

ASYLUM IN JAPAN: AN OVERVIEW OF GOVERNMENT COMMITMENTS AND ASYLUM STATISTICS

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I. INTRODUCTION

2011 was a landmark year for the Japanese asylum system in many ways. First of all, it was the thirtieth anniversary of its accession to the 1951 Convention relating to the Status of Refugees. Secondly, the number of asylum applications reached a record high for Japan, with 1,867 applications in the first instance and 1,719 appeals in a year. Thirdly, the recognition rate hit a record low at 0.33% in the first instance and 1.6% on appeal. The following sections provide an overview of the current status of asylum in Japan by reviewing the commitments recently made by the government and introducing some statistics from the past thirty years. The aim of this paper is to provide an overall picture of refugee protection in Japan with a focus on the refugee status determination procedures and asylum statistics. Therefore, it neither covers the issues of assistance to asylum seekers and refugees, nor the ongoing pilot resettlement programme, both of which merit a separate analysis.

II. JAPAN'S COMMITMENTS

2011 marked thirty years since Japan acceded to the 1951 Convention relating to the Status of Refugees in 1981. It was also the sixtieth anniversary of the 1951 Convention. In this milestone year, the Japanese Government made a record financial contribution to UNHCR and made important commitments for refugee protection, by way of a resolution passed by the National Diet and a pledge made at the Ministerial Meeting in Geneva to celebrate the anniversary of the 1951 Convention.

Japan contributed USD 226,106,644 to UNHCR in 2011, making it the second largest donor to UNHCR after the United States.¹ The contribution by the Japanese government constituted 10.6% of the total contributions to UNHCR in 2011.² It should be noted that this remarkable contribution was made precisely during the year in which the Great East Japan Earthquake hit Japan, requiring a tremendous amount of recovery efforts that are still ongoing

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1 UNHCR 2012a.

2 UNHCR 2012c.

today.

Also during 2011, a “Resolution regarding continued commitment for refugee protection and solutions to refugee issues” was passed by the House of Representatives on 17 November³ and by the House of Councillors on 21 November⁴ in the National Diet. Prime Minister Yoshihiko Noda remarked on the occasion: “We will continue to play a leading role in the international community for durable solutions to refugee issues around the world and for the improvement in the quality of refugee protection.”⁵

The following is the full text of the resolution:

2011 marks the 60th anniversary of the adoption of the 1951 “Convention relating to the Status of Refugees”, and the 30th anniversary of Japan’s accession to the Convention. Over the past 30 years, Japan has contributed to the assistance for refugees and displaced persons around the world as a member of the international community and, by emphasizing the concept of Human Security, has taken various measures with a focus on peace-building and humanitarian assistance for individual refugees. In 2010, Japan became the first resettlement country in Asia by starting a pilot programme for accepting resettlement of Myanmar refugees from Thailand.

On the national level, we have continued to strive for the transparency and efficiency of the refugee status determination procedure, aiming for the improvement and development of the asylum system.

Respecting the past achievements, international law and international basic principles with regard to refugee protection, Japan will strive forward for the establishment of a comprehensive national asylum system and further enhancement of the resettlement programme, while strengthening the cooperation with international organizations and civil society organizations assisting refugees. At the same time, by continuing our assistance for refugees and displaced persons overseas in line with our foreign policy, we will play a leading role in Asia and in the world for durable solutions to refugee issues and for improvements in the quality of asylum.

The adoption of the resolution in the House of Representatives coincided with the date of an anniversary symposium co-hosted by UNHCR and the Japanese Government with the participation of both the current High Commissioner Antonio Guterres and the former High Commissioner Sadako Ogata. The resolution is welcomed in general by UNHCR and refugee organizations in Japan. UNHCR sees it as a sign of increased awareness for refugee issues in the Diet, as well as a commitment to express Japan’s leadership for refugee protection and

3 House of Representatives. 2011a. Provisional translation of the resolution, including the title, is provided by the author.

4 House of Councillors.

5 House of Representatives, 2011b.

humanitarian assistance.⁶ Japan Association for Refugees, one of the most active non-profit organizations with a focus on refugees within Japan, also released a statement welcoming the resolution.⁷ Whether the resolution is a mere show of goodwill on the occasion to celebrate the anniversary year for Japan and UNHCR or a sign of true commitment for refugee protection remains to be seen. Either way, the resolution can be a useful advocacy tool for practitioners, especially given the fact that it was passed by consensus in both houses of the Diet.

In a similar show of public support for refugee protection, the Government of Japan pledged to do the following at the Ministerial Meeting, held in Geneva in December 2011 to mark the 60th anniversary of the 1951 Convention.⁸

1. Play a leading role and continue to actively support UNHCR in the protection of refugees and internally displaced persons around the world towards achieving a durable solution to refugee issues.
2. Improve Refugee Status Determination (RSD) procedures by: a) enhancing training of refugee status inspectors; b) both publicizing and enhancing data collection concerning refugees' countries of origin and refugee producing situations throughout the world; c) accelerating the RSD process to increase confidence in the system; d) providing information on RSD procedures to asylum seekers; and e) solving issues related to detention during the RSD process.
3. Improve and enrich the support program for resettled refugees in Japan, aiming for the success of the pilot project for resettlement currently underway.

While the contributions and commitments by the Japanese government are significant and cast a positive light for Japan in the international community, the actual situation of refugees and asylum seekers within Japan brings out a somewhat different picture. Although Japan's asylum system has seen some improvements over the years such as the abolition of the 60-day application time limit, reform of the appeal system and some regularization of asylum seekers' legal status, there are still many challenges and areas for improvement. The next section will introduce some issues about the refugee status determination procedure in Japan, which will in turn provide a background for understanding the statistics in the subsequent sections.

III. REFUGEE STATUS DETERMINATION PROCEDURE

The Japanese refugee determination procedure is unique among industrialized countries in the sense that the decisions in the first instance and on appeal are both made as adminis-

6 UNHCR 2011a.

7 Japan Association for Refugees.

8 UNHCR 2011c.

trative decisions in the name of the Minister of Justice.⁹

For many years, both the first instance and appeal decisions were handled by the Immigration Bureau of the Ministry of Justice, albeit by different divisions within the Bureau. In 2005, the Immigration Control and Refugee Recognition Act was revised to introduce a new procedure, under which the Minister is now required by law¹⁰ to consult with the “refugee examination counselors” (RECs) for asylum appeal decisions. While the introduction of RECs into the appeal system is an improvement over the past, the current system is still a far cry from an independent review. The Immigration Bureau handles the first instance decisions on one hand and on the other still maintains much influence over the appeal process through the appointment and team assignment of RECs, as well as the provision of administrative and other support services for them. Moreover, the Immigration Bureau is also responsible for deportation. A fully independent and transparent appeal with specialized staff is required in order to ensure fair and impartial reviews of decisions on refugee status.

As of 15 February 2012, there are 55 RECs appointed by the Minister of Justice including the author.¹¹ They come from various backgrounds, and include former judges, prosecutors, attorneys, university professors, diplomats, journalists, and personnel from non-governmental and international organizations. Japan Federation of Bar Associations and UNHCR can recommend candidates for RECs, but the Minister of Justice holds the power of appointment.

The RECs are divided into teams with three members each, and conduct appeal interviews and make recommendations to the Minister of Justice. The recommendations made by the RECs are not legally binding. However, according to the Ministry of Justice, there have been no cases so far where the Minister’s decision on appeal was different from the recommendation by the RECs, indicating the fact that the RECs’ opinions are generally respected in practice. When there is no consensus among the three RECs in a team, the Minister’s decision follows the majority opinion.

While the Ministry of Justice together with UNHCR currently provides training to those involved in the first instance decision-making process and support staff for RECs, there is no systematic training as such for the RECs except for country briefings organized by the Ministry. Training in refugee law, credibility assessment, interview techniques, drafting of decisions, etc., would be useful not only for the first instance decision-makers but also for the RECs.

There is no asylum tribunal or immigration court in Japan. Lawsuits regarding asylum decisions usually take the form of “actions for the revocation of the original administrative disposition”¹² to deny refugee status, submitted to a district court. If an applicant wins his or her case in court and has the Minister’s negative decision cancelled, he or she must resubmit an

9 Immigration Control and Refugee Recognition Act, Article 61-2 and 61-2-9. The appeal system is based on the Administrative Appeal Act. The Republic of Korea has a procedure similar to Japan, with an advisory committee on the appeal level.

10 Ibid. Article 61-2-9(3): “When making a decision on the objection set forth in paragraph (1) [author’s note: i.e. regarding denial or revocation of refugee status], the Minister of Justice shall, as provided for by an Ordinance of the Ministry of Justice, consult with the refugee examination counselors.”

11 Immigration Bureau 2012b.

12 Administrative Case Litigation Act, Article 3(2).

application for refugee status to the Ministry of Justice, which will normally follow the court's judgment and grant refugee status. However, Japan Lawyers Network for Refugees reported that in 2011 there was one case in which the Minister, after having his negative decision cancelled by the judiciary and upon re-application by the applicant, still refused to grant refugee status and only provided humanitarian status.¹³

IV. ASYLUM STATISTICS

Every year around the end of February, the Ministry of Justice publishes asylum statistics for the previous year. This section is based on the most recent data from 2011 made available by the Ministry on 24 February 2012.¹⁴

A. Applications

1,867 applications were registered in 2011, i.e., a monthly average of 156. This number is extremely low for a developed country. For example, the US alone received an estimated 74,000 new applications in one year, while France received 51,900 and Germany received 45,700.¹⁵ According to UNHCR's *Asylum Levels and Trends in Industrialized Countries 2011*, a group of 44 industrialized countries received an estimated 441,300 asylum applications in 2011, in which Japan's share of 1,867 was only 0.4%. Still, it is a record high for Japan and an increase of 55% compared to 2010 when there were 1,202 applications. As the following graph shows, the number of applications in Japan has been gradually increasing as a trend, with some ups and downs.¹⁶

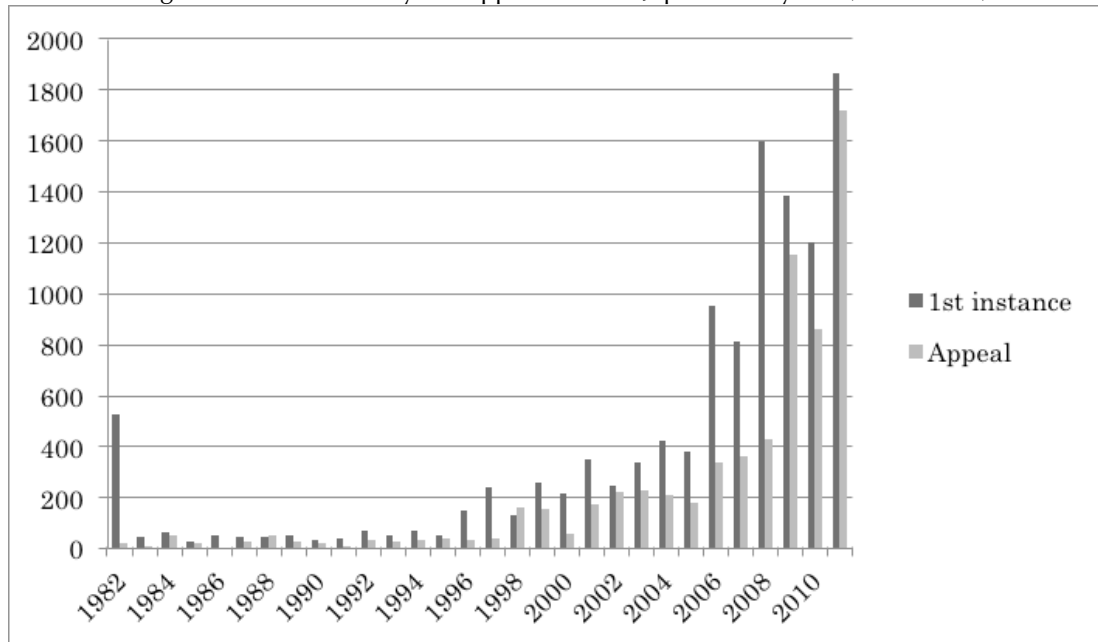
13 Japan Lawyers Network for Refugees.

14 Immigration Bureau 2012c.

15 UNHCR 2012b.

16 It should be noted that sometimes the immigration bureau's campaign to identify foreign nationals without legal status invites new applications from those living in Japan for a long time without status. At other times, a change in the political situation of the home country encourages people to submit new applications. Thus, the number of applications does not necessarily represent new arrivals of asylum seekers.

Figure 1: Number of asylum applications in Japan in 30 years (1982-2011)



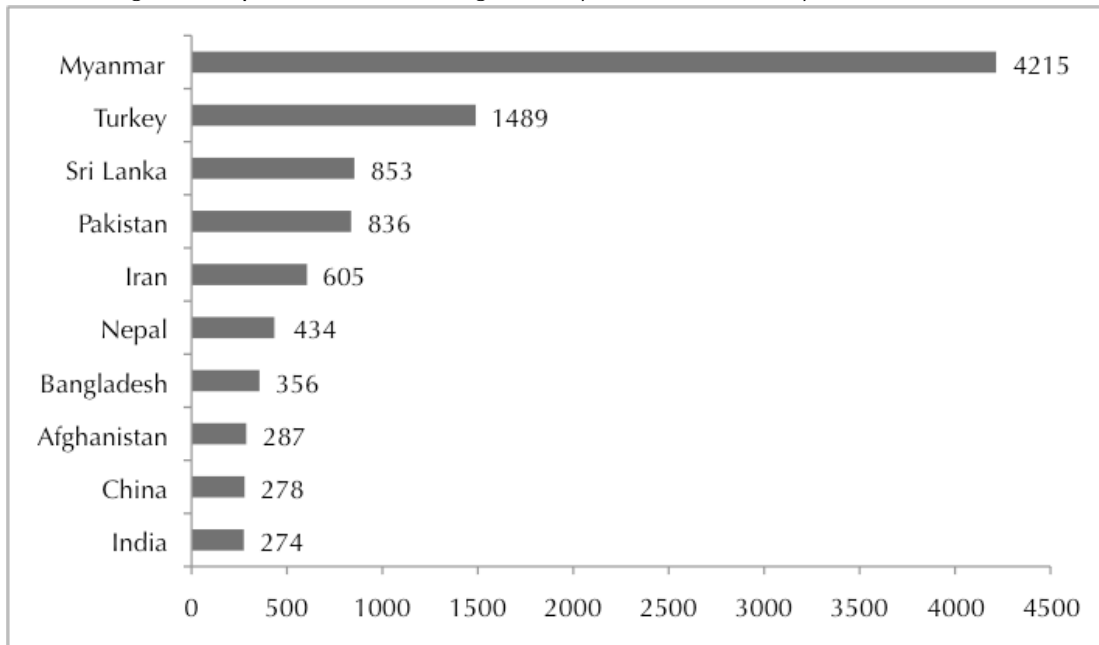
Source: Ministry of Justice, Japan (Graph created by author)¹⁷

The asylum seekers in 2011 came from 57 countries, and main countries of origin were Myanmar (491), Nepal (251), Turkey (234), Sri Lanka (224), and Pakistan (169). Most asylum seekers tended to come from Asia, but African asylum seekers are also increasing as a recent trend, for example from Ethiopia, Uganda, Cameroon and Nigeria.

Over the past 30 years since the establishment of Japan's national procedure for the determination of refugee status, 11,754 applications were submitted in total, mainly from Myanmar (4,215), Turkey (1,489), Sri Lanka (853), Pakistan (836), and Iran (605). The following graph shows the top 10 countries of origin of asylum applicants in Japan, from January 1982 to December 2011.

¹⁷ Immigration Bureau 2009a and 2012c.

Figure 2: Top 10 countries of origin for asylum seekers in 30 years (1982-2011)



Other countries: 2127

Source: Ministry of Justice, Japan (Graph created by author)¹⁸

Another trend is an increase in multiple applications. In 2011, 540 applications, or 28.9% of the total number of applications in the year, were multiple applications. A multiple application is an application from an asylum seeker who already received a negative decision in Japan’s refugee status determination procedure including appeal in a previous asylum application. In Japan, there is no legal limit to the number of asylum applications an individual can submit, and multiple applications are processed in the same way as new applications.

There are legitimate concerns that the increase in multiple applications might clog the system and prevent timely decisions for genuine asylum seekers, and the government is in the process of seeking ways to address this issue. While it is inevitable that there may be some cases where a new application is submitted for the sole purpose of prolonging one’s stay in Japan for economic reasons, it is important not to generalize because there are cases where a multiple application is justified. For example, new evidence may be presented in support of the existence of a well-founded fear of persecution, or a sur place element may come up during the applicant’s stay in Japan.¹⁹ The latter is especially relevant when the processing time is prolonged, as discussed below. It is also important to look at the issue in context. The Japan

¹⁸ Immigration Bureau 2012c.

¹⁹ An applicant “who was not a refugee when he left his country, but who becomes a refugee at a later date, is generally referred to as a refugee ‘sur place.’” See UNHCR 1992, para 94-96. Sur place elements may include post-departure events such as a new regime or intensification of existing social or political conflicts in the country of origin, or actions taken by the applicants while in the country of asylum that may give rise to a well-founded fear of persecution.

Lawyers Network for Refugees points out in its statement that, given the “abnormally high” rejection rate in Japan, the number of multiple applications is an indication that those deserving protection are not properly protected and are obliged to re-apply.²⁰

The number of appeals doubled in a year, from 859 in 2010 to 1719 in 2011, and also marked a record high for Japan. The appellants’ main countries of origin were Myanmar (444), Sri Lanka (231), Turkey (213), Nepal (191), and Pakistan (142).

The government does not publish breakdowns of annual statistics by age or sex, but the majority of the applicants are adult male. During the 24-year period from January 1982 to December 2005, 80.3% of the applicants were male and 19.7% female.²¹ During the same period, the age composition was as follows: 8.1% below age 10, 6.8% age 10-19, 32.3% age 20-29, 36.5% age 30-39, 13.0% age 40-49, 2.5% age 50-59, 0.7% age 60 and above, and 0.1% age unknown.²² Unlike some other industrialized countries, no rise in the number of applications by unaccompanied minors has been reported in Japan.²³

B. Decisions

In 2011, the number of processed cases was 2,119 in the first instance. Processed cases include cases that were recognized, rejected, or withdrawn. Among them, 7 were recognized as refugees, 2,002 were rejected, and 110 were withdrawn. The recognition rate among all processed cases was 0.33% (0.35% if withdrawn cases are excluded). This was a record low in 30 years of Japan’s national refugee status determination procedure. According to Japan Lawyers Network for Refugees, at least 2 out of the 7 recognized in the first instance were cases for which the previous decision to deny refugee status was later reversed in court.²⁴

At the appeal level, 880 cases were processed. Among them, 14 were recognized, 635 were rejected, and 231 were withdrawn. The recognition rate at the appeal level was 1.6% (2.2% if withdrawn cases are excluded). This was also a record low since the asylum procedure was reformed and refugee examination counselors were introduced in 2005.

²⁰ Japan Lawyers Network for Refugees.

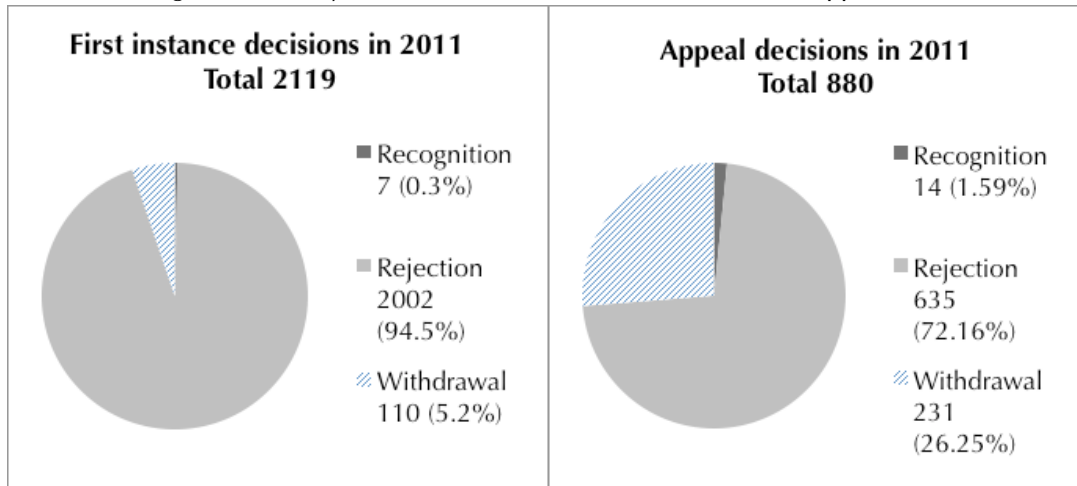
²¹ Immigration Bureau 2006, 5.

²² *Ibid.*

²³ For example, both a rise in the number of unaccompanied minors seeking asylum and a decrease in their average age were reported in Belgium and other European countries in 2011. UNHCR 2011b.

²⁴ Japan Lawyers Network for Refugees.

Figures 3&4: Asylum decisions in 2011 (first instance and appeal)



Source: Ministry of Justice, Japan (Graphs created by author)²⁵

Among the total of 21 refugees recognized (7 in the first instance and 14 on appeal) in 2011, 18 were from Myanmar (85.7%). This predominance of Myanmar refugees has been a major characteristic of Japan's refugee status determination since 2003. Myanmar nationals are also dominant among those who are given humanitarian status discussed below. One African per year is granted refugee status in recent years that some advocates call it "the African quota".²⁶

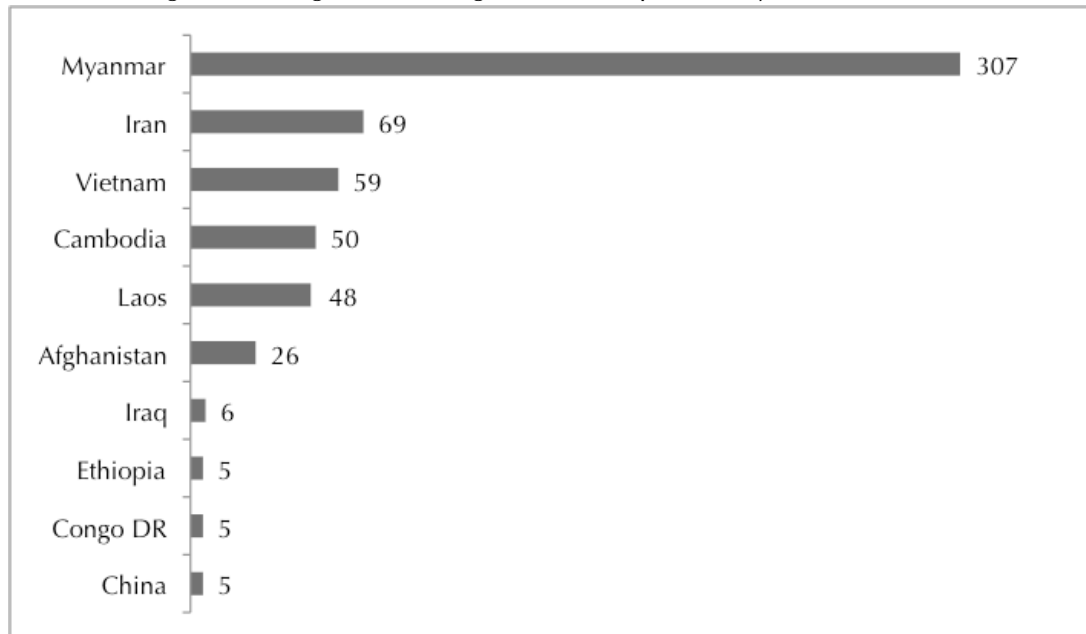
Over the past 30 years, Japan has recognized a total of 598 refugees (including both first instance and appeal recognitions).²⁷ Main nationalities of those recognized as refugees in the past 30 years are Myanmar (307), Iran (69), Vietnam (59), Cambodia (50), and Laos (48).

²⁵ Immigration Bureau 2012c.

²⁶ Japan Lawyers Network for Refugees.

²⁷ Immigration Bureau 2012c. These figures do not include all the Indochinese refugees from Vietnam, Laos and Cambodia, who started arriving by boat before Japan acceded to the 1951 Convention and established a national refugee status determination procedure. 11,319 in total were accepted between 1978 and 2005 through a special framework for Indochinese without going through the regular refugee status determination procedure. Some of them did apply for refugee status upon establishment of the procedure, and consisted most of the applications and recognitions in the first few years. Towards the end of the programme for Indochinese, however, there were only arrivals for family reunification through the Orderly Departure Programme. See Ministry of Foreign Affairs, 2009. Also not included here are the refugees who are resettled to Japan under the pilot resettlement programme now in place. Japan initially set the pilot resettlement quota at 90 over 3 years starting in 2010, but only 45 have arrived as of April 2012 and the government recently announced to extend the programme for 2 more years. See Miura and Masutomi 2011 and Takizawa 2012 for details and some difficulties regarding the programme.

Figure 5: Recognition of refugee status in Japan in 30 years (1982-2011)



Total: 598. Other countries: 18. Includes recognition on appeal.

Source: Ministry of Justice, Japan (Graph created by author)²⁸

Among the rejected asylum seekers, 248 were given humanitarian status in 2011. This is not reflected in the two graphs above, because the government does not make public how many are given humanitarian status in each stage of the asylum process. The RECs who take part in the appeal procedure are not officially requested or required by law to provide advice on humanitarian status. Nevertheless, many RECs do express opinions and provide reasoning for granting humanitarian status. Also, the government includes humanitarian status in its report on “total protection”, i.e. number of those recognized as refugees under the 1951 Convention and those who are given humanitarian status. The following graph shows the numbers of recognition in the first instance and appeal, as well as the number of humanitarian status provided over the last 30 years.

²⁸ Immigration Bureau 2012c.