

Joint Press Release for Immediate Release

UN Experts Expressed Concerns to the Government of Japan on the Special Procedures about Violations of International Human Rights Law in the Bill to Amend the Immigration and Refugee Recognition Act Currently under Deliberation in the Diet. The Experts Called for a Thorough Review and Further Information.

— Response must be in line with Japan's Obligations under International Human Rights Law and their Pledges.

Tokyo, Japan, 25 April 2023 – On 7 March 2023, a bill to partially amend the Immigration Control and Refugee Recognition Act (hereinafter referred to as the "2023 Bill") was approved by the Japanese Cabinet and submitted to the 211th session of the Diet (regular session)¹. It has been almost two years after the withdrawal of their previous bill (hereinafter referred to as the "2021 Bill")². While deliberations on the 2023 bill started off in the plenary session of the House of Representatives on 13 April 2023, and the Committee on Judicial Affairs in the House of Representatives just had discussed about the bill on 19 and 21 April, on 21 April 2023 (Geneva and Japan time), it was found that experts of the UN Human Rights Council sent a joint letter to the Government of Japan on April 18 2023 (Geneva time), which alleged that the 2023 bill would violate international law and the International Covenant on Civil and Political Rights (ICCPR) in particular³. The experts expressed concerns about the 2023 Bill in terms of remaining presumption of detention, lack of judicial review of detention, indefinite detention, violation of the *non-refoulement principle*, negative impact on the enjoyment of human rights and a risk of exploitation under the newly established non-custodial measures ("monitoring measure"), and protection of rights of the child, and called for dialogue with the Government of Japan regarding their concerns. We strongly support the concerns raised in the letter and call for an immediate response by the Government of Japan and the greatest commitments by all parliamentarians to address this letter in light of the urgent situation where the 2023 Bill is already under discussion in the Diet.

Overview of the letter or 2023

The letter was issued by the UN Working Group on Arbitrary Detention (WGAD), the Special Rapporteur on the human rights of migrants, and the Special Rapporteur on freedom of religion or belief. This is the second time for the Government of Japan to receive a letter regarding a bill to amend the ICRRRA on the

¹ Immigration Control and Refugee Recognition Act (ICRRRA) Cabinet Bill, 19 February 2021: available at <http://www.moj.go.jp/isa/laws/bill/index.html>.

² Same as above.

³ OL JPN 1/2023, 18 April 2023: available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27995>.

special procedures since 2021. In 2021, the letter was sent on March 31, expressing serious concern that the 2021 Bill fell short of international human rights standards⁴, and the Government of Japan reported back on June 17 that they withdrew the 2021 Bill⁵. In the letter of 2023, the WGAD and Special Rapporteurs urged the Government of Japan to thoroughly review the 2023 Bill to bring domestic legislation in line with Japan's obligations under international human rights law, despite some modifications to the 2021 Bill, as proposed provisions questioned in the letter of 2021 remain fundamentally unchanged and would still fall short of international human rights standards. They requested further information from the Government of Japan regarding the concerns mentioned in the letter and stated that they stand ready to cooperate with the Government of Japan to enhance the protection of the human rights of all migrants, asylum seekers and refugees in Japan.

Concerns raised in the letter of 2023

Particularly, the experts expressed concerns about the following points:

1. Maintaining a system based on a presumption of detention

It was concerned that detention would still prevail whenever a "monitoring measure" is not applied and that the decision to apply such measures or to be detained is at the discretion of an immigration officer (the supervising immigration inspector), under the 2023 Bill. They stressed that such a structure could violate Article 9 of the ICCPR and Article 9 of the Universal Declaration of Human Rights, which identifies personal liberty as the principle and detention as a measure of last resort. They expressed particular concern that the 2023 Bill is still based on the presumption of detention.

2. Problems caused by the newly introduced non-custodial measure

The 2023 Bill maintains the introduction of a new alternative to immigration detention, the "monitoring measure" in which an individual is allowed to undergo proceedings from their place of residence under the supervision of a monitor. The experts noted that (1) the payment of a deposit of not more than three million yen would, in principle, no longer be a requirement to apply a monitoring measure, however this deposit could still be imposed by the immigration officer (the supervising immigration inspector), when they find it necessary; (2) although reporting obligation of the designated "monitor" appears to be reduced as compared to the 2021 Bill, it can still be imposed if the immigration official (the supervising immigration inspector) requests so; (3) a fine would still be applicable in case the monitor violates their reporting obligations as in the 2021 Bill; (4) "monitoring measures" could negatively impact on the enjoyment of the right to privacy for both migrants and their monitors. They observed that the application of "monitoring measure" could be particularly challenging and raised concerns that it even could entail a risk of exploitation. They stressed that States are required to provide non-custodial alternatives to detention that fully protect the human rights of migrants.

The experts stated "Importantly, alternatives to detention must not be provided when there is no justification for detention in the first place. Importantly, alternatives to incarceration should not be applied when there is no justification for the incarceration in the first place. In such cases, the immigrant should be released.", which means that if detention is not necessary, the individual is neither subject to detention nor even subject to "monitoring measure".

⁴ OL JPN 3/2021, 31 March 2021: available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26325>.

⁵ See for more details, Permanent Mission of Japan, 17 June 2021: available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=36354>.

3. Lack of judicial review

The experts expressed concern that the 2023 Bill does not foresee any judicial review of immigration detention. They stressed that the 2023 Bill states that every three months the immigration official (the supervising immigration inspector) will review the need for detention, however, this does not constitute judicial review. They recalled that international standards require that “any form of detention, including detention in the course of migration proceedings, must be ordered and approved by a judge or other judicial authority”.

4. Indefinite detention

The experts stressed that the 2023 Bill does not provide for a maximum period of detention and it induced prolonged detention, and that the indefinite detention of individuals during migration proceedings is considered arbitrary, which constitutes violations of the ICCPR. They urged the Government of Japan to define a maximum detention period in law.

5. Immigration detention of a child

The experts emphasized concern that the 2023 Bill still does not include an explicit prohibition of immigration detention of children.

6. Concerns on lifting of suspension of the deportation procedure for some of those who have applied for refugee recognition

The experts expressed a serious concern that the 2023 bill allows the automatic suspension of the deportation procedure to be lifted for individuals who have applied for refugee recognition for a third time or more, individuals who have been sentenced to three years or more of imprisonment in Japan and those suspected for having possibly been involved in or facilitated violent, subversive or other activities. They stressed that this could be a threat to their lives or rights, and would not be in line with the principle of *non-refoulement* codified in article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); article 16 of the International Convention for the Protection of All Persons from Enforced Disappearances; article 7 of the ICCPR. They stated “the absence of appropriate procedural safeguards that explicitly require individual assessment on the circumstances and protection needs prior to deportation, legislative proposals lifting automatic suspension of deportation procedures for asylum seekers of the above-mentioned categories would undermine international human rights law and the principle of non-refoulement.”, which led to a clear conclusion that proposed lifting of suspension of the deportation procedure in the 2023 Bill would violate international law.

Actions the Government of Japan must take

The WGAD and Special Rapporteurs are appointed by the UN Human Rights Council (Japan has served as member for a long time) to conduct special procedures under the mandates given by the Human Rights Council to achieve one of the Council's main functions: to raise public awareness on human rights issues and to improve the human rights situation around the world. The Special Procedures cover a wide range of issues, from human rights violations against individuals to the laws and policies of each country. The joint letter to the Government of Japan in 2023 is also part of their mandates.

Prime Minister Fumio Kishida stressed Japan's commitment to the realization of a UN that promotes the rule of law in the international community, at the 77th session of the UN General Assembly on 20

September 2022⁶; Special Advisor to the Prime Minister Gen Nakatani stated that Japan will continue to play a leading role in the protection and promotion of international and domestic human rights at the 52nd High-Level Segment of the Human Rights Council held on 3 March 2023⁷. In addition, the Government of Japan has announced that they would run for election to the Human Rights Council in 2023, following in 2019. In a series of elections at the Human Rights Council, Japan have made the voluntary pledges, which have promised that Japan would attach great importance to meaningful and constructive dialogues with the Office of the High Commissioner for Human Rights (OHCHR) and the Special Procedures, to which Japan would continue to offer its cooperation⁸.

The letter concludes by stating, "We reiterate that any migration governance measures, including those aimed at addressing irregular migration, shall not adversely affect the enjoyment of the human rights and dignity of migrants. Human rights apply to everyone, including all migrants notwithstanding their nationality, age, gender, migratory status, or other attribute. States' obligations under all the core international human rights treaties relating to their migration governance measures require that human rights be at the centre of their efforts to address migration in all its phases —". Fundamental human rights are not to be "taken into account" but should be placed at the "center" of any system. There is no one who should be an exception.

Many concerns expressed in the letter of 2023 pertain to the backbone of the 2023 Bill. They are also stated from a legal perspective and would not be responded by changes to the operation of the 2023 Bill. We believe that a fundamental review of the 2023 Bill is essential to ensure that Japan respects the universal value of fundamental human rights. In sum, we urge the Government of Japan to prioritize substantive communications and consultations with various stakeholders, including the special procedures, rather than a hasty debate on the 2023 Bill at the current 211th session of the Diet, and to thoroughly review the amendment to the ICRRRA to ensure that they are in line with Japan's obligations under international human rights law, as called for in the letter of 2023 in connection to the letter of 2021.

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⁶ See for more details, Address by Prime Minister Fumio Kishida at the 77th Session of the UN General Assembly, 20 September 2022: available at https://www.mofa.go.jp/fp/unp_a/page3e_001242.html.

⁷ See for more details, Statement by Mr. Gen Nakatani, Special Advisor to the Prime Minister, at the High-Level Segment of the 52nd Session of the Human Rights Council, 3 March 2023: available at https://www.mofa.go.jp/hr_ha/page22e_001027.html.

⁸ See example, Government of Japan, Commitments and pledges pursuant to General Assembly resolution 60/251, 15 July 2016 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/227/93/PDF/N1622793.pdf?OpenElement>. Also see Government of Japan, Voluntary pledges and commitments pursuant to General Assembly resolution 60/251, January 2019: available at <https://www.mofa.go.jp/mofaj/files/000175306.pdf>.