Human Rights of Non-Status Migrants in Japan

INTRODUCTION

This policy brief addresses the emerging human rights concerns that arise from the plight of Japan’s non-status migrants. The brief focuses on the punitive components of immigration detention, as well as the precarious conditions of detained asylum-seekers who are statistically labeled as "illegal foreigners" or "deportable foreigners" in Japan.

Immigration detention is a highly contested modern state-sanctioned practice. While it emphasizes “administrative” functions to control borders, immigration law increasingly employs punitive practices toward non-status migrants who seek to remain in the territory. According to Flynn (2012), detention involves a deliberate decision to deprive a person of his or her liberty. Furthermore, more countries such as Japan employ a mandatory detention policy toward non-status migrants, including those who seek asylum. Such a practice is rooted in the principle of preventive detention in which all the non-status migrants are collectively perceived as a threat to national security (Takahashi and Kodama 2009; Wilsher 2014). This mandatory detention practice triggers a set of human rights concerns that are essentially in conflict with international human rights law.

We argue that the contemporary lives of non-status migrants are overwhelmingly reduced to “rightlessness,” the fundamental deprivation of legal personhood, especially individuals’ inability to claim and exercise rights (De Genova 2013; Gundogdu 2015). The state’s prioritization of immigration law deprives non-status migrants of the right to liberty and of the right to life despite the fact that these fundamental rights are theoretically guaranteed to everyone regardless of their legal status under international human rights law (Crépeau 2012). The pervasive practice of immigration
detention thus profoundly suggests there is a fundamental moral tension between the state’s right to assert its sovereignty and the individual’s right to liberty. This policy brief will analyze the contemporary moral dilemmas surrounding the human rights of non-status migrants, especially of asylum-seekers, through the lens of immigration detention in Japan.

Recent Surge of Asylum-Seekers in Japan

In recent years, the number of asylum seekers in Japan has increased sharply from 1,202 in 2010 to 10,901 in 2016. However, Japan’s refugee acceptance rate was a record low of 0.25 percent as the country accepted a total of 28 asylum applications plus an additional 97 asylum-seekers who are granted Special Residence Permits on Humanitarian Grounds (‘Backers of Immigration Detainees Blast Prolonged Stays as Violation of Human Rights,” Japan Times, July 8, 2017). The recent surge of asylum-seekers also implies a growing number of detainees who claim asylum. Japan’s immigration authority detains, upon arrival, the majority of asylum seekers with the exception of children and their mothers (Takahashi and Kodama 2009). The contemporary trajectories of asylum-seekers are thus homogeneously directed into the category of “deportable foreigners.”

Flynn (2012: 4) makes a parallel point noting that “in many countries there is little effort to separate asylum seekers from irregular migrants within detention regimes.” Furthermore, migrant detainees oftentimes experience a fundamental lack of procedural guarantees in detention facilities (Crepéau 2012: 5). These procedural violations include the lack of access to legal representation, unjustified prolonged periods of detention, overcrowded facilities, restricted access to family members and public support, inadequate health care, suicide, and unexplained deaths in detention centers (The Japan Times, November 18, 2015). For example, the recent deaths in Japan’s immigration facilities between 2013 and 2016 were overwhelmingly experienced by asylum-seekers, including a Sri Lankan, a Rohingya from Myanmar, an Iranian, and a Cameroonian (“Death in Detention: Grim Tool Mounts in Japanese Detention Centers as Foreigners Seek Asylum,” Reuters, March 8, 2016).

Japan’s mandatory detention of asylum seekers is increasingly seen as a violation of the 1951 Convention Relating to the Status of Refugees that outlines the rights of displaced people as well as the legal obligation of the states to protect them. Japan ratified the treaty in 1981 when the country faced an inflow of Indochina refugees from Vietnam, Cambodia, and Laos (Omata 2015). Omata depicts Japan’s refugee policy as an “open wallet with closed doors.”

Japan’s significant monetary contribution to the international aid agencies, especially as the fourth largest financial contributor to the United Nations High Commissioner for Refugees (UNHCR), ironically functions as a convenient excuse for rejecting international human rights norms regarding the state’s obligation to provide physical protection to refugees (ibid.).

Questioning "Refugeeness"

Japan’s immigration authorities normalize their closed-door policies toward asylum-seekers by questioning the “refugeeness” of the applicant. The term “fake refugees” frequently appears in the mainstream Japanese media (Yomiuri News, June 29, 2017). Asylum-seekers’ moral deservingness to claim rights is discursively denied in Japan’s public moral sphere. The government’s distrust of asylum-seekers is deeply related to the recent rise of asylum applications that largely consist of former foreign students and foreign trainees. These two groups comprise 30 percent of the total number of asylum applications (1,106 trainees and 1,399 students). Japan’s Justice Minister recently claimed that these former foreign students and trainees who seek asylum are subject to detention as soon as their visa expires (“Japan Considering Some Asylum Seekers to Curb Alleged Abuse of Refugee System,” Japan Times, September 16, 2017). The state’s practice of detention of asylum-seekers, however, is not just applied to former foreign students and trainees. Asylum-seekers regardless of social background face detention upon their arrival.
Such arbitrary detention of asylum-seekers was witnessed and documented by Takamura, the co-author of this brief, during her recent visits in 2016 and 2017 to the Higashinihon Immigration Center near Narita Airport – one of the two main long-term detention facilities in 2016 and 2017. Interviews with migrant advocacy groups and human rights lawyers also confirm such punitive practice. For example, Takamura met more than 30 Kurdish asylum-seekers from Turkey in the Higashinihon Immigration Center in her recent visits. Their political “refugeeness” is particularly evident given the high prevalence of political violence toward the ethnic Kurds in Turkey.

**Japan’s Criminalization of Deportable Foreigners**

Japan’s restrictive immigration policies toward asylum-seekers should be understood as part of the state’s cultural paranoia vis-à-vis the highly criminalized body of “deportable foreigners” in Japan. The original rise of irregular forms of migration was rooted in the 1990 immigration reforms that facilitated the inflow of de facto migrant workers who serve as cheap and exploitable workers under the non-labor categories of ‘visitors,’” “entertainers,” “technical interns and trainees,” “students,” “spouses,” and “Japanese-descendants” especially from the Latino-Japanese diasporas (Yamamoto 2015).

While de facto migrant workers have been conveniently reduced to exploitative and unprotected low-waged workers, these individuals have been trapped into the sphere of illegality due to their precarious labor and legal arrangements (De Genova 2013). Japan once had faced a record high of 290,000 non-status migrants in 1994. The immigration authority has however declared “great success” in reducing the total number of irregular migrants to 60,000 in 2015 (Ministry of Justice 2015: 8). The state’s strong commitment to end irregular migration is translated into an institutionalized migrant surveillance system that effectively regulates and punishes “Illegal foreigners,” including “fake asylum-seekers.” Thus, the rhetoric of “deportable foreigners” that is now applied to asylum-seekers is carefully perpetuated thorough the enforcement of a virulent nationalistic ethos that determines who is removable and who is not.

Asylum-seekers in Japan are deprived of the right to liberty and life not just within detention facilities, but also even following their release from detention. The conditions to gain release from detention under provisional release status are: prohibition from seeking income opportunities; prohibition of moving beyond the province where the migrant is registered with the immigration authority; and the requirement that the migrant must renew their provisional release permit at an immigration office every month or every two months. If the migrant breaks one of these conditions, the migrant will be immediately subject to detention and deportation (Immigration Bureau of Japan). Based on the data by the Immigration Bureau, there were a total of 4,388 migrants categorized under the condition of provisional release in 2016 (Ministry of Justice 2015: 9).

Despite the UNHCR’s efforts to address human rights violations in Japan’s detention facilities, the conditions of foreign detainees remain highly precarious (Obi 2013). In order to effectively defend the rights of non-status migrants, it is necessary to strengthen moral legitimacy and capacity of multiple local actors who challenge the state’s production of migrant rightlessness. The recent workshop at Waseda University (Tokyo) co-organized by Takamura and the Stateless Network in July 2017 showed the greater significance of bringing multiple stakeholders to the discussion table (The Stateless Network 2017). We thus strongly recommend a facilitation of active and sustainable multi-stake holders’ collaborations among local municipal governments, NGOs, health professionals, legal experts, scholars, and international human rights organizations who could directly challenge and interrogate the state’s normalization of human rights violations against non-status migrants, especially asylum-seekers.

**CONCLUSION**

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