

# Japan

## Submission of Information to the UN Human Rights Committee

111<sup>th</sup> session of the UN Human Rights Committee (7 - 25 July 2014)  
Consideration of the Sixth Periodic Report of Japan under article 40 of  
the Covenant

June 2014

### NGO Osaka Team for Refugees

Osaka Team for Refugees based in Osaka, the second largest city in Japan, submits the following information to HRCttee regarding the refugee recognition system in the Sixth Periodic Report of Japan and the Replies of Japan to the List of Issues dated on 6 March 2014.

#### Outline of the information

##### 1. Relating to **Article 12**

The Minister of Justice applies his own severe standard of proof when examining refugee applications, which is incompatible with the standard set by UNHCR without showing any proper reasons in public.

In 2013, the Minister of Justice granted the refugee status to only 2 out of 2,642 applicants.

##### 2. Relating to **Article 13**

In 2005, the refugee examination counselor system was introduced to ensure fairness and neutrality of the examination of objections against the denial of refugee status; however, the system has not been functioning properly because of the fundamental defects.

In 2013, only 3 out of 1,135 applicants filing objections were approved of their objections.

In March 2014, the bill to amend drastically the Administrative Appeal Act for the first time in 50 years was laid before the Diet. The amendment is aiming mainly to improve fairness of the whole appeal systems, and in spite of that, the Ministry of Justice is to set restrictions on the application of the new fairer system to the refugee recognition procedure by revising the Immigration Control and Refugee Recognition Act (hereafter referred as the “Immigration Control Act”).

## Article 12

The standard of proof in the examination of refugee applications

Document : Sixth Periodic Report of Japan (Paragraph 233–235)

1. In 2013, The Minister of Justice granted the refugee status to only 2 out of 2,642 applicants (excluding objection and trial cases). It has already been known that Japan has made too serious decisions against refugee applicants. The examination result of last year following 2012 shows The Minister of Justice uses his own severe standard of proof when examining refugee applications to avoid Japan's duty as a signatory country by disqualifying almost all refugee applicants in a systematic way. Actually, 151 applicants who disqualified got the special permission to stay in Japan last year, however, these dispositions are not the protection under the UN Refugee Convention.

2. The Immigration Bureau of the Ministry of Justice which takes charge of examining refugee applications has provided that the degree of proof to meet the condition of a refugee defined in the UN Refugee Convention should be the same as required in civil suit, so refugee applicants need to prove their condition with the proof of the degree not to classify rational doubt into. Then, under this standard of proof, they have provided that when they can not find if an applicant is the refugee or not, the applicant should be disqualified.<sup>1</sup> It is completely incompatible with the view of proof shown by UNHCR<sup>2</sup> to require such a severe proof in civil suit for a refugee application. The Immigration Bureau disqualifies nearly all refugee applicants by using this standard of proof.

3. We have claimed that Immigration Bureau should explain the reason why they use the standard of proof required in civil suit to make a decision on a refugee application as an

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<sup>1</sup> About the degree of proof, these kind of remarks are recorded as the government side claims in trial records in 2012 and others.

<sup>2</sup> UNHCR's document "Note on Burden and Standard of Proof in Refugee Claims" (6 December 1998) shows as follows.

- In examining refugee claims, the particular situation of asylum-seekers should be kept in mind and consideration given to the fact that the ultimate objective of refugee status determination is humanitarian.
- In so far as evidence is concerned, refugee claims are unlike criminal cases or civil claims.
- Where the adjudicator considers that the applicant's story is on the whole coherent and plausible, any element of doubt should not prejudice the applicant's claim; that is, the applicant should be given the "benefit of the doubt"
- Since the examiner's conclusion on the facts of the case and his personal impression of the applicant will lead to a decision that affects human lives, he must apply the criteria in a spirit of justice and understanding.

administrative disposition. Immigration Bureau replied three times, on February 23, 2013, July 9, 2013 and January 28, 2014. Those three answers could not explain any reason and they only repeated two points.<sup>3</sup>

① The guidelines shown by UNHCR do not have legal binding force.

② In a trial, there is no special rule to ease the degree of proof.

We never mention about the legal binding force of the guidelines or the proof treatment manner in a trial. After all, the Immigration Bureau, without showing any reason, requires sever proof for refugee recognition which affects even human lives as UNHCR remarks and continues to reject almost all refugee applications. Moreover, it is very exceptional for refugee applicants to get refugee status under the current objection system with serious defects as mentioned in the next item. Eventually, those applicants' passports are expired and they do not have any chance to get a visa from other countries. Finally, they only have two choices, going back to their home country under the deportation system or staying in Japan as illegal residents to lead a hopeless life.

### **Article 13**

The objection system against the denial of refugee applications

Document : Sixth Periodic Report of Japan (Paragraph 244—246)

Replies of Japan to the List of Issues (Paragraph195—197)

4. A person who is rejected refugee status by the Minister of Justice's disposition can file an objection to the Minister under the Administrative Appeal Act. The partial amendment of the Immigration Control Act in 2005 introduced the refugee examination counselors system. Under this system the Minister of Justice is required to seek opinions of the refugee examination counselors (hereafter referred as "the counselors"), who are selected from nonofficial persons of learning and experience, when the Minister makes a decision on any objection case. Although the Ministry of Justice keeps explaining at home and abroad that the objectiveness of the Minister's decision making process is fully assured by this counselors system, the serious defects involved in this system has been pointed out as follows.

① The refugee examination counselors are selected by the Minister of Justice to submit opinions on the objections to the Minister. This kind of system can be hardly called to be independent.

② The counselors have been selected from persons mainly in the three fields of academic standing, legal professions and experts in international affairs. However, the counselors who have knowledge and experience on refugee matters in Japan are only a few out of 79 counselors at present, for example. The counselors are to compose teams of three members each, and the opinion to the Minister of Justice is made by each team in charge. Therefore a team with a counselor having good knowledge and experience relating to refugees is very rare, while some teams even have an ex-prosecutor member.

③ Although the counselors have opportunities to take lessons about refugee matters, it is

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<sup>3</sup> There is a record of the answers given by Osaka Immigration Bureau.

not indispensable for them to have the lessons before they start their work. In addition, the practical key lessons such as on how to implement UNHCR's Guideline are not included in them<sup>4</sup>.

5. So that, under this counselors system, in 2013, only 3 out of 1,135 persons of objection cases were recognized as refugees defined in the UN Refugee Convention by the Minister of Justice. As a matter worthy of special concern regarding this result last year, the Minister refused to admit 7 persons of 4 cases as the refugees even the teams in charge recognized them as refugees. Therefore, despite the sixth periodic report of Japan submitted in 2012 to HRCtte mentions "there is no case in which the Minister of Justice's decision went against the majority opinion submitted by the refugee examination counselors" at the paragraph 245, this remark is not seen at the relating paragraph 196 in the Replies of Japan same submitted to the HRCtte on 6 March, 2014.

6. In this way, even though the Ministry of Justice states that the examination system of objection to a denial of refugee status is improved since the refugee examination counselors system is introduced, the system does not fulfill its function.

In addition, Administrative Appeal Act, which the existing objection system is based on, is to be amended drastically for the first time in 50 years for more equitable examination, but as follows, for the examination of objections to a denial of refugee status, the Ministry of Justice has submitted a bill to incorporate some articles in the Immigration Control Act, which limit the application of the more equitable remedy in the new Administrative Appeal Act.

7. The amendment bill of the Administrative Appeal Act, which was submitted to the Diet on March 14, 2014, newly installs "examination members" under the minister who adjudicates on appeals. The examination members are normally appointed from among the staff of the Minister's Secretariat, who are not related to the original disposal of refugee recognition, and they hear both assertions by the person filing an appeal and the authority making the disposal of the problem.

The epoch making significant point of this hearing is that the both sides are convened at the same time, and there, oral statements of opinion by the person filing an appeal are made, and moreover the person may ask questions to the authority. In the current system, documentary examination is chosen as a rule, and in addition there is no provision to separate the person who reviews the disposition from who makes it.

8. The amendment bill of Immigration Control Act, which was submitted the same day, is to provide to limit the convening of the authority responsible for the disposition as well as the

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<sup>4</sup> In the convention held in 2011 and 2013, these points were mentioned by a professor who was the Counselor at that time.

opportunity of oral statements of opinion for the person filing an appeal (Article 61-2-9 vi of the revised Immigration Control Act).

The Minister of Justice informs the refugee examination counselors mentioned above 4 as the examination members, then,

① Even though giving the opportunity is the obligation, the counselors are able not to give this opportunity where it is recognized that the assertion of the person filing an appeal does not include the grounds to be a refugees and that there are other circumstances under which giving the opportunity to the person is not appropriate.

In the just beginning of the preparation for the Minister of Justice to adjudicate on an appeal contesting the denial of refugee status, counselors are to recognize the person as non-refugee and limit the proceedings.

② There is no need for examination members to convene the authority responsible for the disposition where it finds that they do not need to convene the authority, as a result of the hearing on the presence and content of the questions from the person filing an appeal, even if it is assumed to make oral statements of opinion.

9. Despite the fact that disposal of refugee status affects human lives, even the equitable relief procedures of the new Administrative Appeal Act, which are applied to appeal cases as a rule, has a limiting for its application to the refugee recognition cases under the amendment bill of Immigration Control Act. That can be understood only from the standpoint of efficiency of the adjudication process in the Ministry of Justice.

Refugee recognition disposition is such that with a character very different from other administrative decisions, and therefore the disposal procedures and relief procedures of refugee recognition requires Humanitarian system different from the normal administrative cases, which takes into consideration the severity of the disposal result and the situation of asylum seekers. However, such a viewpoint has not seen in the treatment of refugees to the Ministry of Justice.

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