

Joint statement on the revision of Immigration law regarding the long-term detention and “*Soukan-Kihisha*”

On October 1st, 2019, the Ministry of Justice established an “*Expert Committee for Detention and Repatriation*” under the informal meeting for immigration policies. At the meeting, policies on how to decrease the number of “*Soukan-Kihisha*” (those who refused to follow the expulsion order) were discussed relating to the protected detention and respective treatment during such detention. The committee could only agree on certain possibilities by promoting repatriation and strengthening the independent policy.

Today, we call upon all parties concerned to take urgent action on the following:

1. Revise Immigration Law to stop unnecessary long-term detention;
2. Create a separate agency for refugee status and the necessary determination process related thereto in order to distinguish it from the Immigration Bureau of Japan; and
3. Regularize the irregular residents.

1. Revise Immigration Law to stop unnecessary long-term detention;

The Ground

The main reason for the current situation is that there are no limitations on the maximum period of detention bound by the Deportation Order. The United Nations has given recommendations for the improvement of the indefinite detention. As detention under the Immigration Law is specifically for repatriation, it is unacceptable to detain someone for a period longer than that. By limiting the maximum period of detention, we can speedily resolve the current long-term detention issue.

What follows is an example. In 2013, the supreme court of Taiwan concluded that indefinite detentions are unconstitutional and subsequently revised the law. In 2018, five judges from the constitutional court of South Korea voted that indefinite detentions are unconstitutional, while four dissented.

The Ministry of Justice in Japan, however, uses detention as a preventive means similar to the situation in World War 2 based on the reasoning that there is a high chance of foreigners committing a felony in Japan again after serving a sentence. On July 22nd, 2019, the supervising immigration inspector of the Tokyo Regional Immigration Bureau re-detained two foreigners who had been on a hunger strike.

The provisions should be amended to stipulate the purpose of detention as repatriation to prevent such arbitrary future detention. Moreover, the judicial branch should be involved to decide if the detention is necessary or whether releasing the individuals should be considered within a certain number of days.

2. Create a separate agency for refugee status and the necessary determination process related thereto in order to distinguish it from the Immigration Bureau of Japan

Before separating the refugee status determination process from the Immigration Bureau of Japan, there should not be a revision of the non-refoulement provisions (Immigration law art. 61-2-6-3).

The Grounds

According to the document “Current Situation around “*Soukan-Kihisha*” published by the Ministry of Justice, the biggest reason for the increase in the number of long-term detentions is “the refugee recognition system abuse” as such submitting the multi-application after deportation expulsion order has been issued. However, the five countries stated in the document (Iran, Sri Lanka, Turkey, Nigeria, Myanmar) are the majority of “*Soukan-Kihisha*” refugees. The reason they repeat the refugee application multiple times even after the expulsion order has been issued is that they need help. The government needs to tackle the current situation and change the policy called “*Nanmin-Sakoku*”

(*sakoku*=closed country coming from the isolationist policy in *Edo-era*/“*Nammin*”=Refugee in Japanese) to protect those who are in need before considering the way to decrease the “abuse” of the system.

It is necessary to set up an independent institution to specifically be in charge of the refugee status determination process instead of the immigration bureau of Japan. Revising the non-refoulement provisions (Immigration law art. 61-2-6-3) would lead to a decrease in the number of refugees to be protected and in so better the current situation.

3. Regularize the irregular residents.

The Grounds

There are multiple reasons as to why “*Sokan-Kihisha*” may reject being deported. Some may have a family in Japan, while others might have made their livelihoods in Japan. Whatever the reason, they have a justifiable reason to stay in this country.

The Japanese government revised the Immigration Law to implement the Specified Skilled Worker System in the short term allowing congress to accept migrant workers in urgent situations. At first, the intention was to accept 345,000 foreigners, about 5,000 people in a month. Despite the effort, by the end of September in 2019, the number of residential permission for the specified skilled workers has been only 219. On the other hand, there is much demand for these specified skilled workers from both businesses, which require workers in an aging Japanese society, and immigrants who want to work in Japan. Considering each of the different circumstances from a human rights perspective, even for those who may not have met the requirement, the issue of the special permission to stay in Japan should also be put into consideration.

Some countries have been working on this issue since the 1970s for 10,000 people. The US regularized 2,700,000 in the 1980s, and South Korea did 1,80,000 in 2003. Japan also did for 50,000 people with the plan to reduce illegal residents in 5 years, and the Ministry of Justice has subsequently been emphasizing these effects. Hence it should not be a challenge to regularize every one of those who meet the range of qualifications that are applicable in each respective situation. The motivation to drive these countries to implement these policies will not only protect human rights but be more beneficial for the countries ensuring the labor forces and those with financial interests including social insurance and taxes. It is strongly suggested that the Japanese government should learn other ways when it comes to facing illegal immigrant issues like the examples provided in this joint statement and applies to the policy in a productive direction.

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Solidarity Network with Migrants Japan

Japan Lawyers Network for Refugees

Catholic Commission of Japan for Migrants, Refugees, and People on the Move

Human Rights Now

Hammersmith Oath

Attorneys Fighting Against Mandatory Detention Policy

Immigration Review Task Force