

A Statement of Demand for the Securement of Human Dignity, from Immigration Detention Sites in Humanitarian Crisis

On June 24, 2019, at the Omura Immigration Center, an immigration detention center located in Omura City, Nagasaki Prefecture, a Nigerian man in his 40s known as “Sunny-san” died. Sunny-san, who was detained in November 2015, had a child with a Japanese woman. According to those who knew him, Sunny-san had been saying, “If I leave this country, I won’t be able to see my child.”

According to a study report that was made public by the Immigration and Residence Control Agency on the 1st day of this month, the cause of death of Sunny-san was “death by starvation.” The fact that a death by starvation occurred within a state institution in present-day Japan leaves one at a loss for words.

Despite the occurrence of such an extremely serious and grave abnormal situation, the Immigration and Residence Control Agency has been content to issue only an internal investigation report, in the same manner as with previous cases of death. Furthermore, the report’s content only states that there was no problem with the handling of the case, without performing thorough investigation or determination of cause.¹

We humbly express our condolences here. And, to the Immigration and Residence Control Agency, we demand that a thorough investigation be conducted by a third party agency to determine the true facts of the case.

In Japan in recent years, many irregular residents have been held in detention for extremely long periods.

As of June 2019, of the 316 detainees held at the Higashi Nihon Immigration Center, 301 were in detention for 6 months or longer, and 279 for 1 year or longer. Similarly, of the 128 detainees at the Omura Immigration Center, 110 were detained for 6 months or longer, and 92 for 1 year or longer. Many of the detainees have been in detention for two years, three years, or even longer.²

As a background to such long-term detentions, there is the fact that, under the Immigration Control Act, there is no stipulation regarding the limit of period of detention based on a deportation order, and all authority over procedures are in the hands of administrative institutions without evaluation by judicial body regarding the need for detention, period of detention, approval of provisional release, need for re-detention, etc.

What should further be pointed out is, immigration authorities have adopted an extremely strict stance toward provisional releases in recent years. Especially, in the Ministry of Justice Immigration Bureau instruction of February 18, 2018, titled “Regarding further thorough enforcement of appropriate operation of provisional release measures and the strengthening of movement surveillance against persons to whom deportation orders have been issued,” eight types of “persons not recognized as appropriate for approval of provisional release” are

¹ Immigration and Residence Control Agency web page 「大村入国管理センター被収容者死亡事案に関する調査報告について」 (“Regarding the Investigation Report Concerning the Death of an Omura Immigration Center Detainee”); October 1, 2019. http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri09_00050.html

² Resource materials found on House of Councillors Member FUKUSHIMA Mizuho website; August 29, 2019. <http://mizuhoto.org/2091>

listed, and further instruction states, “As a general rule, even in cases of persons for whom there is no prospect of deportation, unless the person suffers from illness that would make it difficult to withstand detention, detention shall continue and effort shall be made to implement deportation until deportation becomes possible.” The above-mentioned strict stance of immigration authorities toward provisional releases is graphically illustrated by the numbers and percentages of provisional release approvals, which have fallen sharply in the last few years, from 1160 persons/approx. 46% approval rate (2016) to 822 persons/approx. 26% (2017) to 523 persons/approx. 17% (2018).

Extremely long detentions have become normalized since this instruction was issued, causing the situation to fall into what should be called a humanitarian crisis.

Such a state of detention, where absolutely no consideration is given to necessity, fairness and proportionality, is not only “arbitrary detention” (Universal Declaration of Human Rights, Article 9, Par.1),³ but constitutes “torture” (see Convention Against Torture Article 1, Par.1) and is clearly illegal.

These points are evident from the fact that this state of Japanese detention has been the subject of repeated recommendations from U.N. institutions⁴, and from the fact that limits are typically applied to the lengths of detention periods in other advanced nations.

Hunger strikes to protest against long-term detention have been held in the past, too, but the hunger strike which began in May of this year was undertaken against a backdrop of such extremely long detention periods, and it was large in scale, with over 100 participants and spreading to facilities across the country. Furthermore, the situation has become grave, with some participants refusing even to drink water, experiencing drastic weight loss, becoming dependent of wheelchair for mobility, and/or losing control of egestion functions and requiring paper diapers.

The death of Sunny-san occurred amid such circumstances and, as such, is a problem that must not be squared away as a random, or peculiar event.

And yet, despite these circumstances, the Immigration and Residence Control Agency has shown no sign of changing its behavior. Rather, it acted to approve a shorter-than-usual 2-week provisional release for one person who was granted permission for provisional release after a hunger strike, then re-detained the person without reason or explanation.

We are very concerned that another victim might arise.

The Immigration and Residence Control Agency announced on September 19 of this year that it will establish an expert panel on detentions and deportations within the “Immigration Policy Council,” a private council of the Justice Minister, in which learned persons will

³ References: U.N. Human Rights Committee General Comment No.35, on the prohibition against arbitrary detention (Article 9, Par.1); U.N. Working Group on Arbitrary Detention Compilation of Deliberations, Deliberation No.5 on situation regarding deprivation of liberty of immigrants; etc.

⁴ Examples: Human Rights Committee Concluding Observations on the 6th Periodic Review of Japan, Paragraph 19; Committee on the Elimination of Racial Discrimination (CERD) Concluding Observations on the 7th, 8th and 9th (2014) Periodic Reviews of Japan, Paragraph 23; CERD Concluding Observations on the 10th and 11th (2018) Periodic Review of Japan, Par.35 and 36; Committee on the Elimination of Torture Concluding Observations on the 2nd (2013) Periodic Review of Japan, Par.9.

consider solution policies concerning long term detentions, and that recommendations will be issued by the end of March next year.

The Ministry of Justice states, in its Basic Plan for Immigration Control, “We will further consider, from the perspectives of both the legal system and of operations, introducing as a further measure restrictions on reasons for re-application, especially as a control measure against abuses and misuses of application procedures, and introducing certain exceptions to the effect to suspend deportation effect for egregious illegal remainers that are not the subject of “further revision of operations”, who try to avoid forcible deportation by repeatedly submitting applications.”

However, among those who apply repeatedly for refugee status, there are considerable numbers who are refugees under the Convention, but cannot receive recognition as refugees because Japan maintains its own, unique interpretation of the Refugee Convention. This is evident from the fact that the UNHCR has pointed out that Japan’s “refugee approval standards are quite strict, compared with other advanced nations”⁵ and uniquely identifies Japan by name as a nation with a remarkably low rate of refugee approvals, and also from the many cases where persons who were denied refugee status in Japan were recognized as refugees in another country. One can only say, it is the Ministry of Justice that is misusing the refugee recognition system.

If the government seeks only to promote deportations without going through self-reflection and careful consideration on the point above,, it is as clear as day that the humanitarian crisis will only deepen.

Japan is a signatory to the International Convention on the Status of Refugees. Given the fact, we strongly oppose Japan’s efforts to implement only restrictions on re-applications and effect to suspend deportation, while ignoring measures and policies for true protection of refugees, such as accuracy of refugee recognition, or improvement of fairness and transparency of the system.

The Ministry of Justice is the ministry responsible for “law. “Law” includes international treaties that Japan is a signatory to. However, Japan’s detention of irregular residents contravenes every principle demanded by international human rights treaties concerning detention, and we can only say of the situation that the “rule of law” is absent in the area of immigration. As a result, the detention of irregular residents has fallen into a condition that should be called a humanitarian crisis.

We can no longer overlook the Ministry of Justice’s stance of trampling upon the law.

We strongly demand of the Ministry of Justice that it respect treaties, establish rule of law and secure human dignity in the area of immigration and, as organizations engaged in the support of irregular residents, including applicants for refugee status, we vow to make every effort to improve this situation as soon as possible.

October 25, 2019

⁵ Kyodo News article, 「日本の低難民認定率に懸念 国連弁務官、法整備も要請」 (“Concerned about Japan’s low rate of refugee approvals, U.N. High Commissioner demands law improvements”) : August 30, 2019.

<<Signing Organizations (alphabetical order)>>

Catholic Commission of Japan for Migrants, Refugees and People on the Move

Hammersmith Promise (Attorneys Fighting against Mandatory Detention Policy)

Immigration Review Task Force

Japan Lawyers Network for Refugees

Japan Network towards Human Right Legislation for Non-Japanese Nationals and Ethnic Minorities

Japan NGO Network for the Elimination of Racial Discrimination (ERD Net)

National Christian Conference for Promotion of a Basic Law for Foreign Residents

Solidarity Network with Migrants Japan

Ushiku no Kai (Ushiku Detention Centre Problem Study Group)