

# Joint Statement of Churches

## Protesting the Malamendment of the Immigration and Refugee Act and for Life with Refugees and Immigrants

June 9, 2023

(List of endorsements as of July 3)

In March this year, the government submitted to the Diet (Japan's national legislature) a draft amendment to the Immigration Control and Refugee Recognition Act. This draft, which amended only a small portion of the "malamendment<sup>1</sup> bill" that was proposed and scrapped in 2021, has been opposed by bar associations and civic groups across Japan, as well as by the Center for Minority Issues and Mission Steering Committee and the National Christian Council in Japan. It has also been the subject of sit-ins at the Diet (Japan's national legislature) and standing protests throughout the country.

However, this malamendment bill was approved by the House of Representatives on May 9, and was approved and enacted by the House of Councillors today, on June 9.

We angrily protest against the passage of this "rare evil law," which is full of malicious intent towards foreigners. We are angered because Japan's refugee recognition system does not function to protect "those who should be protected." Properly, the refugee recognition system should be fundamentally revised based on the Universal Declaration of Human Rights and the Refugee Convention, and the immigration detention system should be amended in line with international human rights treaties to which Japan is already a party. However, the government of Japan has not done so, and the malamended legislation puts "asylum seekers" and "unregistered foreigners" (irregular residents) who have lost their status of residence into situations that are even more difficult than before.

### ◆ "Refugee isolationist nation" Japan

Most importantly, the revised law lacks any provision to improve the current refugee recognition system, which has an approval rate of 1% or less. In 2020, when airports and seaports were closed due to the coronavirus pandemic, the number of refugees whose applications were approved and the rate of approval by each country was 63,456 (41.7%)/Germany, 19,596 (55.2%)/Canada and 9,108 (47.6%)/U.K., compared to 47 (0.5%) in Japan.

The reason why the number and rate of refugee approvals in Japan is extremely low compared to other countries is that Japan's recognition system has been arbitrarily operated by the Ministry of Justice and the Immigration Services Agency (ISA).

In the first screening for refugee recognition, a "Refugee Investigator," who is an employee of the ISA, interviews the applicant, and the Minister of Justice makes a decision after referring to information on the country of origin. However, recent lawsuits seeking cancellation of rejections of refugee applications have revealed how crude these interview are, and how poor the information is on applicants' countries of origin held by the ISA.

In addition, if the application is not approved in the first screening, the applicant can appeal the decision and receive a second screening, where three "Refugee Screening Counselors" examine the applicant as a group, and the Minister of Justice makes a final decision based on their written opinions. One of the 111 counselors was in charge of 1,378 out of 6,741 screenings in 2021 and 1,231 out of 4,740 in 2021, which represent more than 20% of the total number of second screenings. Another counselor, who appeared as a reference witness at the House of Councillors' Legal Affairs

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<sup>1</sup> "Malamendment" is an attempt to capture the meaning of the Japanese word "kaiaku" (改悪), which means to "amend(ment) for the worse."

Committee, stated, "I processed 50 written applications in one day" and "I have been in charge of more than 1,000 cases in a year."

Meanwhile, according to an emergency questionnaire of lawyers who are counselors, conducted by the Japan Lawyers Network for Refugees ("Zennanren"), the average number of applications examined by the 10 respondents was 36 per year. In other words, it is impossible to rigorously review 1,000 cases in a year, including interviews with applicants.

Presumably, the ISA assigns more cases to counselors who are likely to confirm the non-approvals of the first screenings, and these counselors only skim the documents prepared by ISA staff and mass-produce "non-approvals." As Zennanren lawyers point out, "Most of the councillors lack expertise and the second screening system is not functioning." In such a system, where the ISA has been arbitrarily and messily operated by some counselors, it is inevitable that the approval rate will be less than 1%.

But this is the absurd "reality of Japan" for the 99% of foreigners who were not approved under this refugee recognition system.

Governments should listen seriously to the following concerns and recommendations of UN human rights bodies: "The Committee is concerned about reports of low refugee recognition rates" and "The state party should urgently adopt a comprehensive refugee law that meets international standards." (Concluding Observations of the UN Human Rights Committee: November 2022).

#### ◆Deviation from international principles

"No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." (Article 33 of the Refugee Convention).

This is called the *non-refoulement principle*, and is considered to be a "moratorium against deportation" of any foreigner while applying for refugee status. UN human rights institutions have repeatedly emphasized the importance of this principle and issued recommendations to the government of Japan.

However, the malamended law would allow asylum seekers who would be persecuted upon repatriation to be forcibly repatriated, without a chance for a third or subsequent asylum claim. Furthermore, persons sentenced to more than three years' imprisonment in Japan, or suspected of engaging in or facilitating terrorism, violence or destructive activities, broadly defined, may be forcibly repatriated even during their first asylum application.

The lifting of this "moratorium against deportation" clearly violates international human rights law. The Special Rapporteur on the Human Rights of Migrants, the Vice-Chair on Communications of the Working Group on Arbitrary Detention, and the Special Rapporteur on Freedom of Religion or Belief, who are appointed under the UN Human Rights Council, issued a joint letter to the Japan government on April 18, 2023, while the bill was under consideration. In this letter, the problems were listed in detail, the government's proposed amendment was described as "below international human rights standards" and the following was sharply pointed out:

"The Non-Refoulement Principle is an essential and inalienable protection under international human rights, refugee, humanitarian and customary law, which is articulated in Article 3 of the Convention against Torture (to which Japan is a party) and Article 16 of the Convention on Enforced Disappearances. The principle of non-deportation is an inherent element of the prohibition of torture and other forms of ill-treatment and is not subject to any exceptions or deviations."

#### ◆Malicious legislation

Foreigners who are not approved as refugees, or unregistered foreigners who marry in Japan, have children in Japan and whose livelihood is in Japan, "cannot go back even if they are told to." The Ministry of Justice calls these people "deportation evaders" and their number is said to be 4,000.

The malamended law not only imposes indefinite detention on such people, but also imposes criminal penalties, which, indirectly but effectively, force them to return home. It must be said that this legislation is full of malicious intent, because it mass-produces "criminals" by criminalizing

"overstay," which is a violation of administrative law, and further promotes prejudice and discrimination that "foreigners = criminals."

◆Children on "provisional release"

Among the 4,000 "deportation evaders," there are about 200 children born in Japan and attending Japanese schools, who are "on provisional release." These children have no resident status since birth, and also no residence registration, or health insurance. Even if efforts of supporters enable them to attend elementary, junior high, high school and university, the path to employment is completely closed. It is the current Immigration and Refugee Act that is depriving these children of their futures, and the malamended law deprives them of their right to life.

As Japan is a signatory to the Convention on the Rights of the Child, all refugee and migrant children, regardless of their status of residence, must be given priority. All of the rights enshrined in the Convention on the Rights of the Child must be enjoyed, both legally and substantially. As the UN Committee on the Rights of the Child makes clear, the detention or deportation of any child is a violation of the rights of the child and is incompatible with the principle of the best interests of the child.

Nevertheless, there is no provision in the malamended law prohibiting the detention and deportation of children.

◆Immigration detention centers where detention without judicial review and deaths from illness and suicide continue

"Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention... Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." (ICCPR, Article 9, paragraphs 1 and 4).

Thus, international human rights establishes "liberty of the person" as a basic principle, and that "detention" is an exception, and requires state parties to abide by this principle and to deviate from the principle only in exceptional cases. Moreover, this principle is not limited to nationals of the state party, but covers all persons within its territory, including asylum seekers, refugees and migrants.

However, the malamended law maintains the principle that all asylum seekers and unregistered foreigners who refuse, or have no choice but to refuse, deportation are subject to detention, and provides no "judicial check" on whether they should be detained. Decisions on detention, provisional release, and new supervision measures shall be left to the discretion of ISA officials. In other words, the immigration detention system that led to Ms. Wishma's death in March 2021 remains unremedied.

This, too, is a clear violation of international human rights law. International human rights standards state that "all forms of detention, including detention, must be ordered and approved by judges and other judicial authorities" and that "detention should be a last resort and immigration detention constitutes arbitrary detention if it is not justified in terms of reasonableness, necessity, legitimacy or proportionality."

Furthermore, the malamended law was enacted without any investigation into the truth, or fundamental remedial measures, despite the fact that at least 21 detainees have died of illness or suicide in immigration detention centers nationwide from 1997 to the present. Both the ISA and the Minister of Justice say that, since 2021, "the effects of reforms, such as securing full-time doctors, are steadily becoming apparent," but in January this year, it was discovered that a full-time doctor was examining detainees while drunk at the Osaka Immigration Bureau's detention facility. However, there has been no confirmation of the facts, nor has any disciplinary action been taken.

◆Recalling the Universal Declaration of Human Rights 75 years ago

As can be seen above, the "malamended" Immigration and Refugee Act not only violates international human rights treaties to which Japan is a party, but also seeks to destroy the international human rights standards that international human rights institutions and other countries have worked tirelessly to build up since World War II.

This December marks the 75th anniversary of the adoption of the Universal Declaration of Human Rights by the United Nations General Assembly. The significance of the Declaration of Human Rights issued by the United Nations on December 10, 1948, after remorseful reflection on World War II, was that, whereas human rights had been regarded as a domestic problem of each country and the principle of non-interference in the internal affairs of each country applied until then, it was recognized that the universality of human rights must be confirmed and international guarantees and international implementation must be ensured. Article 14 of the Universal Declaration of Human Rights states, "Everyone has the right to seek and to enjoy in other countries asylum from persecution."

1. We will firmly oppose the implementation of the "malamended" Immigration and Refugee Act by the government.
2. We will urge the Diet to enact a refugee protection law that is based on international human rights treaties, and to enact a comprehensive Basic Law on Human Rights for foreigners and refugee and migrant minorities.
3. Churches in Japan, which have already become "immigrant societies," are now welcoming many foreign clergy and congregants. We declare that we will begin concrete initiatives in the church, and in solidarity with work of civil society, to support the lives and livelihoods of asylum seekers and unregistered foreigners, in particular.

● Appealing Body ●

National Conference of Christians Seeking Enactment of a Basic Law for Foreign Residents (Gaikikyo)

● Endorsing Bodies ●

Hokkaido Conference of Christians Seeking Enactment of a Basic Law for Foreign Residents (Hokkaido Gaikiren) / Kanto Conference of Christians Seeking Enactment of a Basic Law for Foreign Residents (Kanto Gaikiren) / Kanagawa Conference of Christians Seeking Enactment of a Basic Law for Foreign Residents (Kanagawa Gaikiren) / Chubu Conference of Christians for Coexistence with Foreign Residents (Chubu Gaikiren) / Representative of Kansai Conference of Christians for Coexistence with Foreigners Conference (Kansai Daihyosha Kaigi) / Kansai Conference of Christians for Coexistence with Foreigners (Kansai Gaikiren) / Hiroshima Conference of Christians for Coexistence with Foreign Residents (Hiroshima Gaikiren) / Kyushu-Yamaguchi Conference of Christians for Coexistence with Foreign Residents (Kyushu-Yamaguchi Gaikiren) / Center for Minority Issues and Mission / National Christian Council in Japan (NCCJ) Board of Directors / NCCJ Committee for Human Rights of Foreign Residents in Japan / NCCJ Urban-Rural Missions (URM) Committee / NCCJ Committee on Reconciliation and Peace in East Asia / NCCJ Education Department / NCCJ Women's Committee / Nagoya Christian Council / Japan Catholic Committee on Refugees, Migrants and People on the Move (JCARM) / Catholic Archdiocese of Osaka Social Action Center Synaxis / Catholic Nagoya Committee on Refugees, Migrants and People on the Move / Osaka St. Joseph Missionary Sisters Headquarters Monastery / Osaka St. Joseph Missionary Sisters Bethlehem / Sacred Heart Sapporo Monastery / Tokyo Canossa Monastery / Salesian Sisters / Fifth Convent of the Society of the Sacred Heart / Catholic Salesian Order / Catholic Junshinkai Japan District / Sacred Heart Akenohoshi Monastery / Ursula Missionary Sisters of the Sacred Heart / Sisters of the Sacred Heart / Oblate Society / Second Monastery of the Society of the Sacred Heart / Caritas Sisters of Jesus Miyazaki Shugaku Volunteer / Bellis Mercès First Monastery of the Sisters of Missions / Sacred Heart Society Kobayashi Shu-in / Pure Heart Society / Japan Catholic Council for Justice and Peace / Hiroshima Council for Catholic Justice and Peace / Jesuit Social Pastoral Centre / Ottawa Sisters of Love and Beauty Higashi-Sendai Monastery / Sisters of Mary of the Heart Mobarra Community / Japan Anglican-Episcopal Committee on Justice and Peace / Japan Anglican-Episcopal Church Human Rights Officer / Japan Anglican-Episcopal Chubu Diocese Social Mission Department / Japan Anglican-Episcopal Church of St. John, Chubu Diocese / Japan Anglican-Episcopal Church Tokyo Diocese Human Rights Committee / Japan Mission Bureau of the Osaka Diocese / Japan Episcopal Church Osaka Diocesan Mission Bureau Social Mission and Korean Missionary Collaboration Committee in Japan / Japan Episcopal Church Tokyo Diocese Justice and Peace Council / Japan YWCA / Hiroshima YWCA / Kobe YWCA / Sendai YWCA / Niigata YWCA /

Kyoto YWCA / Hiratsuka YWCA / Shonan YWCA / Hakodate YWCA / Kofu YWCA / Osaka YWCA / Shizuoka YWCA / Korean Christian Church in Japan Social Committee / Korean Christian Center (KCC) / Seinan Korean Christian Center (Seinan KCC) / Research-Action Institute for Koreans in Japan (RAIK) / Japan Christian Church Human Rights Committee / Japan Christian Church Yokohama Kirihata Church Yasukuni Shrine Problem Committee / Japan Christian Church Hokkaido Presbyterian Yasukuni Social Affairs Committee / Japan Evangelical Lutheran Church Social Committee / Japan Baptist Convention Special Committee on Japan-Korea Solidarity / Japan Baptist League Yasukuni Shrine Issue Special Committee / Japan Baptist Convention Ichikawa Hachiman Christian Church / Japan Baptist Convention Meihama Baptist Church / Japan Baptist Social Committee of the Komagome Peace Church / Japan Baptist Union Neyagawa Christian Church / Japan Baptist Union Kanto Gakuin Church / Japan Baptist Social Committee of the Japan Baptist Atsugi Church / United Church of Christ in Japan (UCCJ) Nikichi Church / UCCJ Nagoya Horikawa Mission / UCCJ Nishi-Chugoku District Mission Committee Social Department / UCCJ Hiroshima Tobu Church / UCCJ Hanyu no Mori Church / UCCJ Hokkai Diocesan Peace Division Committee / UCCJ Shinhakan Church / UCCJ Kyushu Diocese Kitakyushu District Yasukuni Human Rights Committee / UCCJ Nishikatamachi Church / UCCJ Tohoku Diocese Okinawa Exchange and Joint Issues Special Committee / UCCJ Aizuwakamatsu Church / UCCJ Kanto Diocesan Mission Committee / UCCJ Ryugasaki Church / UCCJ Rinkan Tsukimino Church / UCCJ Kinosaki Church / UCCJ Toyooka Church / UCCJ Naka Mission / UCCJ Kyoto Diocese "Church and Society" Special Committee / UCCJ Kyoto District Mission Department / UCCJ Kanagawa Diocesan Social Committee / UCCJ Tertiary Church / UCCJ Oshima Church / UCCJ Suo Church / Nishi-Chugoku Christian Social Service Kamenosato Apartment House / UCCJ East China Diocesan Society Committee / UCCJ Tobi Church / UCCJ Muromachi Church / UCCJ Ainai Church / UCCJ Kanagawa District Center / UCCJ Oki Church / UCCJ Urayasu Church / UCCJ Hiroshima Nanbu Church / Japan Christian Women's Correctional Association / Niigata Help Association / Christian Solidarity Conference on Buraku Issues / Sapporo Christian Federation Committee for Coexistence with Koreans in Japan Committee / Christian Business Establishments Solidarity Joint Labor Union / Yasukuni Emperor System Information Center / "Christian Kyujo no Kai" Kitakyushu / Christian Association for Faith and Sexuality (ECQA) / Atutu Myanmar Support / Atutu Myanmar Fukuoka / Christian Net for Peace / Rokus Hiyori Yama (Shimonoseki Labor Education Center) / Amnesty International Shimonoseki Group / Nets / Tokyo Christian Association for Unforgiving War / National Council for Human Rights Education and Research in Christian Schools / Christian Friendship Association Tokyo Tsukishakai Peace Committee / Kyo Shigeru Christian Peace Association

[As of July 3, 2023]