

Opinion on the Bill for the Partial Revision of the Immigration Control and Refugee Recognition Act

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Japan Association for Refugees (NPO)

On February 19, 2021, the Japanese government approved the "Proposed Bill for the Partial Revision of the Immigration Control and Refugee Recognition Act and the Special Act on the Immigration Control of, inter alia, those who have lost Japanese Nationality pursuant to the Treaty of Peace with Japan" (hereinafter referred to as "this bill"). This bill was drafted in response to the report "Proposal to Solve the Issues of Deportation Evasion and Long-term Detention" (June 2020) by the 7th Immigration Control Policy Discussion Panel's Sub-Committee on Detention and Deportation. Although there are some improvements, there is also concern that some of the contents may lead to a deterioration of the level of protection and treatment of refugees who have fled to Japan. Based on our experience of providing refugee assistance for more than 20 years, we would like to express our opinions on the following four issues in this bill that we believe will have a particular impact on refugee protection in Japan: (1) deportation of refugee applicants, (2) complementary protection, (3) provisional stay system, and (4) monitoring measures.

Abstract: Japan's refugee status determination (RSD) system has so many problems that the United Nations and other organizations have repeatedly called for improvements. It is imperative to improve the RSD system itself before promoting deportation, and we are strongly concerned that this bill was decided on without implementing many of the recommendations that contribute to refugee protection in the "Results of the Study on the Direction of the Revision of the Refugee Recognition System (Report)" published by the 6th Immigration Control Policy Discussion Panel's "Sub-Committee on the RSD System" in 2014. Facilitating deportation without addressing these points will further increase the likelihood that refugees will be repatriated to countries of origin where they are likely to be persecuted or seriously harmed. Although this bill creates a new "complementary protection," it does not fulfill the purpose of protecting those who need international protection. As for prolonged detention, no measures have been taken to make detention a "last resort," such as setting a maximum detention period and requirements for detention and conducting judicial review, and no drastic improvements are expected.

1. Regarding deportation of refugee applicants: It is unacceptable to make certain exceptions to the effect of deportation suspension in a manner that contradicts the principles of refugee protection.

This bill provides an exception to the provision on deportation suspension (effect of deportation suspension) for those who have applied for refugee status three or more times (Article 61-2-9, Paragraph 4). However, the deportation of refugees and refugee applicants is prohibited by principle of international law (non-refoulement principle; Article 33 of the Convention Relating to the Status of Refugees), and no exception should be made to the

effect of suspending deportation. In Japan's RSD system, where many people who should be recognized as refugees are not recognized, such a provision is unacceptable as it increases the possibility that refugees will be repatriated to their countries of origin where they are likely to be persecuted.

Beginning with strict criteria for refugee recognition (*1), Japan's RSD system has so many problems that the United Nations and other organizations have repeatedly called for improvements. This bill has been decided without implementing many of the recommendations that contribute to refugee protection found in the "Results of the Study on the Direction of the Revision of the Refugee Recognition System (Report)" released by the 6th Immigration Control Policy Discussion Panel's "Sub-Committee on the RSD System" in 2014 (*2). As we stated in our opinion in June 2020, the first priority should be to improve the RSD system, not to promote deportation.

It is also stated that even pending applications for refugee status are subject to the newly established deportation order (Article 55-2). However, ordering refugee applicants seeking asylum to leave Japan is contrary to the principle of non-refoulement, which is the cornerstone of refugee protection, and even if the effect were to be suspended, refugee applicants should not be subject to deportation orders.

With regard to exceptions to the effect of deportation suspension, this bill states that "persons who have submitted materials for which there are reasonable grounds for recognition" shall not be considered exceptions (Article 61-2-9, Paragraph 4), but there is no procedure for making such a determination, nor is there any provision on appeals. There is also no explicit guarantee of notification to the individual in cases falling under the exceptions to the effect of deportation suspension or of the right to a trial, which raises concerns about the guarantee of due process.

2. Regarding complementary protection: The definition and procedures should be revised to fulfill the purpose of protecting those in need of international protection.

In this bill, "complementary protection" is newly established as an alternative system to the current "residence permission to stay on humanitarian grounds" (Article 61-2, paragraphs 2 and 3). However, the definition of "complementary protection" in this bill is very limited and does not fulfill the purpose of complementary protection, which is to protect those who do not fall under the category of refugees but need international protection, and it should be revised to a broader definition.

The significance of complementary protection is that it provides a framework for the protection of persons at risk of serious harm, such as torture and inhuman treatment, which are prohibited by international human rights laws such as the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and the Covenant on Civil and Political Rights, to which Japan is a party. The "Sub-Committee on the RSD System" also recommended the establishment of such a framework (*3).

However, this bill defines complementary protection in a very limited way as "persons other than refugees who meet the requirements for refugees subject to the Refugee Convention other than that the reason for fear of persecution is a reason stipulated in Article

1, paragraph A (2) of the Refugee Convention" (Article 2, item 3-2). With this, it is feared that it may not be possible to protect those for whom an obligation exists to protect by international norms.

In addition, it is feared that the problems faced by the existing RSD system will also be seen in complementary protection. This bill stipulates that refugee examination counselors shall also submit their opinions on the recognition of persons eligible for complementary protection in the application for examination (Article 61-2-12). However, the number of people recognized by the application for examination has remained stagnant, with one person recognized in 2017, four in 2018, and one in 2019 (*4), and the implementation rate of oral statements of opinion has remained below 10% (*5). It is difficult to expect that the recognition of complementary protection will be properly implemented in an environment where the system itself requires fundamental improvement. Furthermore, it is also problematic that complementary protection procedures are exempted from the Administrative Procedure Law, just as refugee status recognition procedures are (Article 3, Item 10). In the RSD system, many issues have been pointed out regarding due process (*6), such as the fact that a representative is not allowed to be present at the interview during the first instance procedure, and that no recording is made.

In addition, the provision on special permission for residence for those who have been denied refugee status (Article 61-2-2, paragraph 2 of the current law) has been deleted in this bill, but necessary amendments must be made to ensure that parties such as those covered by the current "humanitarian consideration" are properly protected.

3. Regarding the provisional stay system: Requirements should be relaxed and the system should be utilized.

Regarding the provisional stay system introduced in 2005 to stabilize the legal status of refugee applicants who do not have residence status, this bill newly establishes provisions regarding the acquisition of residence status (Article 61-2-5) and work permits (Article 61-2-7, Paragraph 2). This in itself is welcome as a measure to improve the lives of refugee applicants.

However, under the current circumstances, the number of granted provisional stays is low, and out of 733 people for whom permission was considered in 2019, only 25 were granted permission (*7). The following grounds for denial should be removed: (A) the application is clearly made after six months from the date of landing, (B) the applicant has been issued a deportation order, or (C) there are reasonable grounds to suspect that the applicant is likely to flee (Article 61-2-4, paragraph 1, items 6, 8, and 9 of the current law). These grounds for denial should be removed so that more refugee applicants can wait for the result of their application without being exposed to the risk of detention.

4. Regarding monitoring measures: Monitoring measures do not improve the issue of long-term detention and should be reviewed.

This bill newly establishes "supervisory measures" as one of the measures to eliminate long-term detention (Article 44-2, Article 52-2). The "supervisory measures" is a system under which a person who has been issued a deportation order is released from detention

under the supervision of a supervisor, subject to conditions. Since many detainees are in the process of applying for refugee status (about 39% of detainees as of the end of 2019)(*8), many refugee applicants may be subject to monitoring measures. However, there is a concern that monitoring measures are an inadequate system for eliminating long-term detention, and that they impose unnecessary restrictions on those subject to them, leading to a violation of their rights.

Efforts to prevent the detention of individuals who move across national borders are internationally referred to as "alternatives to detention (ATD)," and are based on the idea that support should be provided while protecting the subject's right to freedom (*9). However, the monitoring measures stipulated in this bill do not consider the perspectives of respect for human rights and guarantee of livelihood, which are considered important elements in alternative measures to detention.

With regard to livelihood support for persons subject to confinement measures, this bill states that "efforts shall be made to provide support for maintaining housing, provision of the necessary information, advice, and other assistance" for the purpose of "contributing to ensuring compliance with conditions" (Article 44-3, Paragraph 3), but ensuring the livelihood of the subject should be positioned as the original purpose of support. (Article 44-3, Paragraph 3). Furthermore, it is assumed that it will be particularly difficult for those subject to the supervision measures who are not allowed to work. There is a need for a mechanism to ensure that the necessary support is delivered through government budgetary measures, rather than relying solely on the private efforts of supervisors and others.

Another issue is that there is no provision on how the will of the subject of the supervisory measures can be reflected in the selection (Article 44-3) and revocation (Article 44-3, Paragraph 6) of the supervisor. There is a concern that a structure will be created in which supervision is conducted in a way that the subject himself does not want.

In addition, the supervisor has an obligation to notify the Chief Examiner of the status of the subject's compliance with the conditions of the supervision measures (Article 44-3, Paragraphs 4 and 5), but it is feared that the obligation to notify the authorities will be a major detriment in building a relationship of trust with the subject of the support. It is assumed that it will be difficult for many support groups, including this association and lawyers, to become supervisors.

In addition, the system of supervisory measures is insufficient in preventing prolonged detention. Based on the idea that immigration detention, which involves physical restraint, should be used only as a last resort, it is necessary to establish a system in which the maximum period of detention and the requirements for detention are set, and in which judicial review is conducted.

5. Conclusion: Toward the improvement of the RSD system

Against the backdrop of the policy to strengthen the management of foreign nationals and promote deportation, this bill also establishes new penalties related to monitoring measures, deportation orders, provisional release, etc. This will further destabilize the position of refugees who have fled to Japan and should be reviewed.

While the priority is to improve the RSD system itself, the measures recommended by the "Sub-Committee on the RSD System" to contribute to refugee protection, such as "clarification of normative factors regarding refugee status" and "enhanced coverage of country-of-origin information," are not included in this bill and must be implemented as soon as possible. In addition, there is a need for the recognition of refugees by an organization independent of the Immigration Services Agency (*10), the formulation of refugee recognition standards based on the views of the United Nations High Commissioner for Refugees (UNHCR), ensuring transparency of procedures, and the clarification of livelihood support for refugee applicants.

This year, the "Draft Law on the Protection of Refugees, etc." has been submitted to the Diet. We look forward to a lively debate in the Diet on the ideal form of refugee protection.

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*1 [The Nishinippon Shimbun, "Concerns over Japan's Low Refugee Recognition Rate"](#)

*2 For more information on the implementation of the recommendations made by the Sub-Committee on the RSD System, please refer to [the Japan Association for Refugees hearing material of Sub-Committee for Detention and deportation \(5th meeting\) "Issues in Detention and Deportation - From the Perspective of Refugee Protection"](#) (p.5).

*3 For example, in "supplementary protection" in the EU, which the Sub-Committee on the RSD System identified as a reference, "torture or inhuman or degrading treatment or punishment of applicants in their country of origin" and "serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict" are defined as "serious harm", and cases in which a real risk of suffering such harm is demonstrated are considered to be eligible for protection. For more information on international trends in complementary protection, please refer to [Forum for Refugees Japan Study Group, "Considering Complementary Protection - Towards its Introduction in Japan," presented by Yukari Ando.](#)

*4 See the Immigration Services Agency's "Number of refugees recognized " published each year.

*5 [Japan Federation of Bar Associations, "Chairman's Statement Calling for the Normalization of the Refugee Appeal System in Line with the Purposes of the Revision of the Administrative Appeal Act."](#)

*6 [Forum for Refugees Japan, "How to Conduct Interviews with Applicants for Refugee Status".](#)

*7 [Immigration Services Agency of Japan, "The number of refugees recognized in 2019".](#)

*8 Government response to the questionnaire of Mr. Michihiro Ishibashi, a member of the Diet, dated June 2, 2020 [Cabinet Questionnaire for the House of Councillors No. 201-134].

*9 In Japan, since 2011, Forum for Refugees Japan, of which this Association is a member, the Japan Federation of Bar Associations and the Ministry of Justice have been working on an initiative targeting those who have sought asylum at airports. The aforementioned efforts were also referred to in the discussions of the "Sub-Committee for Detention and Deportation" that formed the basis of this bill, and the creation of "alternatives to detention (ATD)" was proposed.

*10 In the report, ["The Future of Immigration and Residence Management Administration,"](#) [the 7th Immigration Control Policy Discussion Panel states](#), "From the perspective of maintaining the fairness and appropriateness of the administration, we would like to request that the organization of refugee recognition services be examined in order to further enhance its expertise and independence."