



**Economic and Social  
Council**

Distr.  
GENERAL

E/CN.4/Sub.2/2003/NGO/45  
30 July 2003

ENGLISH ONLY

---

COMMISSION ON HUMAN RIGHTS  
Sub-Commission on the Promotion  
and Protection of Human Rights  
Fifty-fifth session  
Item 3 of the agenda

ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY

Written statement\* submitted by Japan Fellowship of Reconciliation, non-  
governmental organizations 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.

[24 July 2003]

---

\*This written statement is issued, unedited, in the language(s) received from the  
submitting non-governmental organization(s).

### Arbitrary Detention and other Situations surrounding Asylum Seekers in Japan

At a NGO forum, which the law students of Ryukoku University in Kyoto organized under the auspices by JFOR<sup>1</sup> concerning the refugee status in Japan on July 2<sup>nd</sup>, 2003, SINAPIS Refugee Committee<sup>2</sup>, Osaka Diocese of Catholic Church and RAFIQ, a network to support refugee applicants, gave witness to the hardships that asylum seekers are facing. JFOR deeply regrets that the Japan's policy for the asylum seekers, who are arbitrarily detained in the Immigration Detention Centers (IDC) with no guarantee under the Immigration Control and Refugee Recognition Act (ICRRA) of the right to a court procedure for discharge, violates the international human rights law.

#### The closed door policies

Japan has practically kept its door for the asylum seekers closed tight with a narrow slit for the exceptional entry. Ultraconservative politicians in some countries are said to cite Japan as a model for their immigration policy to shut out foreigners. Although Japan ratified the Refugee Convention in 1982, total number of refugees accepted by Japan in the past 21 years remains merely 305.<sup>3</sup>

#### Shenyang Consulate Incident

The Japan's negative stance against the asylum seekers was explicitly exposed to the world, when a refugee family from North Korea tried to seek sanctuary in the Japanese Consulate Office in Shenyang, China in May 2002. The next day TV news showed repeatedly how the family members including a small girl were being dragged out of the gate by the Chinese police and how the Japanese diplomats behaved in harmony with the police. Japan accused China for her violation of Japanese sovereignty; China refuted insisting that the arrest was based on the consent of the Japanese consulate. The incident aroused the sentiment of the Japanese public, whose pressure made the Ministry of Justice propose a revision of the policy for the refugees.

#### Major issues

##### (1) General situation

1. After the asylum seekers file an application for the refugee status, they should be kept waiting for a long time until the immigration officials make a decision whether a refugee status is granted or not. The average length of the waiting period is approximately one year.
2. When the applicants are rejected, the reasons given are scarce, abstract and limited to the minimum. For example, the reasons are simply stated as follows: "What has been claimed by the applicant is not trustworthy." Due to the lack of information as to the reason of the judgment, the applicants are left with difficulties to appeal for a review against the decision.

---

<sup>1</sup> The Forum, which was fully supported by Mr. TOTSUKA, Etsuro, JFOR's Geneva Main Representative to the UN, Professor of Ryukoku University, invited, as the main guest speaker, Mr. KANEKO, Toshio, a JFOR member, Lecturer of Kobe College,.

<sup>2</sup> <http://www.osaka.catholic.jp/sinapis/overseas/en/index.html>

<sup>3</sup> As of December 2002, according to the chart made by the Ministry of Justice.

3. During the period they wait for the decision by the immigration bureau, they are, as a principle, to be detained in immigration detention centers, which, we believe, constitutes arbitrary detention with no guarantee under the ICRRA, the procedure of which is entirely dominated by the Ministry of Justice, of the right to a court procedure for discharge in violation of Art 9-1 and 4 of the ICCPR. The detention is usually attributed to the fact that, in most cases, asylum seekers do not possess a legal document such as visa. Upon denial of the application for the refugee status, normally they have to file a lawsuit based on a general Administrative Litigation Procedure Act, because the ICRRA guarantees no right to a procedure by a court asking for a review of the denial. The detention continues, even when the case is pending before a court.

4. No social security including health insurance, no work permit, no financial assistance nor housing is provided for the maintenance of fundamental living of the asylum seekers, while waiting for the decision. The Committee against Racial Discrimination, in its Final Comments adopted in March 2001, recommended Japan to meet with the needs for such assistances.

5. Germany has 'Asylum Procedure Act'. Switzerland has 'Asylum Law'. Both of them guarantee the rights of refugee status applicants, for whom the administration is obliged to take such necessary measures. Japan does not have such a law that is designed specifically for the protection of refugee status applicants.

#### (2) Treatments of detainees in the IDCs<sup>4</sup>

1. Some detainees had been detained more than two years, like in the case of a couple from Ethiopia.
2. The rooms are overcrowded. For example, 11 people are packed in 23 square meters room.
3. Sometimes there are no doctors stationed in the center. Even when a doctor is stationed, the need of the detainee for the medical examinations and treatments in a hospital outside could be ignored by the center.
4. When the detainees are taken to a hospital outside, they are handcuffed in public.
5. The officers, in general, tend to lack the knowledge and the sensitivity, concerning human rights. It shows the lack of learning opportunities for the officer, also the strong stress the officers have due to their overwork.
6. The detainees are entitled to complain about the treatments by filling in the form addressed to the head of the center, but the officer is reluctant in providing the form. No independent body is established to monitor the complaints of the detainees.

#### (3) Defects of the government's amendment proposals of the ICRRA

The amendment proposals<sup>5</sup> of the ICRRA began to be discussed at the 156<sup>th</sup> Ordinary Diet Session after 21 years of its enactment. Provisions for Provisional Residence Permit are proposed to be included in the governmental proposals so that a tentative permit be granted to those asylum seekers whose capacity fulfill the certain conditions as follows:

---

<sup>4</sup> The descriptions are of the West Detention Center in Ibaraki, Osaka.

<sup>5</sup> [http://www.shugiin.go.jp/itdb\\_gian.nsf/html/gian/honbun/g15605068.htm](http://www.shugiin.go.jp/itdb_gian.nsf/html/gian/honbun/g15605068.htm)  
available only in Japanese

- (a) The application has been submitted within 6 months<sup>6</sup> after the person's entry to Japan.
- (b) The person must come to Japan directly from the territory where the person had been persecuted.
- (c) The person needs to be judged as reliable as to the point as there is no possibility of this person to escape.
- (d) The person's entry is based on the authentic documentation; neither forged passport nor false visa was used.
- (e) The person has not been sentenced to imprisonment or penal servitude of more than 1 year, due to the criminal offence (except political crime) neither in Japan nor in any other countries.
- (f) The person has not been sentenced to imprisonment or penal servitude of more than 1 year due to his or her illegal landing to Japan without a permit.

Obviously the multiplex bars are set up high. Related to the condition (b), it is said that 80 percent of asylum seekers to Japan came through the third countries<sup>7</sup>. Many other defects are being critically raised against the governmental amendment proposals, but it remains basically a revision within the frame of the existing Immigration Control Act<sup>8</sup>. The aim of the proposed bill is interpreted as the preventive measures for the big flow of the refugees from North Korea (DPRK) which Japanese government is afraid to come in the near future. Japan Federation of Bar Associations<sup>9</sup> has expressed opinions before and after the governmental amendment proposals. Japan Association for REFUGEES<sup>10</sup> lobbied actively among politicians. Reflecting those criticisms, the Democratic Party of Japan<sup>11</sup> submitted to the Diet an alternative proposals, the Refugee Protection Law Bill,<sup>12</sup> the deliberation of which will be hopefully carried over at the current and/or next session of the Diet. This can be considered an equivalent to the Asylum Procedure Act of Germany, and is more favorable to the benefit of the refugees and refugee status applicants.

### Conclusions

JFOR wishes to draw the attention of the Sub-Commission and the HCHR to the above mentioned information including the followings.

It has been made obvious, to our regret, that the present policy of, and the practice by the Japanese government concerning the asylum seekers are below the standards under international human rights law. The above mentioned situations are, we believe, in violation of the International Covenant on Civil and Political Rights, specifically the Article 9 that prohibits arbitrary arrest or unlawful detention, and the Article 7 that

---

<sup>6</sup> 60 days in the regulations now in force.

<sup>7</sup> According to the survey made by UNHCR Tokyo Office, which is not made public yet

<sup>8</sup> <http://www.moj.go.jp/ENGLISH/IB/ib-19.html>

<sup>9</sup> <http://www.nichibenren.or.jp/en/index.html>

<sup>10</sup> <http://www.refugee.or.jp/>

<sup>11</sup> <http://www.dpj.or.jp/english/news/030310/02.html>

<sup>12</sup> [http://www.shugiin.go.jp/itdb\\_gian.nsf/html/gian/honbun/g15601020.htm](http://www.shugiin.go.jp/itdb_gian.nsf/html/gian/honbun/g15601020.htm)  
available only in Japanese

prohibits torture or cruel, inhuman or degrading treatment or punishment. JFOR sincerely wishes that the policy of the Japanese government is drastically changed to comply with the convention and treaties related to human rights that Japan has accepted. Furthermore, it will be our pride to see our nation striving for the accomplishment of high morals which are universal to humanities.

-----