

Partial Summary of UNHCR's Comments dated 9 April 2021 on the bill to amend ICRRA (24 February 2022)



UNHCR **acknowledges** the **challenges** the Immigration Services Agency (ISA) faces in addressing abuse or misuse of the asylum system while ensuring protection of refugees, which are common around the world. As the “guardian” of the 1951 Refugee

Convention, UNHCR stands ready to continue to support Japan in its efforts to ensure a fair, efficient, transparent, and quality asylum system that reflects international refugee law standards.¹

UNHCR welcomes some of the proposed amendments while making some recommendations.

The **introduction** of the **concept** of “**complementary protection**” for persons not falling within the refugee definition under the 1951 Convention but needing international **protection** is welcome. Nevertheless, UNHCR recommends that the proposed criteria for granting such protection be modified to clearly reflect the **GoJ's obligations under international human rights law including** the Convention against Torture (CAT). Some proposed amendments to **improve the rights of refugees** are also welcome, including the extension of validity of the refugee travel document and facilitation of permanent residency for certain refugees. Proposals to **improve detention conditions** including on support for intellectual, educational, and recreational activities are notable while further improvements such as in access to psychological counselling are desirable.

Key issues of interest and recommendations

Deportation of asylum-seekers in general

Deporting asylum seekers still undergoing RSD procedures (through the lifting of a currently-automatic “suspensive effect”) increases the risk that they would face persecution in their country of origin, prohibited by the 1951 Convention and international law under the principle called “*non-refoulement*.” In UNHCR's view the most effective way to address issues of abuse of the system is to invest resources in enhancing the quality, fairness and efficiency of the RSD system, where refugees are properly identified in a timely manner. UNHCR strongly recommends that, **exceptions to the suspension of deportations, if** they were to be made, be limited to truly exceptional cases, and never applied to first-time RSD applicants. In all such cases **due process** should be in place allowing for **appeals** against decisions to lift suspension of deportations.

Deportation of first-time RSD applicants for criminal profile or record

The Bill makes it possible to deport any RSD applicants solely for being **suspected** to be, or **become** (in the future), involved in terrorism or violent or subversive and other activities or for having been sentenced in Japan to three or more

¹ This is a *partial* summary of “UNHCR Comments on the Bill for partial amendments to the Immigration Control and Refugee Recognition Act (ICRRA) submitted to the 204th Diet session” (9 April 2021). For details, please refer to the [Comments](#) and [Executive Summary](#) available at www.refworld.org.

years of imprisonment with or without work. This even applies to persons who are **applying for RSD for the first time**, who have **not yet been interviewed** or received the decisions of their first instance examination. UNHCR shares the Government's legitimate concerns over national security. However, State **security and refugee protection are compatible**. Asylum-seekers pending their first-time RSD applications need to firstly be **given access to RSD interviews** to explain the harms they may face upon return to their home country. Cases of persons posing security concerns should be processed **fairly and efficiently by qualified RSD** personnel, some of whom may indeed not be recognized as refugees for being **undeserving of refugee status**.



Asylum-seekers/refugees who have committed crimes in Japan should certainly be prosecuted/punished in accordance with the due process of law. Article 33(2) of the 1951 Convention provides that a refugee can be exceptionally deported to where he faces persecution only if he is **a danger to the security** of the **country** of asylum, or (after **convicted** of a **"particularly" serious crime**) to its **community**. This provision however

is intended to apply to a person who has been recognized as a refugee. Many of the broad range of activities covered in the relevant provision in the Bill are unlikely to fall within such exceptions. Further, under ICCPR and CAT that Japan is a State party to, there are **no exceptions** from *non-refoulement* obligations, so lifting of the suspensive effect might, at the end, may **not lead to actual deportation**. **If** the suspensive effect were still to be lifted, for existing Article 53(3)² of ICRRRA to function as a safeguard to prevent refoulement, it would be needed, among other things, to establish a clear procedure for (re-)examination of the applicability of the provision with a concomitant issuance of a residency permit.

Deportation of those applying for refugee status for the third time or more without "materials constituting reasonable grounds" for protection

Given that the **first RSD applications have been properly examined** and finally rejected, establishing a proper **admissibility examination** procedure for subsequent applications to decide whether there are elements to justify re-examination of the content of their claims can be a useful efficiency measure. **If** the suspensive effect were to be lifted, the ISA's decision that the "material constituting reasonable grounds" for protection has **not** been submitted should be **considered to constitute an administrative disposition**, which should be explicitly **informed to the individual** concerned and be subject to an **effective opportunity for appeal**.

Imposition of penalties for not leaving despite a deportation order/not applying for a passport etc.

At least all **asylum-seekers** and **stateless persons** should be **explicitly exempted** from these measures.

"Supervisory measures" and the need to further utilize existing ATD

Risk of abscondment should be addressed by providing a means of livelihood for the individual concerned (by granting the right to work or State-funded assistance) as well as proper **case-management** rather than the imposition of imprisonment or a fine. It is recommended that existing measures to avoid detention of asylum-seekers such as Provisional Permission to Stay be granted more widely by abolishing some of its criteria. The **maximum period of detention** and prompt and periodic **review of decisions to (continue to) detain** by an independent judicial body should be established.

² Article 53(3) ICRRRA basically prohibits designating as destinations for deportation orders countries where non-refoulement principle apply.