

This is a provisional and unofficial translation of the “Opinion on the report “Recommendations for solutions of the long-term detention and ‘Soukan-Kihi(Refusing the deportation order)’” proposed by “Expert Panel for Detention and Deportation” under the 7th Immigration Control Planning Meeting” jointly published by members of Forum for Refugees Japan. Please note that only the original Japanese text on the FRJ’s Homepage is official. In order to ensure accuracy, please also refer to the original Japanese text. Original: 第7次出入国管理政策懇談会「収容・送還に関する専門部会」報告書「送還忌避・長期収容問題の解決に向けた提言」に対する意見 available at: http://fri.or.jp/news/wp-content/uploads/sites/2/2020/06/FRJmemberOpinion200628_0707updated.pdf [accessed 31 August 2020]

Opinion on the report “Recommendations for solutions of the long-term detention and ‘Soukan-Kihi(Refusing the deportation order)’” proposed by “Expert Panel for Detention and Deportation” under the 7th Immigration Control Planning Meeting

Preface

In June 2020, “Expert Panel for Detention and Deportation” under the 7th Immigration Control Planning Meeting published a report “Recommendations for solutions of the long-term detention and ‘Soukan-Kihi(Refusing the deportation order)’”. While this report makes some recommendations on the protection of human rights for foreign nationals which include measures to prevent prolonged detention and utilization of Special Permission to Stay, we express our profound concern about the recommendations that “Some exceptions shall be made to the effect of suspension of deportation of asylum seekers”, which could go against the principle of non-refoulement provided in the 1951 Refugee Convention.

As for the refugee recognition system, recommendations proposed on the “Results of consideration about the direction for review of the refugee recognition system (Report)” which was published in 2014 by the Expert Panel for Refugee Recognition System should be implemented in priority. Given the current status where those to be recognized as refugees are not provided adequate protection, it is not acceptable to make exceptions to the effect of suspension of deportation of asylum seekers.

About the Alternatives to Immigration Detention

The report has also proposed new Alternatives to Immigration Detention (the “**ATD**”) models as a measure to prevent prolonged detention. ATD refers to any legislation, policy, or practice that ensures people are not detained for reasons to their migration status, implemented also for those having been issued a deportation order in more than 60 countries worldwide¹. In Japan, it has been implemented since 2011 by three actors – the Forum for Refugees Japan (“**FRJ**”), the Ministry of Justice (“**MOJ**”), and Japan Federation of Bar Associations (“**JFBA**”) – within the framework of the “Project of providing accommodations, etc. for those who sought asylum at Japanese airports.”

1. Alternatives to Immigration Detention in Japan:

Project of providing accommodations, etc. for those who sought asylum at Japanese airports

Based on the memorandum signed by MOJ, JFBA and FRJ in February 2012, this project has been implemented since 2014 after a certain period of trial. Applied to those who claimed to be eligible for refugee at airports, FRJ secures accommodations, the MOJ decides whether to release them in the forms of landing for temporary refuge, provisional stay, or provisional release, and JFBA and FRJ provides legal assistance and livelihood support.

As of the end of 2019, 38 asylum seekers have been subject to the project, among which 4 have been recognized as refugees and other 6 obtained special permissions to stay on humanitarian grounds, as a result of the refugee recognition procedures facilitated by not detaining them. This project is also

¹ International Detention Coalition. (2015). “Alternatives to Detention”. Accessed June 24, 2020

(<https://idcoalition.org/alternatives-to-detention/>)

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praised for being able to offer casework that meets individuals’ needs and maintain their mental and physical health by linking support organizations at an early stage. Considering that there has not been any case where asylum seekers have absconded, we would confirm that building relationships between private support organizations and lawyers have contributed significantly to preventing them from absconding.

2. About “New Alternatives to Immigration Detention”

We welcome the newly proposed “New ATD” as it is seemingly able to contribute to preventing prolonged detention by covering a wider range of people than the aforementioned project. Drawing from our experience as FRJ, we will raise three points below which should be taken into account when concrete institutional designs are to be considered.

1 Persons eligible for ATD

In terms of immigration detention, “detention as a last resort to be used” is an international agreement². UNHCR provides that detention is an exceptional measure that can be justified only when it is based on legitimate grounds prescribed by law³. To be concrete, it is justified only when they are in the process of identity verification, when deportation cannot be implemented in other ways but detention, or when releasing from detention could be posing a significant threat on society⁴. Therefore, in introducing the “New ATD”, who to be covered under its range should be clearly stated, except for under such exceptional circumstances as mentioned above.

2 Concern with excessive measures to prevent absconding

The International Detention Coalition (“IDC”) provides that the ATD “do not necessarily require the application of conditions such as bail/reporting” and must uphold the “right to freedom”, one of the fundamental human rights, as a comprehensive principle⁵. In other words, conditions imposed on those who are subject to the ATD and their supporters must be minimal. In this regard, we express our concern about the fact that recommendations in this report are intended to “prevent absconding and require reporting to ensure the implementation of deportation” and “consider effective measures, including penal provisions, to prevent

² International Organization for Migration. (2018). “Global Compact for Safe, Orderly and Regular Migration”. Accessed June 24, 2020 (https://refugeesmigrants.un.org/sites/default/files/180711_final_draft_0.pdf).

The 13th of its objectives states “Use immigration detention only as a measure of last resort and work towards alternatives.”

³ UNHCR. (2012). “Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention”. Accessed June 24, 2020 (<https://www.unhcr.org/505b10ee9.html>).

⁴ UNHCR. (2012). “Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention”. (<https://www.unhcr.org/505b10ee9.html>, accessed June 24, 2020). & IDC. (2015). “There are Alternatives”. (<https://idcoalition.org/publication/there-are-alternatives-revised-edition/>, accessed June 24, 2020). & EU. (2008). “Common standards and procedures in Member States for returning illegally staying third-country nationals”. (<https://www.refworld.org/docid/496c641098.html>, accessed June 24, 2020).

⁵ IDC. (2015). “There are Alternatives”. Accessed June 24, 2020. (<https://idcoalition.org/publication/there-are-alternatives-revised-edition/>).

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deportees from absconding”. As mentioned above, there has been no absconding case under the current ATD in Japan. It is appropriate support, not crackdown measures such as penalties and conditions, that would lead to inducing them to consider voluntary departure rather than absconding. Building an environment akin to immigration detention facilities and forcing people to live the same living as there are incompatible with the purpose of the ATD, taking part of mandatory detention. We strongly demand that conditions are considered on this basis.

3 Importance of casework

Support from the people around including communities, support organizations, and lawyers is essential for the life of those under the ATD. In particular, casework has significantly contributed to several issues from achieving legal status such as refugee recognition and special permissions to stay on humanitarian grounds and helping them leave for their home country or a third country. In this regard, the statements only mention “third-party support or subsidies”, being unclear who offers what kind of support to whom. Hence, relevant institutions should be designed so as to reflect the importance of casework which takes individuals’ circumstances into account and, in doing so, the cost and their rights and individual well-being also needs to be clarified.

Afterword

Thus, as an organization which has been engaged in ATD in Japan, we have expressed our opinion towards the recommendation proposed by the Expert Panel for Detention and Deportation. While welcoming the newly proposed measures, we demand that institutions be designed based on the values we have cherished, such as freedom and human rights, and other countries’ successful practices.

Useful resources

Various findings and knowledge about ATD have been accumulated, as listed below.

- IDC (2015) “There are alternatives”
 - Original (English): <https://idcoalition.org/publication/there-are-alternatives-revised-edition/>
 - Japanese translation (Only Executive summary): <https://idcoalition.org/wp-content/uploads/2015/10/Japanese-version-of-the-Exec-Summary-of-TAA.pdf>
- UNHCR (2015) “Options Paper 2: Options for governments on open reception and alternatives to detention”
 - Original (English): <https://www.refworld.org/docid/5523e9024.html>
 - Provisional Japanese translation: <http://www.moj.go.jp/content/001318372.pdf>
- FRJ (2019) “Concerning the Project of Providing Accommodations, etc. for Those Who Have Sought Asylum at Japanese Airports”
(「日本の空港において難民としての庇護を求めた者に係る住居の確保等に関する事業の実施状況について」)
 - Original (Japanese): <http://frj.or.jp/news/news-category/form-frj/536/>
- Immigration Services Agency, JFBA, and FRJ (2015) “Project of Providing Accommodations, etc.

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for Those Who Sought Asylum at Japanese Airports”

(「日本の空港において難民としての庇護を求めた者に係る住居の確保等に関する事業の実施状況」)

- Original (Japanese):

<http://frj.or.jp/news/wp-content/uploads/sites/2/2015/03/2a0c3b232a42d9e89d6d4715133b1aab.pdf>

June 28, 2020 (Additionally agreed by two more organizations in July 7, 2020)

- Africa Japan Forum (AJF)
- Door to Asylum Nagoya (DAN)
- International Social Service Japan (ISSJ)
- Japan Association for Refugees (JAR)
- Catholic Commission of Japan for Migrants, Refugees and People on the Move (J-CaRM)
- Jesuit Social Center Tokyo
- Japan Lawyers Network for Refugees (JLNR)
- RAFIQ
- Rainbow Refugee Connection Japan (RRCJ)
- Refugee Empowerment Network (REN)
- Stateless Network
- WELgee

Inquiries

Forum for Refugees Japan (FRJ)

Yamatocho 1-53-11, Nakano-ku, Tokyo, 165-0034, Japan

Tel: 03-6383-0688 Fax: 03-6383-0699 Email: info@frj.or.jp