FRJ
Forum for Refugees Japan
なんみんフォーラム

# Submission to the UN Human Rights Committee For the 7th Periodic Review of Japan based on ICCPR

# NGO Report on Treatment of Refugees, Asylum Seekers and Stateless Persons in response to the List of Issues

## Submitted by Forum for Refugees Japan
## September 12, 2022

**Forum for Refugees Japan (FRJ)** is an umbrella body of organizations supporting refugees who have fled to Japan. Established as an non-profit and non-governmental organization in 2004, FRJ has worked in cooperation with its member organizations (25 organizations as of August 2022), as well as the Office of the United Nations High Commissioner for Refugees (UNHCR). Envisioning a society where the rights and dignity of those seeking international protection including refugees are protected and they can rebuild their lives in safety, FRJ is dedicated to information sharing among NGOs, networking and partnership building with relevant actors both inside and outside Japan, and advocacy at a national level and beyond. Since 2011, FRJ has engaged in the alternatives to detention project for those who sought protection in airports, in collaboration with the Ministry of Justice and Japan Federation of Bar Association. Specifically, FRJ provides shelters and casework to meet individual needs. FRJ is a member of the Asia Pacific Refugee Rights Network (APRRN), as well as the International Detention Coalition (IDC).

**Table of Contents**


**Section 1. Introduction** **3**

**Section 2. Matters of concern and recommendation** **4**

1. Asylum Procedure 4

(1) Fair and Efficient Asylum Procedures 4

(2) Requests for an Administrative Review to the Minister of Justice 5

(3) Judicial Administration 7

2. Treatment of Asylum Seekers 8

3. Deportation of Asylum Seekers 9

(1) Execution of Deportation Procedure against Asylum Seekers 9

(2) Protection against Refoulement 12

4. Detention of Asylum Seekers 14

(1) Immigration Detention against International Human Rights Law 14

(2) Alternatives to Administrative Detention 15

5. Stateless Persons 17

**Section 3. Overall Conclusion** **20**

**Section 4. References** **20**

## Section 1. Introduction

Refugee status recognition system in Japan contains a variety of issues that are causing obstacles to ensure protection for those who need it. The government's seventh periodic report submitted under article 40 of the Covenant raises many concerns, as it does not accurately reflect the situation of refugees and others in need of international protection who have fled to Japan.

The primary issue is the considerably low number of refugee status recognitions. In 2021, 74 applicants were recognized as refugees while 10,928 cases were denied (calculated by a total number of first examinations and requests for an administrative review). The total number of cases granted refugee status from 1982 (the year when the refugee recognition system was introduced in Japan) through 2021 is less than 1,000. Since 2011, there has not been a single year where the refugee recognition rate surpassed 1%. This is due to several factors, including a narrow interpretation of the criteria for refugee status under the Refugee Convention and a lack of procedural safeguards. Under these circumstances, those who are in need of international protection have not been ensured access to their rights, leaving them no choice but to re-apply for refugee status or to leave Japan.

Another concern is the treatment of applicants for recognition of refugee status. The average processing period, starting from the date of application to its disposition, is approximately 53.1 months (calculated by a total of first examinations and requests for an administrative review). However, not all asylum seekers have been receiving necessary public support during their application, neither having been granted work permission. In addition, some asylum seekers have not been ensured their legal rights and are detained while applying for recognition of refugee status.

As for the way to strengthen the national asylum system, UNHCR has suggested the "establishment of a comprehensive asylum system (see no.5 of Section 4. References)", though the Government has hardly taken effective measures to develop such a system. Refugee-supportive organizations have constantly been dealing with asylum seekers living in poverty, or with those who are facing detention and will eventually have no choice but to return to their country.

Furthermore, in February 2021, the government submitted a "Bill for the Partial Revision of the Immigration Control and Refugee Recognition Act" (hereinafter referred to as "the Amendment Bill") to the Diet, which includes a provision allowing the deportation of applicants for recognition of refugee status. Though the bill did not pass during that Diet session and has been abandoned to this point, it is reported that the government intends to re-submit it. If such a provision were to be introduced, applicants who had been denied refugee status but were able to avoid deportation by re-applying for refugee status would face danger of deportation. This provision has been criticized by people with refugee backgrounds, support organizations, and the international community as being contrary to the principles of the Refugee Convention.

Referring to questions (a) from (e) of section 21 in the List of issues which calls for a report of measures regarding "treatment of aliens, including refugees and asylum seekers," FRJ proposes recommendations to the Government of Japan below. This is followed by a lay out of issues concerning support for all persons in need of international protection. The coming examination on the periodic report is to be conducted in a serious situation in which the government promotes the consideration of the legislation which makes the status of asylum seekers more vulnerable. Given this situation, FRJ believes that the concluding observations are of critical importance to the development of the asylum system in Japan.

## Section 2. Matters of concern and recommendation

### 1. Asylum Procedure
### (1) Fair and Efficient Asylum Procedures (LOI, para.21 (b))

■ Recommendations that we request

The State party should:

- Conduct a fundamental review of the asylum procedure to achieve "fair and efficient asylum procedures," including the enactment of a law specializing in refugee protection and the establishment of an independent organization for the protection of refugees.

■ Backgrounds

A. The Need for a Drastic Review of the Refugee Recognition System

In Answer 187, the government states that recent operational reviews "have led to prompt protection for refugees who are truly in need of protection," but the system has not been drastically improved, and people who should be recognized as refugees continue to be denied recognition.

In 2021, only 74 people were recognized as refugees in Japan. For instance, regarding persons from Myanmar, where the situation has further deteriorated due to the coup, 32 persons were recognized in 2021 while 559 were not, and 2,889 were in process at the end of 2021. In addition, from 2017 to 2020, not a single person from Myanmar has been recognized including Rohingya. Improvements are needed in various aspects, such as criteria for determining refugee status, due process guarantees, and methods of establishment of the facts.

Furthermore, regarding the refugee status system of Japan, UNHCR has proposed the establishment of a dedicated legal framework and agency for refugee protection, however there has been no concrete movement to improve the systems.

B. Complementary Forms of Protection

There is a system to give permission to stay on humanitarian grounds which allows those who have not been recognized as refugees to stay in Japan. In 2021, 580 people were granted to stay through this system and 525 of them were said to be granted to stay based on the situation in their home country. The breakdown of nationalities included Myanmar (498 people) and Syria (6 people). There is a concern that even those who should be recognized as refugees are being subject to permission to stay on humanitarian grounds, especially considering that for those from Myanmar, only 32 people were granted refugee status.

The government had proposed the establishment of complementary protection in the Amendment Bill submitted to the Diet in 2021 as an alternative to permission to stay on humanitarian grounds. However, the scope for the protection, defined as “a person who is not a refugee, who fulfills the criteria for the application of the 1951 Convention as a refugee, except for the criterion that the reason(s) for the fear of being persecuted is(are) the reason(s) provided for within Article 1A(2) of the 1951 Convention,” is inadequate to protect those in

need of international protection. It is necessary to revise the definition which complies with non-refoulement obligations imposed by the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture (CAT), and the Convention on the Rights of the Child (CRC) etc.

### (2) Requests for an Administrative Review to the Minister of Justice (LOI, para.21 (c))

■ Recommendations that we request

The State party should:

- Implement initiatives to ensure the expertise of refugee adjudication counselors and their independence from first instance decisions.
- Ensure transparency in the screening process by refugee adjudication counselors.
- Improve the implementation of oral opinion statements by refugee adjudication counselors.
- Continue compliance to positive opinions rendered by refugee adjudication counselors.

■ Backgrounds

A. Issues in Requests for an Administrative Review

In Answer 188, the government states "a person who was not recognized as a refugee in the procedures of application for refugee recognition (the first examination) may file a request for an administrative review with the Minister of Justice," but the determination at first instance is made by the Minister of Justice, and therefore a request for an administrative review against the Minister of Justice is cannot be considered as an "independent appeal mechanism." Fewer than 10 people per year have been recognized through the administrative review from 2013 to 2020, which means that the system is not functioning as an effective remedy for the determination in the first instance.

There are also various issues related to refugee adjudication counselors, who are supposed to be "heard the opinions" by the Minister of Justice. According to the current Immigration Control and Refugee Recognition Act (hereafter “ICRRA”), counselors are appointed from persons of "reputable character" and "an academic background in law or international affairs." However, the selection process has not been clear, and there are concerns that the Immigration Service Agency (hereafter “ISA”) may arbitrarily select the counselor, or the review is conducted in an inappropriate way by those without expertise in refugee recognition.

Multiple instances of personal attacks and insults by refugee adjudication counselors against applicants have been reported. For example,in March 2017, a refugee adjudication counselor asked a refugee applicant who claimed to be a rape victim inappropriate questions such as, "Were you targeted because you were pretty?" In response to a question by a lawmaker calling for an investigation into the inappropriate remarks, the government stated that it could not answer whether or not there would be an investigation because it "might intimidate refugee adjudication counselors."

In some selection processes of counselors, recommendations by UNHCR and bar associations are said to be sought, but the breakdown of these recommendations is unclear, and it is also noted that there are differences in the recommendation sources depending on the region where the screening takes place. The career backgrounds of the 118 people appointed as counselors as of August 2022 raises a concern that expertise in refugee recognition is not among the evaluation points of their appointments. The initiatives to ensure the qualification of refugee adjudication counselors, including the review of selection process and mandatory training, should be implemented.

The fact that the names and opinions of counselors in charge of the procedure are not disclosed to the applicant themselves is also a barrier to responsible judgment. The system to ensure the transparency and accountability of the screening should be established.

Moreover, of the 6,741 people who received the results of requests for an administrative review, only 720 were interviewed by counselors. It leads to the situation where decisions are made without sufficient opportunities for applicants to express their opinions directly to the counselors. Of these 6,741 people, 3,198 people are reported to have abandoned the requests for an oral opinion statement by themselves, but it is feared that the refugee applicants were not provided with sufficient information on the procedure and chose to abandon the procedure without understanding it. For the other 2,823 people, even though they did not abandon the requests by themselves, the opportunity for the oral opinion statements were not given due to the judgment that they did not have grounds to be recognized as refugees, etc.

B. Implementation in Good Faith of Positive Opinions of Refugee Adjudication Counselors

In Answer 191, the government states that “looking at the cases that determined administrative review (including the decision granted on appeal) from 2005, when the system was established, to the end of 2017 as a whole, Minister of Justice made the same decision as the major opinions of adjudication counselors for more than 90% of those.” Although decisions differ from majority opinions of adjudication counselors have not been reported in recent years in fact, there are still countless concerns in the system of administrative review, which hinders the improvement of the current circumstances

Despite the fact that the last decision which was against the opinions of the majority adjudication counselors was in 2015, there are no amendments in law to ban such determination. Furthermore, from 2016 to 2020, the number of refugees recognized in the administrative review was merely less than 5 persons a year. Along with the maintaining compliance of majority opinion by adjudication counselors, more practical and concrete improvements in the system need to be implemented, such as the ones mentioned in the above section.

### (3) Judicial Administration (LOI, para.21 (c) (d))

■ Recommendations that we request

| The State party should:<br><br>- Implement initiatives to substantially ensure access to judicial review, including legal aid for all asylum seekers.<br>- Maintain the current practice regarding the reflection of positive opinions by the courts. |
|---|

■ Backgrounds

A. Access to Judicial Review

In Answer 190, the government states that "....regardless of whether or not there is a request for an administrative review, when an applicant has an objection to the disposition, he/she may file an administrative lawsuit to seek judicial remedy," but it is not easy for asylum seekers to file an administrative lawsuit, which indicates the lack of effective remedy for them. Moreover, there are some reported cases where the right of a trial was deprived by deportation.

Refugee applicants do not have ensured access to attorneys or legal aids of any sort, rather, usages of legal aid for undocumented residents are de facto restricted. This causes hardships for applicants to seek judicial remedy and in fact, the number of lawsuits related to refugee recognition was only 15 in 2020.

B. Matters of Sincere Implementation of Good Faith Positive Opinions by Judiciary

In Answer 192, the government states that "in cases where a judgment revoking a disposition denying recognition of refugee status has been handed down in court, the Government has reconsidered whether or not the applicant qualifies as a refugee, taking into account the content of the judgments, and then addressed the situation appropriately," and official documents regarding the good faith implementation of positive court rulings have also been issued. Establishment and extension of appropriate practices are anticipated.

In July 2021, concerning positive decisions made by the courts, the government issued an official document saying that it won't make decisions that differ from the decisions unless the situation afterwards falls under the secession clause. In fact, in August 2022, an Kurdish asylum seeker from Turkey was recognized as a refugee based on this new practice. It was the first case as such in Japan in terms of the refugee recognition of Kurdish from Turkey.

The official document noted above was issued following a win case in December 2018, where the administration re-rejected the refugee status despite the positive decision by the judiciary and the applicant sued the government for the second time. Up to now, five cases are reported to be carried out without implementing positive opinions by the judiciary, which suggests that attention should be paid on the further implementation of the new practice.

## 2. Treatment of Asylum Seekers (LOI, para.21 (b))

■ Recommendations that we request

The State party should:

- Provide adequate public support for applicants for recognition of refugee status and establish an environment in which they can face "fair and efficient asylum procedures" with peace of mind.
- Ensure the livelihood of applicants for recognition of refugee status during the application process, regardless of whether or not they have a status of residence at the time of application.

■ Backgrounds

"Further revisions for operation of the refugee recognition system," which was referred to by the government in answers 185 to 187, is accompanied by restrictions on refugee applicants' rights to work and residence, and has the effect of making life even more difficult for them.

Under the "revisions for operation of the refugee recognition system" from September 2015 and "further revisions for operation of the refugee recognition system" from January 2018, it will be decided whether a person can work and be granted a status of residence while applying for refugee status or not depending on the classification of cases, which takes place within the first two months of their application. In particular, the fact that subsequent applicants are now subject to work/residence restrictions in principle has a serious impact on their lives and should be revised immediately.

There is also a concern that the classification of cases, which is an important decision regarding whether or not there are restrictions on work and residence, is made only by a documentary examination within a short period of two months.

Some refugee applicants are eligible to receive public assistance. However, in principle, the eligibility for the assistance is limited to first-time applicants, and due to strict eligibility and screening procedures, there are applicants who live in poverty but are not eligible for the grant. The number of recipients in 2021 was 250. In the same year, 2,413 people applied for refugee status and 16,619 people were waiting for the result of their applications at the end of the year. On average, it takes about 85 days for the screening process to receive the financial assistance, and during this time, some applicants are placed in extremely difficult situations, such as being homeless.

Furthermore, the amount allowance paid under the program for refugee applicants is about 60% of the Welfare Benefits (Social Security System for Japanese and others), which is implemented for the purpose of "guaranteeing a minimum standard of living." It creates the situation where refugee applicants are forced to live far below the minimum standard of living.

One refugee applicant, who came to Japan because it was the fastest country to grant him a visa, had nowhere to go after leaving the airport without any acquaintances in the country. With what little money he had, he was able to stay in a hotel, but soon ran out of money and was forced to be homeless. He had no country or even a home to go back to in the place he had fled to. By the time a person he happened to know taught him about a refugee assisting organization and he learned about the public assistance, he had experienced about two weeks of homelessness out in parks and train stations.

## 3. Deportation of Asylum Seekers
## (1) Execution of Deportation Procedure against Asylum Seekers (LOI, para.21 (a))

■ Recommendations that we request

The State party should:

- Avoid conducting deportation procedures against applicants for recognition of refugee status by actively implementing permissions for provisional stay.
- Avoid detaining asylum seekers with the purpose of deportation.
- Take measures to improve the current situation in which many of those who seek protection at airports are subject to deportation.

■ Backgrounds

A. The Operation of the Provisional Stay System

In Answer 179, the government states "...an applicant for recognition of refugee status without the status of residence is granted permission for provisional stay and not detained unless he/she is recognized as falling under certain grounds such as a case where he/she is likely to flee," but the provisional stay is only granted in very limited situations and the reality is that this system does not adequately function as a system to prevent the detention of refugee applicants.

To begin with, Japan's refugee recognition procedures do not prohibit the implementation of deportation procedures against refugee applicants, instead, a deportation order is issued to refugee applicants and they are detained for the purpose of deportation.

In this circumstance, the provisional stay system was introduced in 2005 to stabilize the legal status of refugee applicants who do not have the status of residence. When the provisional stay is granted, deportation procedures are exceptionally suspended and no detention takes place. However, only 29 were granted a provisional stay out of 625 people who were given a decision in 2021. This is due to the fact that "certain grounds such as a case where he/she is likely to flee (see government response 179)" are set in terms that are different from perspective of refugee protection and can be applied to almost all undocumented refugee applicants, without clear definition of certain criteria such as "where he/she is likely to flee."

One refugee applicant was denied provisional stay on the grounds of "the risk of absconding" after submitting the application immediately after landing. The applicant was transferred from the airport to a detention facility, where she was detained for a long period of time. If the reason for the decision that the applicant is at "risk of absconding" is because she has no acquaintances in Japan immediately after landing, then this is an inadequate remedy system for those seeking asylum at the airport and needs to be improved by eliminating some grounds for exception or introducing flexible interpretation of the grounds. In addition, the prohibition of detention of asylum seekers in principle needs to be stipulated in the law.

B. Reception Conditions for Refugee Applicants who are Denied Provisional Stay

In Answer 180, the government states "...the refugee recognition procedure is to be processed only after the person concerned is detained. However…the maximum consideration is given to people for whom particular humanitarian considerations are needed, by the flexible implementation of provisional release," but the reality is that those on the provisional release are in a situation where many of their rights have been taken away, and it cannot be said that "the maximum consideration" has been given to them.

Since February 2018, the government has changed its previous policy of utilizing provisional release for refugee applicants and has rather listed some situations of refugee applicants as one of the categories of "those who are not appropriate to be granted provisional release." As a result, the number of refugee applicants in detention remained at approximately 400 to 600 before the active utilization of provisional release due to the spread of COVID-19.

Furthermore, even if provisional release is granted, work is not permitted and access to medical care is difficult because enrollment in National Health Insurance is not allowed. In addition, they are not allowed to move across prefectures without permission of the authorities.

C. Treatment of Asylum Seekers at Airports

"Unjust Treatment" in the deportation process also applies to those who sought asylum at airports, which are supposed to function as the front line of asylum.

Unless "landing permission for temporary refuge" is granted, asylum seekers at airports are deemed as meeting the grounds for denial of landing and become subject to deportation procedures. Since 2012, the number of asylum seekers granted "landing permission for temporary refuge" has remained below 5 per year, and many of those seeking asylum at airports are detained in facilities inside and outside the airport. In 2019, of 192 people placed at Higashi-Nihon Immigration Center, 18 were transferred from nearby Narita airport. In addition, 17 people applied for refugee status at Narita Airport in the same year. Although the current system suspends the deportation of those applying for refugee status, it can be said that the access to asylum plays as a trigger to put them to the situation where their freedom and rights are extremely restricted.

One refugee applicant who entered Japan several years ago sought asylum at an airport and was detained in a facility there for a week, then transferred to a nearby detention facility, where he remained for another 3 months. During his detention at the airport, he was repeatedly pressured by the official to return to his country. When he was transferred to the facility, he was shackled and treated like a criminal. He also testified that the poor conditions at the facility mentally tortured the detainees and tried to make them give up.

The system should be reviewed to prevent asylum seekers at airports being subject to the deportation procedure, by making amendment of laws and change of practices to broaden the target of landing permission for temporary refuge.

D. Promoting the Deportation of Refugee Applicants without Status of Residence

The current system in which refugee applicants are subject to deportation is inappropriate from the perspective of implementing the Refugee Convention and needs to be revised as soon as possible. Furthermore, in recent years, the government illustrates refugee applicants without the status of residence as "Deportation Evaders" and there is concern that undocumented refugee applicants will be placed in an even more vulnerable position.

The situation in which any system has not been established to prevent the punishment of refugee applicants for landing or staying in the country by irregular means is contrary to Article 31 of the Refugee Convention. Even in a provisional release, the rights are severely restricted and the situation which amounts to the violation of the Convention continues.

Cases have been reported in the past that a refugee applicant who chose to return to his country in fear of detention was prosecuted by the authorities after the return and killed during trial. The attitude of forcing people to return to dangerous countries by "clampdown" through detention and provisional release is contrary to the non-refoulement principle.

In October 2019, the government released new statistics on "Detainees Evading Deportation." According to the peper, as of June 2019, 858 of the detainees, including 582 who had applied for refugee status were "evaders of deportation." This included 279 who were first-time refugee applicants. The government indicates the analysis such as "there is a certain number of refugee applicants who have applied for refugee status, focusing on the fact that their deportation is uniformly suspended during the refugee recognition procedures," which shows the attitude of disregard for the principles in international protection by considering those who have sought asylum to be subject to deportation, including those who have not yet been given any decisions regarding the status.

## (2) Protection against Refoulement (LOI, para.21 (b))

■ Recommendations that we request

The State party should:

- Review the scope of Article 53(3) of ICRRA and establish a procedure for deciding deportation destinations in compliance with the principle of non-refoulement. Also, disclose the operational status of the provision.
- Develop a legal system to prevent deportation of asylum seekers, for instance, to suspend deportation during statute of limitations for filing an action.

The State party should not:

- Introduce any exceptions to the suspension of deportation in the context of refugee status procedure.

■ Backgrounds

A. Issues in the Current System

In Answer 186, the government states that "the provision in Paragraph 3 of Article 53 of the Immigration Control Act, which clearly states the principle of non-refoulement, is applied to the deportation of persons who are not recognized as refugees," but Article 53(3) of the Act does not function adequately as a system to ensure protection against refoulement. In addition, the government is considering the bill that allows deportation of those who have applied for refugee status, and it is concerned that the protection situation against refoulement will further deteriorate.

Article 53(3) of the Act is the provision regarding the country designated as the destination for a person who cannot return to their country of origin. However, the provision does not include the principle of non-refoulement based on ICCPR and it provides an exception broader than specified in the 1951 Convention Article 33(2). In addition, there are no reported cases where the provision has been applied in the past, and in response to requests from members of the Diet, the government responded that there are no statistics as such. There is no established procedure or any provision for appeals regarding this article, and there is a concern that it has not been properly implemented as a system to ensure protection against refoulement.

In addition, although the government states in Answer 190 that “when the suspension of execution of deportation, based on a written deportation order, has been decided by the court, deportation during the application for recognition of refugee status is suspended until the period decided by the suspension of execution is passed,” deportation during statute of limitations for filing an action is not prohibited by the law, which indicates that the system is constructed without the basic premise of the right to a trial.

In March 2010, the government issued the notification that requires related agencies to communicate in order not to "miss the opportunity for deportation" of detainees who are in the refugee recognition process. Moreover, in light of collective deportation with chartered planes introduced in 2013, deportees included those who received their denial of asylum within 24 hours before the departure. For instance, in case of a collective deportation of 32 persons in December 2014, 26 out of 32 were deported within 24 hours from the announcement of a denial of asylum. Regarding this case, decisions have been made by Nagoya High Court in January 2021 and Tokyo High Court in September 2021, stating that their deportations caused violation of the right to trial and therefore were illegal. However, the government has not amended any law accordingly, and deportation before and during the lawsuit has not yet been banned.

B. Lifting of Automatic Suspension of Deportation for Certain Cases

Under these circumstances, the government has been considering the bill that allows the deportation of those who have applied for refugee status. The Amendment Bill, which was submitted to the Diet in February 2021, included provisions to lift automatic suspension of deportation of refugee applicants, which is currently applicable to all refugee applicants, for certain cases. The scope of the exception was those who applied for refugee status three times and more or with a certain criminal record (including first-time applicants).

In its opinion on the bill announced in April 2021, UNHCR suggested the deletion of the above provision due to the serious concerns on refoulement. In March 2021, the Special Rapporteur on the Human Rights of Migrants and others also expressed their concerns on the bill. Although the provision has been widely criticized by support groups as well, the government does not show any stance to amend or delete the provision, and there is concern that deliberations on the adoption of the bill will be held again in the future.

In addition, the Amendment Bill had no mention of an appeal mechanism against the decision to lift suspension of deportation. Notably, the provision regarding the exceptions to the suspension of deportation for the first-time applicants enables a deportation even before the decision on the refugee status takes place, without allowing any appeal to it. In case exceptions to the effect of deportation suspension were to be established, providing the access to independent and effective appeal mechanisms of decisions related to the deportation and maintaining the effect of suspension in the meantime is also essential.

## 4. Detention of Asylum Seekers
## (1) Immigration Detention against International Human Rights Law (LOI, para.21 (e))

■ Recommendations that we request

The State party should:

- Ensure that asylum seekers are detained only for the shortest possible period, only after existing alternatives to administrative detention have been duly considered, and that asylum seekers are able to challenge the lawfulness of their detention before a court.
- Implement initiatives to substantially guarantee the right of asylum seekers to access the judiciary for review of decisions concerning detention.

■ Background

Answers 179 and 180 regarding the detention of refugee applicants do not reflect the actual circumstances of the system as stated in the "section 3. Deportation of Asylum Seekers." There have been various recommendations suggested regarding the detention system in Japan, including the opinion by the UN Working Group on Arbitrary Detention in September 2020 (see no.1 of Section 4. References). The current system should be reviewed immediately considering the fact that refugee applicants will be incorporated in the detention system with such countless issues.

Those who are detained experience various issues regarding their treatments, including the lack of appropriate medical care, restriction on visits and communication with the outside of detention, inadequate access to procedural information, and occurrence of assaults. Immigration Detention Facilities Visiting Committee, which was formed in 2010, does not have authority to work independently from ISA and enough monitoring function. Even as for the occurrence of death cases at detention facilities, there is no system for independent inspection of the incident. The introduction of rules on treatment of detainees, in accordance with international minimum standards for them, and the persistent monitoring by the independent body from the government is essential.

In answer 193, the government stated that "if a detainee in an immigration detention facility has an objection to that disposition, he/she has the right to file an administrative lawsuit," but as it is stated above, undocumented residents cannot receive legal aids by the government, which indicates the abesence of the effective "right to file an administrative lawsuit" in practice. In fact, no one case of suspension of the detention has been reported since 2010.

### (2) Alternatives to Administrative Detention (LOI, para.21 (e))

■ Recommendations that we request

| |
|---|
| The State party should:<br><br>- Ensure that the persons who were released provisionally from detention due to the spread of COVID-19 infections are not re-detained.<br>- Introduce alternatives to administrative detention that are aimed at guaranteeing freedom and human rights. |

■ Background

A. Detention in the Context of COVID-19

It is welcomed that issues of provisional releases are relatively flexible from April 2022 till today as a measure against the spread of COVID-19. The number of detainees, which stayed above 1,000 from 2015 to 2019, decreased to 124 at the end of 2021. Among those 124 detainees, 19 detainees were current refugee applicants. The government should refrain from re-detaining those who were permitted provisional release during this period and should take this opportunity to modify its laws and practices to stop the detention of refugee applicants in principle.

B. Issues of "Monitoring Measures" in the Amendment Bill

In connection with the "expansion of alternatives," the government is currently considering a new system called "monitoring measures." The system, however, does not stand on the perspective of guaranteeing the freedom and rights of those subject to it, including applicants for refugee status, and therefore should not be introduced. In addition, under the new system, restrictions on the eligibility for provisional release are envisaged, and it is feared that the detention of applicants for refugee status will be further increased and prolonged.

The Amendment Bill submitted to the Diet in February 2021 included, with respect to detention, the creation of "monitoring measures." This was supposedly in response to the expert panel’s proposal that the introduction of "new alternatives to detention" be considered. The content of the Bill, however, did not take into account the original purposes of alternatives to detention, such as guaranteeing freedom, human rights, and minimum standards of living of those subject to the new system.

For example, the monitoring measures are a system of enhanced supervision over those subject to it compared to the current provisional release system, in that a foreigner who is subject to the measures is placed under the supervision of a civilian "monitor," and that monitor must report regularly to the authorities on the monitored person’s living situation and compliance with the monitoring measures conditions. In addition, because there is no consideration of establishing a system to ensure livelihood security for those subject to monitoring measures, and some of the monitored persons will not be allowed to work, the poverty prevalent in the provisional release system will presumably persist under the

monitoring measures. Furthermore, it is feared that the monitoring measures system can be operated at the discretion of the authorities because the criteria for eligibility for the measures are not clearly defined.

In light of such developments, the Forum for Refugees Japan conducted a survey to supporters and attorneys to obtain their opinions. As a result, 89% of respondents did not appreciate the monitoring measures, and 90% said they could not or did not want to become monitors, mainly because it would make casework for those they support difficult.

The Amendment Bill also proposed changes to the provisional release system. While the current law does not stipulate who is eligible for provisional release, the Bill stipulates that provisional release is permitted "when it is deemed appropriate to temporarily release a person from detention for health, humanitarian, or other similar reasons." The bill seems to reserve provisional release for exceptional cases by limiting its scope compared to the current law and applying monitoring measures as a primary means of releasing detainees. However, stipulating only conditions in which release from detention is possible runs counter to the principle that detention should be used as a last resort, only when it is necessary, appropriate, etc.

## 5. Stateless Persons (LOI, para.21 (b))

■ Recommendations that we request

The State party should:

- Present a clear timeline and process required for consideration of acceding to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.
- Establish a definition of statelessness in Japanese laws and regulations in line with the definition under customary international law, and introduce procedures specifically for the recognition of statelessness and grant status of residence to those recognized as stateless.
- Fully consider the principle of the avoidance of statelessness and the principle of arbitrary deprivation of nationality in its legislative efforts.
- Facilitate naturalization for stateless persons born outside of Japan.

■ Backgrounds

A. Progress towards acceding the Convention Relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.

Japan has not acceded to the Convention Relating to the Status of Stateless Persons nor the Convention on the Reduction of Statelessness. However, in response to the Human Rights Council's recommendation in its Universal Periodic Review which calls upon the government to consider acceding to the above conventions, consideration has been given for ratification. Nonetheless, the timelines and processes for discussion are yet to be presented.

B. Absence of a unified criteria for determination of statelessness

There are certain measures taken in Japan as an alternative to protect stateless persons, represented in laws and regulations such as recognition of refugee status, granting of special permission to stay by the Minister of Justice, avoidance of statelessness at birth for children born in Japan , and simplified naturalization for naturalization for those born in Japan. An individual's nationality is recognized in certain cases such as when registering 'Nationality/Region' in residence cards, when registering birth of a child born in Japan, when determining whether to require renunciation of nationality prior to nationalization, or when determining the destination of deportation upon the issuance of deportation order.

However, there is neither provision that defines a stateless person, nor are there an independent procedure dedicated to protecting stateless persons. The lack of a unified criteria for determining statelessness generates concerns about whether effective remedies have been made. Article 1.1 of the 1954 Convention Relating to the Status of Stateless Persons defines stateless persons as "a person who is not considered as a national by any State under the operation of its law." This definition has acquired the nature of customary law, so that the government should follow its definition.

As of December 2021, ISA has registered 513 out of 2,795,450 foreign nationals residing in Japan as “stateless”. Among those 513 people, 142 people are children under18 years old. However, these statistics were not based on a rigorous assessment of one’s nationality. Particularly since 2010, experts, law practitioners and NGOs have repeatedly reported equivocal manners regarding the determination of nationality. Some were registered their parent’s nationality as their own even when the child’s nationality was not confirmed. Some were determined different nationalities depending on the agencies responsible. Other examples indicate that some were not recognized as stateless even if they are in a similar situation as those who have been recognized as stateless. Moreover, the statistics on foreign national residents does not include the numbers of stateless persons without status of residence, therefore, the annual official data does not show the actual total number of stateless persons in Japan.

C. Protection of stateless persons without status of residence

Stateless persons without status of residence face serious violations of their fundamental rights. It is practically impossible to enforce deportation of stateless persons whose appropriate destination for deportation are unknown. However, they will either continue to be detained under Article 52(3) of ICRRA or continue residing in Japan without permission to work nor access to the basic security services even after provisional release, if they fail to regularize their status.

A stateless person without a residency permission may have their stay regularized either through three legal measures under ICRRA: Receiving special permission to stay after having gone through the deportation procedure (Article 50(1)); Receiving refugee status and an accompanying permission to stay after applying for refugee status (Article 61-2-2(1) and (2)): Receiving special permission to stay on humanitarian grounds though having been rejected their application for refugee status (Article 61-2-2(2)). However, while ICRRA does not include provisions such as “not having nationality" as a ground for granting special permission to stay, the Guidelines on Special Permission to Stay revised in 2009 neither considers “being stateless” nor “absence of destination of deportation” as one of the grounds to positively consider the special permission. These frameworks of the special permission to stay suggest that the current system does not ensure protection of stateless persons who fall outside of the application of the 1951 Refugee Convention.

It was reported that an asylum seeker was issued a deportation order by ISA even though his country of nationality was written as “Stateless”. In January 2020, the Tokyo High Court ruled that the rejection of the man’s refugee application is illegal and that an issuance of deportation order against the man is invalid. Article 53(2) of ICRRA states that if a person cannot be deported to a country of which they are a national or citizen, that person is to be deported to a country pursuant to their wishes, however, the court recognized that the destination was determined against the man’s wish. Following the court decision, the government granted the man refugee status and a status of residence which was renewable every five years, however, it took around 10 years since the man filed his refugee application in Japan. During that period of time, the man has not even granted a special permission to stay and has been left in destitute while on provisional release.

D. Retroactive loss of nationality due to a change in legal parentage

The Japanese Nationality Act prohibits Japanese nationals from holding dual nationality after he/she reaches 20 years of age (Article 14(1)). Regarding acquisition of nationality by birth, Japan adopts a paternal and maternal *jus sanguinis* principle. According to the Nationality Act, a child shall be a Japanese national when: The father or the mother is a Japanese national at the time of birth; The father who died prior to the birth of the child was a Japanese national at the time of death; Both of the parents are unknown or are without nationality in a case where the child is born In Japan (Articles 2.1-2.3). In the case of a child born out of wedlock in Japan, the child may acquire Japanese nationality by notifying to the Minister of Justice, only if the child is under 18 years of age, and if the father or mother who made the acknowledgement was a Japanese national at the time of birth of the child and such father or mother is currently a Japanese national or was so at the time of death (Article 3.1-3.2).

Under these systems, some could be placed at a disadvantage or even become stateless by losing his/her Japanese nationality due to a subsequent change in legal parentage, especially after a long period of time after birth. For example, he/she may fail to acquire the nationality of their father or mother if one of them were a foreign national, and if one of them were stateless he/she will likely be rendered stateless as well.

In the late 2000s, a male in his 30s lost his Japanese nationality after a court decision denying his child-father relationship. He was denied Japanese nationality retroactively going back to the time of his birth, consequently making him an "illegally staying foreigner". The male's mother was a Korean national at the time of his birth, however, he failed to acquire his mother's nationality because Korea had adopted the paternal *jus sanguinis* principle at the time. The male eventually remained stateless until his approval of naturalization in Japan.

Furthermore, a draft outline issued in February 2022 by the Family Law Subcommittee of the Legislative Council for the revision of the Civil Code proposed an amendment to the Nationality Law so that the acquisition of Japanese nationality can retroactively be invalidated if a birth is registered in the family register (an official record that lists birth, marriage, death, kinship and other status relationships in Japan) but the recognition is later found to be contrary to fact. It also proposed amendments to the Nationality Act, however, does not consider any exception including cases who will become stateless as a result of being deprived of Japanese nationality, nor has it stipulated a deadline for removing nationality by claiming that the father or mother's acknowledgement has been contrary to the truth. In addition, a judicial decision might not be required to proceed with the procedures.

The current law permits stateless persons to acquire nationality by birth (Article 2.3, Nationality Act) or by naturalization to Japan. However, family registration is often a long-term procedure, and in the first place does not necessarily apply to every stateless person. Particularly, the legal framework of the simplified naturalization needs to be improved. For example, a foreigner who was born in Japan may have their conditions for naturalization under Article 5 of Nationality Act relaxed, if he/she has had a domicile in Japan for three consecutive years or more since then (Article 8.4, Nationality Act). Nevertheless, the term "domicile in Japan" practically refers only to the periods when the foreigner has legally resided in Japan. In addition, those who were born in a country outside Japan are not eligible for such relaxation. It is desired that the government continues its legislative efforts in line with UNHCR's guidelines, paying due attention to Articles 3 and 7 of CRC, Article 24.3 of ICCPR, the principle of the avoidance of statelessness, and the principle of prohibition of arbitrary deprivation of nationality.

## Section 3. Overall Conclusion

The above recommendations point to policy changes that are essential for protecting the rights and dignity of people in need of international protection in Japan and for realizing a society where each and every person can live in safety. We call for the sincere implementation of these recommendations by the Japanese government.

## Section 4. References


1. A/HRC/WGAD/2020/58, Opinion No. 58/2020 concerning Deniz Yengin and Heydar Safari Diman (Japan) (23 September 2020) https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session88/A_HRC_WGAD_2020_58_Advance_Edited_Version.pdf
2. OL JPN 3/2021, Mandates of the Special Rapporteur on the human rights of migratns; the Working Group on Arbitrary Detention; the Dpecial Rapporteur on freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (31 March 2021) https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=26325&fbclid=IwAR1z2gc6tSFMLYmaNdfrgR4RSVRHl93wDpA3u8bIHVJKKgARNCWfKTRFABc
3. UNHCR "UNHCR comments on the Bill for partial amendments to the Immigration Control and Refugee Recognition Act submitted to the 204th Diet session of year 2021 Based on the Recommendations of the Sub-Committee on Detention and Deportation (SCDD), 7th Immigration Control Policy Discussion Panel" (9 April 2021) https://www.unhcr.org/jp/wp-content/uploads/sites/34/2021/04/20210409-UNHCR-Full-Comments-on-ICRRA-Bill-English.pdf
4. Japan Association for Refugees “Opinion on the Bill for the Partial Revision of the Immigration Control and Refugee Recognition Act” (19 Februrary 2021) https://www.refugee.or.jp/wp-content/uploads/2021/08/opinion_on_the_bill_for_the_partial_revision_of_the_immigration_control_and_refugee_recognition_act_en.pdf
5. UNHCR Representation in Japan “Points of consideration Related to global and domestic refugee and statelessness issues (Update I)” (May 2017) https://www.unhcr.org/jp/wp-content/uploads/sites/34/protect/Points_for_Consideration_ENGLISH_May_2017.pdf
6. Study Group on Statelessness in Japan “Typology of Stateless Persons in Japan” (December 2017) https://www.refworld.org/docid/5bb618b74.html
7. A/HRC/37/15/Add.1, Report of the Working Group on the Universal Periodic Review - Japan - Addendum - Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (1 March, 2018) https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/37/15/Add.1

* The following documents are in Japanese only.

8. Answer by the Government to the Question from MP Michihiro Ishibashi (June 2022) http://www.jlnr.jp/jlnr/?p=7473
9. ISA “Bills Submitted to the Parliament” (February 2021) https://www.moj.go.jp/isa/laws/bill/index.html
10. ISA “Deportation Evaders” (October 2021)
11. ISA “Refugee Statistics in 2021” (May 2022) https://www.moj.go.jp/isa/content/001372236.pdf
12. Japan Lawyers Network for Refugees “Collective Deportation of Asylum Seekers by Chartered Flights” (October 2021) http://www.jlnr.jp/jlnr/?p=6015
13. Japan Association for Refugees “Official Documents on Provisional Release” (November 2019) https://www.refugee.or.jp/jar/postfile/201911_ProvisionalRelease.pdf
14. Japan Association for Refugees “Meeting with Higashi-Nihon Immigration Center” (March 2020) https://www.refugee.or.jp/report/refugee/2020/03/immig_qa20/
15. FRJ “Report on Hearing of Opinions on Monitoring Measures” (April 2021) http://frj.or.jp/news/wp-content/uploads/sites/2/2021/04/557a2510c39a94ebcfb8734a36c85a92.pdf
16. FRJ “Statement on the Amendment Bill to the Immigration Control and Refugee Recognition Act” (March 2021) http://frj.or.jp/news/wp-content/uploads/sites/2/2021/03/04f1404014b348278f1f4e5556bc5b5a-1.pdf
17. Legislative Council “Draft Outline of Amendments to the Civil Code (Family Law)” (February 2022)

**Forum for Refugees Japan**

Address: 1-53-11 Yamato-cho, Nakano-ku, Tokyo, Japan
Website: www.frj.ror.jp/en | Tel: +81 3 6383 0688 | Email : info@frj.or.jp

Member Organizations (25 groups, as of August 2022):
Association for Japanese-Language Teaching / Africa Japan Forum / Arupe Refugee Center /Amnesty International Japan / Catholic Commission of Japan for Migrants, Refugees and People on the Move / Caritas Japan / Christian Coalition for Refugee and Migrant Workers / Catholic Tokyo International Center / Door to Asylum Nagoya / International Social Service Japan / Japan Association for Refugees / Japan Association for UNHCR / Japan Lawyers Network for Refugees / JELA Foundation / Jesuit Social Center / Living in Peace / Pathways Japan / RAFIQ Japan / Rainbow Refugee Connection Japan / Refugees Empowerment Network / Society for Understanding Kurds Japan / Stateless Network / Support 21 / WELgee / Zainichi Kurudojinto Tomoni