinese on board shouting that they would be imprisoned or killed if sent back to China.

On 29 November 1992 the Chinese<sup>10</sup> were taken by boat to Nagasaki where, along with other Chinese "illegal" immigrants held at the Omura Detention Centre, they were handed over to the Chinese authorities who took them back by boat to China. Since none of them were given the chance to speak with a lawyer or to anyone other than officials (with the exception of a few journalists) there is no way of reliably knowing whether any of them wished to claim asylum, or whether any of them risked serious human rights violations in China.

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<sup>10</sup>141 were handed over to the Chinese authorities; while the "Daiyu 1" had been moored at Yokohama, one of the 142 had apparently managed to leave the boat and had gone missing

## 4. Unfair asylum procedures and inadequate protection for asylum-seekers

It is clear from the 1951 Convention that the decision as to whether an individual is entitled to protection against forcible return to a particular country should be based on a reliable assessment of the risks he or she faces in that country. It is not a decision that should be influenced by immigration or foreign policy considerations. Given the potentially severe consequences of a wrong decision, such decisions should be made with the greatest care and in a procedure which grants the asylum-seeker the rights necessary to ensure a fair hearing of her or his claim, including the right to legal counsel, the right to competent interpretation, and the right to an effective appeal against a negative decision. The decision makers should be competent, with the necessary expertise and impartiality, so that they can be relied upon to base their decision on an informed assessment of the relevant facts, taking full account of the requirements of international law.

The intergovernmental Executive Committee of UNHCR, of which Japan is a member, has elaborated several "basic requirements" which asylum procedures should satisfy<sup>11</sup>; these form a basic international standard for treating asylum applications, which all states should meet. When it adopted those requirements, the Executive Committee also requested the Office of the UNHCR to produce an authoritative *Handbook on Procedures and Criteria for Determining Refugee Status* (the Handbook), which was first published in 1979 and sets out more detailed guidelines for the treatment of all asylum applicants. Japan was a participant in the conference which adopted the 1989 Comprehensive Plan of Action for Indochinese Refugees (CPA), in which the authoritative role of the Handbook in making decisions on refugee status is explicitly recognized. It is against these standards in particular, and Japan's obligations under international human rights treaties more generally, that its current policies and practices regarding refugees and asylum-seekers must be assessed.

Amnesty International believes that the existing asylum procedures in Japan fall below international standards in a number of respects, and that there is inadequate protection in Japan for asylum-seekers who are at risk of serious human rights violations in their own countries. Amnesty International believes a thorough reform of the existing system is needed to bring Japan into line with its international obligations towards refugees and asylum-seekers. Amnesty International has reached this conclusion after considering several factors which are set out in detail below. One point of particular concern is the secrecy surrounding the process of applying for asylum in Japan. While a fair amount of information is publicly available, the government's refusal to disclose the identity of the decision-maker(s) serves to underline Amnesty International's concern that the procedures are arbitrary and overly politicized and do not operate in a way which fulfils Japan's international obligation to identify those in need of protection.

### 4.1 Difficulties in obtaining access to the asylum procedure

The first hurdle faced by asylum-seekers in Japan is actually to be able to register an application for asylum. This is a difficulty faced by all asylum-seekers in Japan, whether they are in the country legally or "illegally", and whether the claim is made at a port-of-entry or some time after arrival. Officials at the Tokyo immigration office assured Amnesty International that anyone who approached the office and indicated a fear of returning to their country of origin would be registered as an asylum applicant and interviewed about their asylum claim. Similarly, Ministry of Justice officials and the Director of

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<sup>11</sup>See Conclusion No. 8 (XXVIII) 1977, "Determination of refugee status", and also Conclusion No. 30 (XXXIV) 1983, "The problem of manifestly unfounded or abusive applications for refugee status or asylum".  
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Enforcement at the Omura Detention Centre insisted that people arriving at a port-of-entry or who were detained upon arrival and who claimed asylum would have their cases referred to the Ministry of Justice and they would be dealt with through the normal procedures. However, the evidence available to Amnesty International strongly indicates that this official version of events has not been borne out in practice.

The cases of Hong Jianbing, Lin Guizhen, J, and the Chinese aboard the "Daiyu 1" described above, all demonstrate that the mechanisms in place are inadequate to ensure that those who make known to public officials their intention to seek asylum will be allowed to exercise their right under both Japanese and international law to have their claim considered. Moreover, in some cases, such as those of Lin Guizhen and other Chinese arriving by boat, it appears that the government has acted in a determined manner to discourage and obstruct potential asylum-seekers from exercising this right.

With regard to people who claim asylum at a port-of-entry, the "landing for temporary refuge" provisions of the Japanese law appear not to be applied except in the case of Vietnamese asylum-seekers arriving by boat. As far as Amnesty International has been able to determine, virtually all of the 4,394 people granted "landing for temporary refuge" since 1982 (according to government statistics) have been Vietnamese asylum-seekers. These provisions should be used in all cases in which an asylum-seeker arrives at a Japanese port and states a fear of returning to his country for reasons set out in the 1951 Convention or "equivalent reasons". Amnesty International was not able to gather sufficient information on the cases of non-Vietnamese who have applied for asylum at a port-of-entry. However, there have reportedly been cases of asylum-seekers who have been detained upon arrival at an air or sea port and who have not been granted "landing for temporary refuge" although they indicated they feared returning to their country of origin for reasons similar to those set out in the 1951 Convention. Officials at the Tokyo immigration office, which is responsible for the immigration officers at Narita airport, told Amnesty International that the officers at the airport were fully aware of the "landing for temporary refuge" provisions and that they could be used in cases where people sought asylum at the airport.

There are numerous other cases which demonstrate that the right to submit an asylum application has been obstructed in practice. An Afghan refugee who asked not to be identified arrived in Japan in February 1984 on a false Pakistani passport; two weeks after his arrival he went to a police station and told the police officers he was a refugee and wanted to apply for asylum. He was detained and held for 23 months by the immigration authorities, apparently because of his improper documents, and, although he was questioned regularly in the weeks following his arrest about his reasons for fearing to return to Afghanistan, he was not given an asylum application form until some twelve months after his detention began. Article 31 of the 1951 Convention provides:

"A Contracting State shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom is threatened ... enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."

This refugee told Amnesty International: "I knew that Japan had signed the Refugee Convention, and so I thought it would be safe. I had no idea it would be so bad".

The Legal Aid Association (LAA) in Tokyo, which has an arrangement with UNHCR to provide legal advice and assistance to asylum-seekers, has assisted some 150 applicants since 1982. A lawyer at the AI Index: ASA 22/01/93Amnesty International March 1993

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association told Amnesty International that in a number of cases the officials at the Tokyo immigration office had refused to register asylum applications; some asylum-seekers who went to the office were told they had to return to the countries they fled and were not given asylum applications to fill in. In such cases, the LAA wrote a letter of protest to the immigration office and only then was an application for asylum registered. An Iranian asylum-seeker, Khodabakhsh M. Reza, told Amnesty International that he had tried to apply for asylum two weeks after his arrival in Japan in 1988, while still on a valid visitor visa; he was interviewed twice by immigration officers for a total of five hours, at the end of which he was told that he could not apply for asylum and he should return to Iran. He returned to the immigration office with a lawyer from the LAA and the application was registered. Similarly, Zhao Nan and other Chinese students reported that when they approached immigration officials to try and extend their study-related visas, they indicated that the reason for the extension was because they feared persecution if they returned to China; none were advised of their right to apply for asylum. The UNHCR office in Japan also confirmed to Amnesty International that they know of cases where asylum-seekers have reported difficulties at the immigration office in being allowed to register an asylum claim.

### 4.2 Restrictive application of the 60-day rule

A related problem concerning access to the asylum procedure is the way the 60-day rule is applied. As described above, this rule requires all asylum applications to be submitted within 60 days of a person's arrival in Japan, or within 60 days from the date when the circumstances arose which gave rise to a fear of returning. Amnesty International interviewed a number of asylum-seekers and lawyers who indicated that if 60 days had passed before the asylum-seeker approached the immigration office, then often the immigration office refused even to register an application. Although some lawyers, and the UNHCR office in Tokyo, believe that this problem has decreased in the last two years, the Ministry of Justice officials were themselves unclear when speaking with Amnesty International as to whether the immigration office could make a decision not to register a claim on the basis that it was not submitted within 60 days and there were no unavoidable circumstances justifying the delay. The Ministry of Justice officials said that they saw the papers "in every case" but also said that if it was "clear that there were no unavoidable circumstances" then the Refugee Inquirer might turn the applicant away without reference to their office. On the other hand, officials at the Tokyo immigration office insisted that all applications were registered, regardless of the 60-day rule.

Even in cases where the application of the 60-day rule does not lead to an outright refusal to register the application, the cases of Zhao Nan and J demonstrate that where such an application is considered, the authorities have relied on a restrictive interpretation of this rule to reject the applications without considering the merits of the claims. In the cases of Zhao Nan and J, it was the unexpected denial of their applications to extend their visas, and the sudden realization that they might have to return to China, which led them to apply for asylum. Although it could be argued that they should have applied for asylum as soon as they knew they would be at risk if returned to China, both of them indicated that they feared to return to China for political reasons when they applied in person to extend their visas and, at that time, neither of them were informed of their right to apply for asylum.

The Executive Committee of 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

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requirements, should not lead to an asylum request being excluded from consideration"<sup>12</sup>. Other countries which impose such time limits usually still consider late requests; the fact that the application is submitted late is usually just one factor in assessing a claimant's credibility. Although Japanese law provides for a relaxation of the rule where there are "unavoidable circumstances", in documents filed in court in the Zhao Nan case the government has interpreted this term narrowly so that it only covers illness or other circumstances making it physically impossible for the person concerned to submit an application within the 60 days.

### 4.3 Lack of advice and guidance on procedures to be followed

According to the Executive Committee of UNHCR, asylum-seekers "should receive the necessary guidance as to the procedures to be followed". When Amnesty International delegates asked officials of the Ministry of Justice whether any assistance and guidance on their rights and the procedures was provided to asylum-seekers, they were given a pamphlet entitled *Guide to the Procedure for Recognition of Refugee Status* which is "designed to explain briefly the ABC of such a procedure for the aliens wishing to be recognized as refugees and other people concerned". The pamphlet, available in English and Japanese, gives a very brief outline of how to apply for refugee status and the formalities involved and lists the offices where applications can be submitted and the telephone numbers and addresses of organizations that might be of assistance. Officials indicated that this pamphlet might be given to asylum-seekers who asked for information, and this was reiterated by officials at the Tokyo immigration office. However, none of the asylum-seekers or refugees Amnesty International spoke to had been given the pamphlet, and none of the lawyers who have experience in refugee cases was familiar with it. The pamphlet was printed in 1982, and there have been no reprints since then.

### 4.4 Expertise and impartiality of interviewing officers and decision makers

The UNHCR Handbook provides:

"It should be recalled that an applicant for refugee status is normally in a particularly vulnerable situation. He finds himself in an alien environment and may experience serious difficulties, technical and psychological, in submitting his case to the authorities of a foreign country, often in a language not his own. His application should therefore be examined within the framework of specially established procedures **by qualified personnel having the necessary knowledge and experience**, and an understanding of the applicant's particular difficulties and needs." [emphasis added]

In order to make competent decisions on an asylum claim, the decision makers and the interviewing officers should have an expert knowledge of international refugee law and international human rights law, and should have access to complete, impartial and reliable information on conditions in the asylum-seeker's country of origin. Since the officials Amnesty International spoke to refused to disclose the identity of the actual decision maker(s), Amnesty International is not able to assess the extent to which they have this knowledge and expertise. However, a prerequisite for a fair asylum procedure is the impartiality of the decision makers and insofar as the government seems determined to keep their identity secret, their impartiality must be open to question.

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<sup>12</sup>See Conclusion No. 15 (XXX) 1979, "Refugees without an asylum country", paragraph (i).  
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The Refugee Inquirers, who conduct all the interviews and make recommendations on each case, play a crucial role as the statement they prepare for any case is the basis for the eventual decision. Ministry of Justice officials told Amnesty International that the Refugee Inquirers receive training in international refugee law as part of their internal training and that, occasionally, outside experts are brought in for special training sessions. According to immigration officials, there is a manual for use by Refugee Inquirers in questioning applicants. However, it is "internal" and Amnesty International was not allowed to examine it to assess the extent to which it provides appropriate guidance for conducting the interviews and preparing the statement, and to what extent it pays due regard to international standards.

The UNHCR Handbook provides detailed guidance for those interviewing applicants and deciding on asylum claims, and presents a careful and thorough guide to applying the 1951 Convention. It has been translated into Japanese. Ministry of Justice officials told Amnesty International that they "refer to and respect" the UNHCR Handbook, but also indicated that the Handbook was not necessarily made available to the Refugee Inquirers; they said that if excerpts from the Handbook are relevant to a case, those excerpts are copied for the Refugee Inquirer. Officials at the Tokyo immigration office where interviews are conducted were vague as to the status and contents of the Handbook, and could give Amnesty International no clear indication of whether the Refugee Inquirers actually used it.

With regard to information on human rights conditions in the country of origin, Amnesty International was not satisfied that the Refugee Inquirers have ready access to complete, impartial and reliable information. A number of asylum-seekers reported that the Refugee Inquirers conducting the interviews seemed unaware of human rights violations or the general political situation in their country. Many Iranian asylum-seekers were simply told "there is a democracy in Iran, you can return home". Moreover, Ministry of Justice officials themselves confirmed that if information was needed on the situation in an applicant's country of origin, in most cases this would be sought from the Ministry of Foreign Affairs. Although such information might be helpful, if the Ministry of Foreign Affairs is the sole source of information on the asylum-seeker's country of origin then the decision makers may not have a complete picture of the situation. Based on interviews with officials, Amnesty International was led to conclude that there is no reliable system in place in the Ministry of Justice to collect current and impartial information from the widest possible range of sources, including non-governmental organizations and others who report on the human rights situation in countries around the world.

A related problem to that of inadequate information about the country of origin arises from the government's stated position that the asylum-seekers themselves must provide full documentation to support their cases. Japanese law places the onus on asylum-seekers to submit documents to establish their claims. However, as the UNHCR Handbook points out "... cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule .... while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner". Amnesty International has received repeated and consistent complaints from asylum-seekers that they had been asked to submit documentary evidence to substantiate **all** aspects of their claims, often with the additional requirement that the documents be translated into Japanese. Moreover, there appears to be a reluctance to accept as evidence anything other than official documents. One asylum-seeker from Bangladesh, Apu Sarwar, was asked to submit proof of the existence of the Special Powers Act, a law in Bangladesh which empowers the authorities to detain without charge or trial anyone suspected of committing a "prejudicial act" likely or intended "to endanger public safety or the

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maintenance of public order". As evidence, he asked to submit a copy of the entry on Bangladesh in the Amnesty International Annual Report which describes this legislation but was told that this was insufficient and an actual copy of the law, translated into Japanese, was required<sup>13</sup>.

Finally, a number of asylum-seekers have reportedly been subject to improper questioning which seemed designed to discredit their stories rather than to elicit relevant information. Apu Sarwar, on whose behalf Amnesty International had written to the Japanese authorities, said he was asked to tell the Refugee Inquirer what he knew of the impending visit by a member of Amnesty International's International Secretariat to conduct research on refugee protection issues in Japan. Other asylum-seekers report that interviews were conducted in an intimidating manner, and some say they have been subject to derogatory remarks. It is difficult to substantiate these reports, but Amnesty International was concerned that officials involved who were interviewed by the organization showed a lack of knowledge and expertise about international standards relating to refugees.

#### 4.5 Right to legal advice and assistance

Asylum-seekers who are not in detention are able to seek legal advice and assistance, and by contacting the office of the Japan Federation of Bar Associations can be put in touch with a lawyer with knowledge about the asylum procedures. Also, asylum-seekers who approach the UNHCR office in Tokyo may, after being interviewed by UNHCR, be referred to the Legal Aid Association where they will receive free legal advice and assistance paid for by UNHCR. The LAA has actively taken up some 150 cases pursuant to this arrangement with UNHCR, and has advised over 200 applicants.

Lawyers taking up asylum cases have expressed frustration at their inability to play an effective role in the asylum procedures. While they can advise asylum-seekers, they are not allowed to attend the interviews conducted by the Refugee Inquirer, nor are they permitted to see the statement prepared by the Refugee Inquirer before the asylum-seeker must sign it. In fact, Amnesty International was told that this statement is not usually made available to the lawyers at all, unless the case is appealed to the courts. Ministry of Justice officials told Amnesty International that the presence of lawyers at interviews was unnecessary because the determination of refugee status was not a judicial process; a final appeal could be made to the courts where lawyers could play a role. The Ministry of Justice did indicate that if the asylum-seeker was reinterviewed after appealing a negative decision to the Minister, a lawyer may be permitted to attend, but that this was entirely at the discretion of the Refugee Inquirer. Amnesty International knows of only a few cases in which this was permitted.

Some detained asylum-seekers have been denied any opportunity to seek legal advice and assistance and, in cases such as that of Lin Guizhen and other citizens of the PRC who arrive by boat, lawyers have been prevented from speaking to people in detention whom they believe might be asylum-seekers and at risk of serious human rights violations if returned.

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<sup>13</sup>Apu Sarwar, a human rights campaigner and a secretary of the Bangladesh Students League opposing the government of ex-President Ershad, was arrested on 3 October 1988 in Sirajganj after the local leader of Jamaat-e-Islamai, a fundamentalist Muslim organization close to the government, accused him and 17 others of an attack leading to the death of a Jamaat-e-Islamai secretary in September that year. Amnesty International was concerned that Apu Sarwar's arrest was politically motivated. He had been detained for his peaceful political activities in 1985, 1986 and in 1987. On the latter occasion Amnesty International adopted him as a prisoner of conscience.

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Article 13 of the International Covenant on Civil and Political Rights (ICCPR), to which Japan is a party, provides that non-nationals lawfully in the country are entitled to "... submit the reasons against expulsion and to have the case reviewed by, **and be represented for the purposes before**, the competent authority ..." [emphasis added]. While the interview to consider whether a person is a refugee is not in itself an expulsion hearing, its outcome could lead directly to a person being expelled, possibly to a country where they are at risk of serious human rights violations. Therefore, in accordance with Article 13 of the ICCPR, Amnesty International believes that lawyers should be permitted to attend this interview and to provide advice to the asylum-seeker regarding the statement prepared by the Refugee Inquirer before it is signed by the asylum-seeker.

### 4.6 Role of UNHCR

According to the Ministry of Justice, the UNHCR office in Tokyo is routinely informed of all asylum applications which are registered and the UNHCR office is free to express an opinion on any case. Ministry of Justice officials refused to indicate whether UNHCR advice was routinely followed; they would only say that any views submitted by UNHCR would be treated on a case-by-case basis. However, Amnesty International knows of several cases where the UNHCR office has written letters to the Ministry of Justice on behalf of people whom it considered were deserving of protection but who had nevertheless been denied refugee status. For example, Hong Jianbing was denied refugee status in April 1992 despite the fact that UNHCR had informed the government that they considered him to be a refugee in need of protection.

Under Article 35 of the 1951 Convention the Japanese Government is obliged to cooperate with UNHCR and facilitate its task of supervising the application of the Convention. In order to comply fully with this obligation, the government should extend protection to asylum-seekers whom the UNHCR office has clearly indicated are in need of such protection.

### 4.7 Ineffective appeal

It is clear that, in view of the potentially grave consequences of an incorrect decision, a fair asylum procedure must include the possibility for an effective review of a negative decision. Amnesty International believes that an effective review requires an appeal to an independent, impartial and competent authority. The appeal body should rigorously examine the basis on which the application has been rejected, taking full account of the asylum-seeker's response or counter-arguments to the reasons for the rejection of his or her request. These reasons must be full and specific. Furthermore, in line with conclusions of the Executive Committee of UNHCR<sup>14</sup>, asylum-seekers must be permitted to remain in the country pending the review body's final decision.

The current appeal provisions in Japanese law allow only for the decision to be reviewed by the Minister of Justice. Amnesty International was told that in practice re-interviews are generally carried out by a different Refugee Inquirer and the papers are sent to the Refugee Recognition Department and then forwarded to the appropriate person or body for a decision. It is clear that since the same ministry deals

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<sup>14</sup>"The applicant ... should also be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending." Conclusion No. 8 (XXVIII) 1977, "Determination of refugee status".  
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with both the appeal and the case at first instance, some of the same departments or individuals may be involved in the case at both levels; indeed, some regional offices only have one Refugee Inquirer. This arrangement does not provide for an effective review, as officials from the same ministry who made the first decision are unlikely to be rigorous or effective in identifying errors in previous decisions made by their colleagues. No decision has ever been overturned on appeal to the Minister of Justice. Indeed, the failure of this system in providing an effective appeal process is also shown in the fact that in many cases asylum-seekers are asked to produce new evidence to support the appeal. In one case, an asylum-seeker who went to the immigration office to file an appeal was reportedly told by the immigration officer that "unless there is something new in the statement, you are wasting our time and joking with Japanese law". The whole point of a review should be to allow for a fresh look at the same facts, not the same look at new facts.

Asylum-seekers are given written reasons if their claim is rejected. Amnesty International has been able to examine a number of these documents. In all these cases, the explanations are very short, rarely more than a few sentences, and tend to be restricted to refusing the claim on the grounds that there was insufficient evidence submitted. Phrases such as "You did not submit the documentary evidence sufficient to prove the [claim], although requested", were common in the reasons for refusal seen by Amnesty International. As discussed above, asylum-seekers will find it difficult to support all aspects of their claim with documentary evidence. Amnesty International is concerned that the written explanations provided to asylum-seekers for rejection of their applications are inadequate in providing a reasonable basis for allowing an effective appeal.

It is possible to appeal to a court against a refusal of refugee status but, for many asylum-seekers, this possibility is illusory. It is impossible to make such an appeal without the assistance of a lawyer and the arrangement UNHCR has with the LAA does not generally extend to cover costs of a judicial appeal. Moreover, many lawyers interviewed by Amnesty International placed little confidence in the judicial appeal because in their view the courts are extremely reticent to substantively review decisions made by the Minister of Justice. Finally, as the case of Lin Guizhen demonstrates, this appeal does not provide asylum-seekers with protection pending a decision, as the government may proceed to implement an order of expulsion while the appeal is under consideration.

#### 4.8 Problems related to detention and the "provisional release" system

In Japan the detention of asylum-seekers arises in two circumstances. First, asylum-seekers arriving at a port-of-entry can be detained for a number of reasons. Although the law applies to non-nationals in general, it makes no special provisions for asylum-seekers. Lin Guizhen and other nationals of the PRC who arrive by boat were detained upon arrival, regardless of whether they indicated an intention to seek asylum. Second, after being admitted to Japan, asylum-seekers who have arrived with fraudulent documents, whose visas expire or whose claims are rejected may be detained pending deportation, as in the cases of the Afghan, Ahmadi and Iranian refugees described above.

Conclusions reached by the Executive Committee of UNHCR provide that the detention of asylum-seekers should normally be avoided and should only be resorted to for certain specified reasons such as to verify identity, to deal with cases where false documents are used intentionally to mislead the authorities,

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or to protect national security or public order<sup>15</sup>. Furthermore, according to the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment<sup>16</sup>, all detained persons have the right to individually challenge the legality of their detention before a judicial or similar authority whose status and tenure afford the strongest possible guarantees of competence, impartiality and independence.

Amnesty International was not able to determine the grounds for detention in individual cases of asylum-seekers. The organization is concerned however at the practice of detaining rejected asylum-seekers, apparently on the grounds that they are about to be deported, when many of those interviewed by Amnesty International who were detained when their claim was rejected appeared to be deserving of refugee status and in need of protection against forcible return. Furthermore, while detained asylum-seekers can challenge the legality of their detention, this possibility is effectively denied when they are denied access to legal advice and assistance, as in the case of Lin Guizhen and other Chinese arriving by boat.

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<sup>15</sup>Conclusion No. 44 (XXXVII) 1986, "Detention of refugees and asylum-seekers".

<sup>16</sup>UN General Assembly Resolution 43/173 of 9 December 1988, adopted without a vote.

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## 5. Amnesty International's recommendations to the Japanese Government

Current policies and practices in Japan regarding the protection of refugees and asylum-seekers are deficient in a number of respects, and thorough reforms are needed to bring Japan into line with its international obligations.

Amnesty International recognizes the problems governments face in trying fairly to balance general immigration policies against obligations assumed towards those who arrive in their territories and who are in need of protection. However, the need to ensure that the fundamental human rights of refugees and asylum-seekers are protected must be paramount. Respecting these rights is not an act of benevolence that can vary depending on domestic policy considerations -- it is an obligation required by international law.

### A. General

• Amnesty International recommends that the Government of Japan establish without delay an independent advisory body, composed of impartial members with a recognized expertise, to review the entire system of refugee protection in Japan, drawing on outside sources as appropriate, with a view to making proposals in the near future to the government for reform of existing policies and practices. There are, both inside Japan and in other countries, many academics, international lawyers, and non-governmental organizations that work with refugees and asylum-seekers who have a recognized expertise in this field and whose views and opinions could be beneficial to the Japanese Government in setting out to ensure that its policies and practices are made to conform to international standards.

Amnesty International further recommends that immediate action be taken on the following points which concern the most serious deficiencies:

### B. Obtaining access to the asylum procedures

1. Effective measures should be implemented to ensure that asylum-seekers arriving at ports-of-entry are guaranteed an opportunity to have the substance of their asylum claims fully considered by the competent authority. People who arrive by boat or at an airport and indicate a fear of returning to the country they came from should receive advice and guidance on the asylum procedures and be allowed to communicate without delay with the UNHCR and a lawyer. A list of lawyers and organizations working with refugees should be given to asylum-seekers arriving at a port-of-entry.

2. The government should ensure that immigration officers at ports-of-entry are properly trained to identify those who might be at risk if returned and these officers should, in appropriate cases, implement Article 18(2) ("landing permission for temporary refuge") of the *Immigration Control and Refugee Recognition Act*, so that such people are assured of admission to Japanese territory.

3. The instructions given to immigration officers at ports-of-entry to give effect to points (1) and (2) should be made public.

4. Asylum-seekers who approach immigration offices to apply for asylum, or who indicate in any other

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way their fear of returning to a particular country, should in all cases be allowed to submit a formal application for asylum and should be given advice and guidance on the procedures to be followed. They should also be provided with a list of lawyers and organizations working with refugees who can provide them with independent advice.

5. The application of the 60-day rule should be modified so that the time when a person knows that he or she must leave Japan (for example, because a visa extension is denied) is taken to be the date when circumstances arise giving rise to a well-founded fear of persecution. Furthermore, in no case should failure to meet time limits in itself lead to a refusal to consider the substance of the claim.

### C. Fair and satisfactory asylum procedures

6. All officials involved in questioning or interviewing the asylum-seeker and in making a decision on her or his application should be instructed and trained to follow the procedural guidance given in §195-§219 of UNHCR's *Handbook on Procedures and Criteria for Determining Refugee Status*. All such officials, including border officials, should take into consideration the special situation of the asylum-seeker, who might experience language or other difficulties in expressing or presenting a request for asylum, who may have had to flee without personal documents, and whose past experience may have caused him or her to be apprehensive of authority, to be afraid to speak freely, and to have difficulty giving a full and accurate account of his or her case.

7. The government should establish a public and independent body responsible for deciding on claims for asylum. It should be a specialized authority whose sole and exclusive responsibility is examining and making decisions on asylum claims. The decision makers of that independent body should have expertise in international refugee law and international human rights law. Their status and tenure should afford the strongest possible guarantees of their competence, impartiality and independence.

8. In examining asylum claims, the decision makers of that independent body should be provided with the services of a documentation office whose tasks would include providing complete and objective information from a variety of sources on the human rights situation in asylum-seekers' countries of origin or any country to which they might be sent.

9. All asylum-seekers, at all stages of the procedure, should have the right to legal counsel and the right to contact and to have access to UNHCR. An asylum-seeker's lawyer should be permitted to advise him or her regarding any statement setting out the reasons for the claim before it is signed and submitted to officials. The government should, in cooperation with UNHCR, ensure that legal advice and assistance is available to all asylum-seekers.

10. All asylum-seekers should have the right to competent interpreters, provided by the government. Furthermore, the government should cease its practice of insisting that documents submitted be translated at the asylum-seeker's expense into Japanese, insofar as such requests place unreasonable demands upon asylum-seekers.

11. There should be a right to appeal in every case to a higher authority which is distinct from the decision maker at first instance; this appeal should in all cases have a suspensive effect on expulsion. All asylum-

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seekers whose claims are refused should receive full written reasons setting out the grounds upon which the claim has been refused so that an effective appeal can be initiated.

#### D. Detention of asylum-seekers and refugees

12. The government should make a formal undertaking not to detain asylum-seekers unless it is absolutely necessary and only for reasons which international standards recognize as legitimate.

13. In cases where asylum-seekers are detained, whether at a port-of-entry or after arrival, they should be given an effective opportunity to challenge the legality of their detention before a judicial or similar authority whose status and tenure afford the strongest possible guarantees of competence, impartiality and independence. To give effect to this obligation, all detained asylum-seekers should be informed of this right and be allowed to communicate with lawyers.

14. Until the necessary reforms have been implemented to establish fair and satisfactory asylum procedures, the government should demonstrate that the practice of detaining asylum-seekers whose cases are rejected is for reasons considered legitimate by international standards.

15. All asylum-seekers who are currently on "provisional release" should have their asylum applications reviewed and in cases where they are at risk of serious human rights violations in their own countries they should be granted a separate permission to remain in Japan which provides effective and durable protection against forcible return.