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Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Written statement\* submitted by Human Rights Now, a non- governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[29 May 2023]

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\* Issued as received, in the language of submission only.

## **Proposed Amendments to Japan's Immigration Control and Refugee Recognition Act Are Inconsistent with International Human Rights Standards**

Human Rights Now (HRN) is troubled with the National Diet of Japan's regressive new amendment bill to the Immigration Control and Refugee Recognition Act by its inconsistency with international obligations and standards against arbitrary detention, and we call on the Diet to reject the bill and reaffirm Japan's international commitments to protect migrants, refugees and asylum seekers in Japan.

### **1. The regressive amendment bill to the Immigration Control and Refugee Recognition Act**

In its current form, the Immigration Control and Refugee Recognition Act has already been widely recognized as falling short of international standards. The Working Group on Arbitrary Detention has criticized the act for allowing unreasonably long and potentially indefinite detentions without justification on an individual basis, such as risk of absconding, and for failing to ensure that detentions are necessary, reasonable, and proportionate.[1] The act also lacks measures to ensure detention is for the shortest possible period, below a maximum period, not punitive, periodically reviewed over time, and subject to judicial review.[2] Notably, at least 17 foreigners have died while detained in Japanese Immigration Centers since 2007, including the high-profile case of Wishma Sandamali in March 2021, who was detained after filing a domestic abuse report and died in detention after being denied access to adequate medical care.[3]

The amendment bill, which was recently passed by the lower house of the National Diet and is currently under consideration by the House of Councillors, perpetuates the existing system of arbitrary detention with the above problems.[4] Moreover, the proposed revisions do little to improve the current situation of those detained in immigration centers, while introducing new restrictive measures inconsistent with international human rights standards, such as enabling authorities to deport individuals who apply repeatedly for refugee status.[5] As described below, the amendment bill would contravene Japan's international legal obligations across a number of regimes to which it is a party, including the International Covenant on Civil and Political Rights (ICCPR), Convention Against Torture (CAT), and 1951 Refugee Convention, among others.

HRN reaffirms the concerns expressed in the joint letter of the Special Rapporteur on the human rights of migrants, the Working Group on Arbitrary Detention, and the Special Rapporteur on freedom of religion or belief to the Government on Japan of 18 April 2023 ("Joint Letter"),[6] as well as the Japan Federation of Bar Associations' statement against the amendment bill ("JFBA Statement"),[7] both of which highlight the fundamental problems with the bill as summarized below.

### **2. Arbitrary Detention**

Completely opposite to the international human rights standard that guarantees migrants, refugees and asylum seekers a legal presumption of liberty and requires that detention orders and penalties should be used only as a last resort, e.g., under article 9(1) of the ICCPR, the amendment bill operates on a presumption of detention rather than liberty. The bill furthermore continues the act's failure to provide an "upper limit" or maximum detention period, and it would allow migrants and asylum seekers facing deportation to remain detained until deported or until "monitoring measures" are put in place. By not restricting the period of detention, the amendment bill allows for the possibility of indefinite detention.

### **3. Detention of Children**

The amendment bill fails to make any distinction between adults and children with regards to detention procedures. The arbitrary detention of children is particularly objectionable, especially with regard to those who are unaccompanied by a parent or guardian. Under the Convention on the Rights of the Child, to which Japan is a party, migrant children should receive special protection and rights, and the detention of minors invariably violates the principle of the best interests of the child. As highlighted by the Joint Letter, unaccompanied migrant children should, at the very least, have access to the same level of care as national children. However, the amendment bill lacks sufficient child-sensitive safeguards.

#### 4. Lack of Judicial Oversight

Both the Joint Letter and the JFBA Statement highlight a lack of adequate judicial review procedures in the amendment bill. Under the proposed amendments, as with the current system, the decision to detain an individual pending their deportation would be left solely to the discretion of the supervising immigration inspector, an administrative official, not an independent judge. In fact, migrants are not afforded any right to appear before a judicial authority, as required by article 9(3) of the ICCPR. The inability of migrants to bring their cases before a court of law to challenge the lawfulness of their detention similarly falls short of Japan's international obligations, including article 9(4) of the ICCPR.

#### 5. Insufficient Alternative Measures

The right to freedom from arbitrary detention requires that when there is no justification for detention, states must provide alternatives. While the amendment bill proposes certain supervisory measures in lieu of detention, as noted by the Joint Letter, the so-called "monitoring" system which is proposed, whereby a migrant must identify a monitor from among their contacts to apply "monitoring measures", could be unduly challenging or exploitative for migrants and asylum seekers and violate the privacy rights of both the subject and the designated "monitor". Additionally, as the JFBA Statement identifies, the system described would require individuals such as legal representatives to fulfill monitoring functions which are incompatible with their position. Finally, the undue restrictiveness of the monitoring system and the requirement of hefty fines to prevent the subject's abscondment or engagement in illegal work may also amount to discrimination on the basis of socio-economic status.

#### 6. Non-Refoulement

Finally, the amendment bill does not contain sufficient procedural safeguards to ensure that refugees are not returned to countries in which they would be in probable danger of persecution based on race, religion, nationality, membership of a particular social group or political opinion, as required under refugee law. Under the amendment, deportation orders may be issued to individuals who have applied for refugee recognition for a third time or more. As the refugee recognition process requires individual assessment of the circumstances, the proposal lifting automatic suspension of deportation procedures for asylum seekers would undermine the principle of non-refoulement. Furthermore, in addition to non-refoulement protection under refugee law for persons entitled to refugee status, Japan must comply with the absolute prohibition against refoulement where deportation would expose a person to a real risk of torture or ill-treatment.

#### 7. RECOMMENDATIONS: The Amendment Bill should be Rejected and the Immigration Control and Refugee Recognition Act Fundamentally Reformed

HRN remains deeply troubled by the inconsistency of both the Immigration Control and Refugee Recognition Act and recent amendment bill with Japan's human rights obligations, and we make the following recommendations to:

- Members of the National Diet to uphold Japan's international obligations and commitments and reject the amendment bill for its inconsistency with well-established

international human rights standards, as well as to consider the JFBA's "Proposals for System Reform" in reforming the act, which includes the establishment of an independent refugee recognition agency to ensure proper recognition of refugee status, the setting of an upper limit on the period of detention in immigration detention facilities, and the requirement of judicial oversight preceding and during detentions.[8]

- The Ministry of Justice, the Immigration Bureau, the Immigration Control Planning Group Meeting and the Specialized Committee on Detention and Deportation to investigate the Immigration Control and Refugee Recognition Act's detention and deportation framework in order to fundamentally reform the system to be consistent with Japan's human rights obligations, including by providing robust safeguards to prevent serious human rights violations as described in this statement and elsewhere.

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[1] Working Group on Arbitrary Detention, "Opinion No. 58/2020 concerning Deniz Yengin and Heydar Safari Diman (Japan)", 28 Aug. 2020, [https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session88/A\\_HRC\\_WGAD\\_2020\\_58\\_Advance\\_Edited\\_Version.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session88/A_HRC_WGAD_2020_58_Advance_Edited_Version.pdf).

[2] *Id.*, para. 70 ff.

[3] Nishizaki, "Japan ordered to pay over death of Cameroonian in state custody", Asahi Shimbun, 16 Sept. 2022, <https://www.asahi.com/ajw/articles/14720452>.

[4] Nikkei Asia, "Japan lower house passes controversial change to immigration law", 9 May 2023, <https://asia.nikkei.com/Politics/Japan-lower-house-passes-controversial-change-to-immigration-law>; New Kokumin, "[San honkaigi] kawai takanori kanji-chō daikō ga nyūkan-hō kaisei-an ni tsuite shitsugi" [[Plenary Meeting] Acting Secretary-General Takanori Kawai asks questions about the Immigration Control Act amendment bill], 12 May 2023, [https://new-kokumin.jp/news/diet/22030512\\_1](https://new-kokumin.jp/news/diet/22030512_1) (in Japanese).

[5] Takahara & Ninivaggi, "Immigration bill set to pass Japan's parliament as two opposition parties join revision discussions", The Japan Times, 21 Apr. 2023, <https://www.japantimes.co.jp/news/2023/04/21/national/immigration-bill-set-to-pass-parliament/>.

[6] OHCHR, "Joint Letter to the Government of Japan", OL JPN 1/2023, 18 Apr. 2023, available at: <https://hrn.or.jp/eng/news/2023/04/24/japanese-translation-of-joint-letter-issued-by-the-un-special-rapporteurs-regarding-japans-2023-revision-of-the-immigration-control-act/>.

[7] JFBA, "Shutsunyūkoku kanrio yobi nanmin ninteihō kaisei-an ni hantai suru kaichō seimei" [Chairman's Statement Opposing the Immigration Control and Refugee Recognition Act Amendments], 9 Mar. 2023, <https://www.nichibenren.or.jp/document/statement/year/2023/230309.html> (in Japanese).

[8] JFBA, "Shutsunyūkoku zairyū nanmin-hō bun'ya ni okeru kikkō no kadai kaiketsu no tame no seido kaisei teigen ~ arubeki nanmin, hi seiki taizai-sha no seiki-ka, sōkan shūyō ni kakaru ~" [Proposals for System Reform to Solve Urgent Issues in the Field of Immigration, Residency and Refugee Law - Legal System for Regularization, Repatriation and Detention of Refugees and Undocumented Residents -], 15 Sept. 2022, <https://www.nichibenren.or.jp/document/opinion/year/2022/220915.html> (in Japanese).