

報 告

# Immigration Detention in Japan: Standing on a Crossroad

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In 2014, there were three reported incidents of detainee deaths at immigration detention facilities in Japan, sparking concerns and discussion regarding detention policy and practice.

In this paper, the general legislation and policy regarding immigration detention is firstly explained, along with specific statistics from the Ministry of Justice. Secondly, the paper examines issues regarding medical treatment within detention facilities, with reference to individual relief cases brought to the Japan Federation of Bar Associations along with the death incidents. Thirdly, the paper elaborates on the mechanism for release from detention in Japan which is also considered to be the cause of prolong and disproportionate detention. Fourthly, the paper explores the activities of the Immigration Detention Facilities Visiting Committee, its effectiveness and the challenges it faces.

## 1 Introduction

In 2014, there were three reported incidents of immigration detainee deaths in Japan. On March 29, an Iranian (male, 33 years old) and on March 30, a Cameroonian (male, 43 years old) died while being detained at the Higashi-Nihon Immigration Center (hereinafter referred to as “East Japan Immigration Center”, Ushiku-shi, Ibaraki). On November 22, a Sri Lankan (male, 57 years old) died while detained at the Tokyo Immigration Bureau (Minato-ku, Tokyo).

These incidents are not coincidental but the result of an accumulation of problematic policies and practices of immigration detention. In this paper we will consider these policies and practices, with particular focus on medical treatments in immigration detention facilities.\*1

## 2 Legislations on Immigration Detention

### (1) Procedures for Immigration Detention

The Immigration Bureau falls under the remit of Ministry of Justice (hereinafter referred to as “MOJ”). Immigration procedures, including detention and deportation, are set down in the Immigration Control and Refugee Recognition Act (hereinafter referred to as “ICRRA”).<sup>\*2</sup> Based on the ICRRA, there are 2 types of Immigration Detention. Those are, (1) Detention by a Detention Order (Article 39, ICRRA) and (2) Detention by a Deportation Order (Article 52 (5), ICRRA).

### (2) Grounds for Immigration Detention

Article 24 of ICRRA contains the grounds for a deportation order. Those include persons who have entered Japan irregularly, overstayed their period of stay, committed certain crimes, been found to engage solely in income-generating activities without permission and others. Article 39 of ICRRA also stipulates “An immigration control officer may, if he has reasonable grounds to believe that a suspect falls under any of the items of article 24, detain the suspect pursuant to a written detention order.”

Thus, any persons in respect of whom it is suspected there are ground(s) for a deportation order may also be subjected to immigration detention. This means that merely overstaying one’s period of stay is enough to trigger a detention order. There are no other requirements needed, such as reasonable risk of absconding or destroying of evidence. The MOJ’s stance is that the article be interpreted as meaning that anyone who is subject to a deportation order would also be subject to detention.<sup>\*3</sup>

This detention system is called “*shuuyou-zennchi shugi* (収容前置主義, “Prepositive detention principle”)” or “*zenken shuuyou shugi* (全件収容主義, “All detention principle”)” and is equivalent to mandatory detention.<sup>\*4</sup>

Detention under deportation orders is the same as under detention orders and does not require anything other than fulfilling the grounds for deportation as stipulated under article 24 of ICRRA.

### (3) Length of Detention

The length of detention orders and deportation orders does vary. According to article 41 (1) of ICRRA, the period of detention in case of detention orders is 30 days. However, that may be extended for a further 30 days when there are unavoidable reasons.

By contrast, there is no limitation to the period of detention based on deportation orders. Article 52 (5) of the ICCRA stipulates that “if the foreign national cannot be deported

Chart1 Population of detainees

Year	Population of detainees (as of December 31) <sup>*1</sup>	Population of irregular foreign nationals (as of January 1) <sup>*2</sup>
2009	1621	113,072
2010	1119	91,778
2011	1026	78,488
2012	1028	67,065
2013	914	62,009
2014	N/A	59,061

<sup>\*1</sup> E-Stat, Portal Site of Official Statistics of Japan, ([https://www.e-stat.go.jp/SG1/estat/GL08020103.do?\\_toGL08020103\\_listID=000001119057&requestSender=dsearch](https://www.e-stat.go.jp/SG1/estat/GL08020103.do?_toGL08020103_listID=000001119057&requestSender=dsearch), February 9, 2015)

<sup>\*2</sup> Immigration Bureau, Ministry of Justice, “2014 Immigration Control”, ([http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri06\\_00055.html](http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri06_00055.html) pp.84, February 9, 2015)

immediately, the immigration control officer may detain him/her . . . until such time as deportation becomes possible.” This means that once a deportation order is issued, the person may be detained for an indefinite period.

### (4) Summary

As explained above, mandatory detention is coupled with indefinite detention, leading to a situation in which people who reside in Japan irregularly are subject to detention without time limitation.

## 3 Practice of Immigration Detention

### (1) The population of detainees

The Immigration Bureau maintains a total of 16 detention houses and three long-term immigration detention centers, which have a combined total capacity of 4,010 (as of 2012).<sup>\*5</sup> As of the end of 2013, the population of detainees was 914 which has decreased gradually over the years (See chart 1). The decrease can be considered a result of the decrease in the population of irregular foreign nationals in Japan.

The top five facilities regarding the number of detainees are as follows:

- (1) East Japan Immigration Detention Center (Ushiku-shi, Ibaraki), 308
- (2) Tokyo Immigration Bureau (Minato-ku, Tokyo), 297
- (3) Nagoya Immigration Bureau (Nagoya-shi, Aichi) 136
- (4) West Japan Immigration Detention Center (Ibaraki-shi, Osaka) 52
- (5) Osaka Immigration Bureau (Osaka-shi, Osaka) 51

Chart 2 The length of detention at East Japan Immigration Detention Center

Length of Detention	Male	Female	Total
Under 3 month	124	18	142
3 month to under 6 month	45	16	61
6 month to under 12 month	36	12	48
12 month to under 18 month	25	2	27
18 month and over	5	1	6
Total	235	49	284

Chart 3 The nationality of detainees at East Japan Immigration Detention Center

Nationality	Male	Female	Total
Sri Lanka	49	0	49
Philippines	30	9	39
China (Mainland)	14	11	25
Iraq	21	0	21
Turkey	21	0	21
Vietnam	11	3	14
Peru	8	5	13
Nigeria	10	1	11
South Korea	1	9	10
Thailand	4	5	9
Nepal	8	1	9
Ghana	7	1	8
Others	51	4	55
Total	235	49	284

Chart 4 The age of detainees at East Japan Immigration Detention Center

Age	Male	Female	Total
20's	54	9	63
30's	90	12	102
40's	69	22	91
50's	21	6	27
60's and over	1	0	1
Total	235	49	284

## (2) Statistics at East Japan Immigration Center<sup>\*6</sup>

As of November 30, 2014, there were 284 detainees at East Japan Immigration Center (235 males, 49 females).

The length of detention varies case by case. Approximately half of the detainees are detained for 3 months or over (See chart 2). The nationality of detainees also varies, consisting of 35 countries and regions (See chart 3). Most of the detainees are between their 20's to 40's, however, detainees over 50 can be found as well (See chart 4).

## 4 Treatment of detainees: focusing on medical treatment

### (1) Legislation on treatment of detainees

Regarding the treatment of detainees, Article 61-7 (1) of the ICCRA stipulates "A person detained in an immigration detention center or detention house shall be given maximum liberty consistent with the security requirements of the immigration detention center or the detention house." However, this provision itself is abstract and does not clarify what kind of guarantee of rights and liberty the detainee actually enjoys. The said article stipulates that "In addition to those matters prescribed in the preceding paragraphs, necessary matters pertaining to the treatment of detainees shall be provided for by a Ministry of Justice ordinance"(Article 61-7 (6)). Thus, a large portion of the guidance on the treatment of detainees is stipulated not in the law but in the ordinance, namely the "Ordinance on the Treatment of Detainees (hereinafter referred to as "Ordinance")". Surprisingly, there are no articles in the ICRRA pertaining to the specific medical treatment of detainees. This situation is in contrast to the treatment of prisoners which is stipulated under the "Criminal Facilities and Treatment of Detainees Act" of 2005, and which also includes reference to medical treatment.

In this paper, we will focus on the medical treatment of detainees which has drawn public attention following the three incidents of death in 2014.

### (2) Provisions within the Ordinance

Article 30 (1) of the Ordinance stipulates that "When a detainee is ill or injured, the Directors and others shall have the detainee to be examined by a doctor or take adequate measures according to the illness". Paragraph (2) stipulates that "Detention facilities shall reserve necessary medicine in order to prepare for emergency cases and other cases".

However, in practice, it is difficult to say whether these provisions are strictly followed.

### (3) The medical system in immigration detention facilities

The biggest problem regarding medical treatment is the lack of sufficient numbers of doctors at immigration detention facilities. For example, in the East Japan Immigration Center there are no doctors working fulltime (as of October 2014).<sup>\*7</sup> Since October 2011, there have been part-time doctors coming to the Center five times a week to provide medical consultation, along with a psychiatrist consultation twice a month.<sup>\*8</sup> However, when considering that there are days within the week where the doctor is not present and the fact that the Center detains approximately 300 people (with the total quota of 700), it is easy to imagine that the number of doctors and frequency of consultation is not sufficient.

The Immigration Detention Facilities Visiting Committee (see below for further detail on the Committee) has given their opinion on this matter to the Center, indicating that “We urge that the Center makes improvement by endeavoring to obtain a full-time doctor and continue considering to deepen the close connections with the local medical institutions in order to provide various types of medical consultation”.<sup>\*9</sup>

#### **(4) Problems regarding medical treatment that can be observed through individual cases**

The Japan Federation of Bar Associations (hereinafter referred to as “JFBA”) is authorized to receive requests for individual relief whenever there is a complaint of human rights abuses.<sup>\*10</sup>

In 2011, there were requests for individual relief made to the JFBA by two detainees. One was a Sri Lankan detainee (male, 30’s, hereinafter referred to as “X”) while the other was a Filipino detainee (female, 40’s, hereinafter referred to as “Y”). Both of them were initially detained at Tokyo Immigration Bureau and then transferred to the East Japan Immigration Center.

There were several complaints common to the two requests. Firstly, the inadequate initial consultation prior to entering the detention facilities. Both X and Y complained that they were unable to have a medical consultation with a doctor when entering the centers. They stated that the only treatment they received was questioning by an Immigration officer along with a brief check-up of height and weight measurements and such. In the case of Y, she alerted the Tokyo Immigration Bureau to the fact that she was suffering from a headache and loss of appetite and had a medical history of cystitis. However, she was denied her request to be examined by a doctor.<sup>\*11</sup>

Secondly, the delay between the request and the medical consultation, either with a doctor within the facilities or a doctor in external medical institutions. For example, in the case of X, it took more than 2 weeks after his request for him to receive a consultation with a doctor within the East Japan Immigration Center.<sup>\*12</sup> On the other hand, in the case of Y, though she fell down unconscious several times owing to high blood pressure, there were several occasions in which it took from approximately 1 week to more than 3 weeks from her request to have a consultation with a doctor inside the East Japan Immigration Center.<sup>\*13</sup> In her case, she was instructed by a doctor within the Tokyo Immigration Bureau during her detention there to have a re-consultation whenever her blood pressure exceeded 180mmHg. However, after her transfer to the East Japan Immigration Center, though there were at least 12 days where her blood pressure exceeded 180 mmHg and at least 3 days where it exceeded 200 mmHg, it was reported that she received medical consultation only 4 times.<sup>\*14</sup>

Thirdly, the difficulties in receiving medical consultation in external medical institutions

was common to both. In the case of X, on April 22, 2011, he was instructed by a doctor in the Tokyo Immigration Bureau to have consultation at an external medical institution. However it was not until May 10, 2011 that he actually underwent a medical consultation outside.<sup>\*15</sup> In the case of Y, after her transfer to the East Japan Immigration Center on June 2, 2011, it was reported that her blood pressure exceeded 200 mmHg on July 23 and 26 and that she had fallen unconscious on June 24 and 27 and on August 7. However, her request to be examined by an external doctor was denied by the Center. Instead she was advised that she would need to prepare 100,000 yen (approximately 1000 dollars) in order to be taken outside to meet a doctor.<sup>\*16</sup>

Fourthly, common to both was the lack of explanation to the detainees about their condition and the types of medicine prescribed. For example in the case of X, there was no interpreters when he received a medical consultation in the external institution. He also claimed that he was not explained about the medicine he was prescribed when at the East Japan Immigration Center.<sup>\*17</sup> In the case of Y, she complained that, while at the Tokyo Bureau, she was unable to accurately explain her condition to the doctor as there was no interpreters present. She has also complained about not being well-informed about her condition and medical prescription after being transferred to the East Japan Immigration Center.<sup>\*18</sup>

Receiving these requests, on November 17, 2014, the JFBA published their recommendation towards the Minister of Justice, the Directors of both the Tokyo Immigration Bureau and the East Japan Immigration Center, and to the heads of both the House of Representatives and the House of Councilors.<sup>\*19</sup> To encapsulate the contents, the recommendation urges that i) detainees should receive medical treatment without delay upon request (in general, within one day after the request), ii) the detention facility should provide adequate medical treatment consistent with that of general social standards, iii) whenever necessary, free medical consultation in external medical institution should be promptly provided, iv) accurate and adequate Information should be provided to detainees along with adequate interpretation, v) whenever detainees are dissatisfied with the content of the consultation or the means of treatment by the doctor within the facility, the opportunity to receive a second opinion by other doctor(s) should be guaranteed, vi) medical consultation including X-ray, blood and urine examination by a doctor should be conducted at the time of entering the facilities and at least once every 6 months.

#### **(5) The death of three detainees in 2014**

As mentioned above, in 2014, there were a total of three deaths reported at the East Japan Immigration Center and Tokyo Immigration Bureau. However, as there has been no official

inquiry conducted by an independent third party into the incidents, many things remain unclear.

The NGO "Ushiku-no-kai", an organization that has been engaging in routine visitation at the East Japan Immigration Center for more than 20 years, has conducted their own research through interviews with detainees who witnessed the incidents. They have publicized the result of the research regarding the first two detainees who died in March. From the research we are able to observe some of the problematic situations which led to the death.

The Iranian detainee had been detained for more than 1 year at the time of his death. As became clear from the research, he was taking 30 tablets of medicine daily, and claimed to suffer from bleeding from the ear, hernia, head-aches and insomnia. He was seen to walk unsteadily and was said to be in a dazed state. On March 28 at 7:30 PM, he choked on his food but the immigration officer did not respond promptly and it was only after 30 minutes that he was taken away by an ambulance. By that time, his face had turned black and he seemed not to have been breathing.<sup>\*20</sup> His death was confirmed on the following day.

The Cameroonian detainee, who died on March 30, was in detention for more than 6 months. He was transferred from Narita International Airport to the East Japan Immigration Center after being denied permission to enter. On March 27, his cellmates started a sit-in to demand that Center officials take the man to an external medical institution as he was in such a condition that he could not stand up by himself to go to the toilet owing to his grave symptoms of diabetes. The situation calmed down after the officers promised that they would take the man to the hospital. However, on the morning of 30th, which was a Sunday, there was a sudden change in the detainee's condition. It was reported that he was not at the hospital but was kept in a bed room in the corner of the medical treatment room inside the Center. He was soon taken to the hospital where his death was confirmed.<sup>\*21</sup>

After the death of the two detainees, seven local bar association along with the Kanto Federation of Bar Associations published statements condemning the lack of sufficient medical care and mistreatment of detainees at the Center. On November 22, the MOJ responded by stating that there were problems with the lack of full-time doctors and that they would continue to endeavor to obtain such doctors and make improvements by reconsidering the procedures regarding requests for medical consultations, speed up the referral of medical examination results and improve the reactions to detainees who need special attention.<sup>\*22</sup>

However, just two days after the MOJ statement, a third death occurred. On November 22, a Sri Lankan detainee died at the Tokyo Immigration Bureau. It was reported that on that morning the detainee claimed that he was suffering from chest pain but was not able

to see a doctor. Around 1:00 PM, he was found unconscious and was confirmed dead at the hospital to which he was transferred.<sup>\*23</sup>

On January 14, 2015, the JFBA released a presidential statement. In the statement, the JFBA demanded that the MOJ have an independent third party conduct a thorough and prompt investigation into the incident and have the result be disclosed as well as taking measures to prevent recurrence.<sup>\*24</sup> However, as of January 31, 2015, there has been no report from the MOJ carrying out such measures.

#### **(6) Summary**

It is apparent from the two individual relief request cases and the three incidents of death that in the present practice of the Immigration Bureau, people who are in poor health are being detained and that medical treatment provided for them is insufficient and inadequate. As has been repeatedly insisted by international organizations, an urgent response is needed to prevent further incidents.<sup>\*25</sup>

## **5 Release from Detention**

As mentioned previously, whenever there are grounds for a deportation order, a person may be subject to indefinite detention. Though there are several means to obtain release from detention, these means cannot be said to be sufficiently effective.

### **(1) Provisional Release**

A detainee may apply for Provisional Release (hereinafter referred to as "PR") which is the most frequently used means of obtaining release from detention. Article 52 (2) ICRRA stipulates that the director of the immigration detention center or supervising immigration inspector may accord provisional release. This means that the director of the detention center him/herself has the authority to decide whether to permit PR or not.

Decisions regarding PR are decided on the basis of many elements. Article 52 (3) stipulates that PR be decided taking into consideration such matters as the circumstances, evidence produced in support of the application, and the character and assets of the detainee. PR can be permitted upon the detainee paying a deposit not exceeding 3 million yen, and with such conditions as may be deemed necessary, such as restrictions on the place of residence and area of movement and the obligation to appear upon receiving a summons.

Various problems regarding PR have been pointed out. Those include the prolonged length of time between the time of application and decision and the non-disclosure of the reason(s) for rejection. Regarding the time span, there is no stipulation in the ICRRA on

the time period for disposing the PR application. Therefore, in practice it is not unusual for it to take one to three months for a decision to be issued.<sup>\*26</sup> Regarding the disclosure of reasons, it may be argued from the MOJ side that the reasons are written out in the “Notice of Decision”. However, the Notice only writes “This is to inform that your application for provisional release of the undermentioned person has been disapproved because no reasonable grounds for permission were found in synthetic consideration of the reasons stated in your application, and others.” It goes without saying that such a statement does not reveal much to a detainee about the reasons for their detention. The ICRRA does not oblige the authority to explain the reason(s) of continuing detention to the detainees and since it is almost impossible to comprehend why the PR was rejected simply from the aforementioned wordings, many detainees are left in a situation where they do not know why their detention is continuing and PR is not being permitted. Consequently, baseless rumors such as “you must be detained for six months before being released” or “The PR would be permitted only after you apply three times” quickly spreads inside the facility.

### **(2) Permission for Provisional Stay**

For those who have applied for refugee status, there is a system called the Permission for Provisional Stay (hereinafter referred to as “PPS”, article 61-2-4 of ICRRA). Whenever someone is granted PPS, the deportation procedure will be suspended and the person would not be detained. It must be noted though that the PPS is not equivalent to granting legal status and thus does not permit someone to work or receive benefits preserved for those with legal status (in practice, national health service is provided for PPS holders).

Another problem regarding PPS is the low recognition rate. In 2012, the recognition rate of PPS was 10.6 % (74 out of 701 applications) and in 2013 it was 12.9 % (95 out of 736 applications) and in 2014, it was 10.9% (111 out of 1012 applications).<sup>\*27</sup> This is because numerous requirements are set down in the law.

### **(3) Order for Stay of Execution**

One means for release from detention through court proceedings is an Order for Stay of Execution under Article 25 of the Administrative Case Litigation Act.<sup>\*28</sup> Through this procedure, one can request the court to stay the execution of a detention order or deportation order. However, to have the request to be admitted, one must demonstrate that “there is an urgent necessity in order to avoid any serious damage that would be caused”. And in reality, the courts interpret the wording narrowly so that detention itself does not amount to “serious damage” and thus it is rare to see an order staying the execution of detention.<sup>\*29</sup>

### **(4) Treatment after release**

Even though PR, PPS, Order for stay of execution is permitted, this does not mean that the person is granted legal status. Therefore, working is prohibited and access to basic needs such as health and welfare are limited. Thus, in reality, it is not unusual to see a former detainee to rely on NGO charities and free medical services provided by several medical institutions.

## **6 Immigration Detention Facilities Visiting Committee**

Japan has not signed the Optional Protocol to the Convention against Torture and has not established a National Human Rights Committee. Treatment of detainees is rarely brought up as an issue in judicial proceedings. Thus, the role of the Immigration Detention Facilities Visiting Committee (hereinafter referred to as “Committee”) has significant importance.

The Committee was established in July 2010 under Article 61-7-2 of ICRRA “in order to contribute to the proper administration of the immigration detention facilities”. Presently, there are two Committees in Japan namely the East Japan Immigration Detention Facilities Visiting Committee and the West Japan Immigration Detention Facilities Visiting Committee.<sup>\*30</sup> Each Committee consists of 10 inspectors from a range of professional backgrounds including scholars, lawyers, doctors, International Organizations or NGO staff and representatives from local communities.<sup>\*31</sup> Inspectors are appointed by the Minister of Justice (61-7-3 of ICRRA) and their names are not publicized.

The Committees regularly visit detention facilities; examines confidential information on the detention facilities and statistics provided by the Immigration Bureau which run the facilities; interview detainees; receive, study, clarify and solicit resolutions to complaints confidentially submitted in writing by detainees; and make recommendations for improvements to the directors of the detention centers.<sup>\*32</sup>

It is noteworthy that there are improvements seen since the activation of the Committee. For instance, now the East Japan Immigration Center provides consultations by a clinical psychotherapist 4 times a month (twice a month by psychiatrist)<sup>\*33</sup> and at the Nagoya Immigration Bureau, open treatment (treatment where the detainees are not locked up in their cell but permitted free movement within their wing) is conducted not only on weekdays but on weekends as well.<sup>\*34</sup>

However, regarding the insufficient medical treatment mentioned above, though the Committee has repeatedly expressed concern, there has been no drastic improvement. For example, the Committee has expressed its opinion towards the East Japan Detention Center in 2012, insisting that “Improvements are needed to reduce the time period between the

request and medical consultation and medical consultation should be provided promptly.” In response to that opinion, the Center responded that they have “complied” with the opinion, explaining that “We are taking measures to reduce the time for medical consultation by our system with part-time and visiting doctors along with providing more opportunities for medical consultation in external medical institutions.”<sup>\*35</sup> However, it was following this response that the two deaths occurred at the said Center.

There are some problems that must be addressed in order to increase the effectiveness of the activities of the Committee. Above all, there is the problem of time and budget. All the Inspectors are part-time (Article 61-7-3 of ICRRA) and the time the Inspectors are capable of spending on their activities is limited.<sup>\*36</sup> Moreover, limited allowance is paid to the Inspectors. In particular, 28,000 yen is paid as a daily allowance whenever there is a Committee meeting or inspection. It is said that the total allowance paid to the Inspector is around 150,000 yen each per year.<sup>\*37</sup> However, under such conditions, it is easy to imagine that it would be difficult for the Inspectors to conduct thorough inspections such as staying at one detention facility for several days interviewing many detainees. Further, the administration of the Committee is operated by the Immigration Bureau itself and the opinions made by the Committee are summarized by the Minister of Justice prior to publication. Therefore, it is difficult to say that the Committee is entirely independent or autonomous.<sup>\*38</sup> It should also be noted that the Committee lacks an official standard or criteria that they can rely on when inspecting.<sup>\*39</sup> This makes it difficult for the Inspectors to conduct inspections covering the various problems emerging at the facilities.

Thus, there are still many challenges regarding the immigration detention inspection system in Japan. The UN Committee against Torture, in its latest concluding observation, urged the Japanese government to “Strengthen the independence, authority and effectiveness of the Immigration Detention Facilities Visiting Committee, inter alia, by providing appropriate resources and authority to ensure effective monitoring detention centres and allowing them to receive and review complaints from immigrants or asylum seekers in detention.”<sup>\*40</sup>

## 7 Concluding Observations

As mentioned above, the mandatory detention policy accompanied by indefinite detention puts detainees at risk of prolonged and disproportionate detention. Treatment inside detention facilities, notably the medical service, is also an issue that must be addressed urgently. Unclear criteria on Provisional Release and the lack of explanation from the authorities on the continuance of detention leads to difficulties for detainees in preparing

their applications, and consequently to a deterioration in their mental condition. The strengthening of the Committee’s power and capacity is an essential element to improve detention conditions.

The International Covenant on Civil and Political Rights states, “Everyone has the right to liberty and security of person” (Art.9 (1)), and that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” (Art. 10 (1)). After the death of the three detainees, it is even clearer that Japan is standing on the crossroad and must choose whether or not to become a country that respects and complies with international norms and standards.<sup>\*41</sup>

- \*1 Detailed information on Japan immigration detention system can be found at Global Detention Project, “Japan Detention Profile” (<http://www.globaldetentionproject.org/countries/asia-pacific/japan/introduction.html>, February 9, 2015)
- \*2 Cabinet Order No. 319 of October 4, 1951. The translation of the ICCRA (<http://www.japaneselawtranslation.go.jp/law/detail/?id=1934&vm=04&re=01>, February 9, 2015)
- \*3 Hideo Sakanaka, Toshio Saito, 2012, “*Shutunyuukokukannri Oyobi nannminninntei hou chikujyou kaisetsu (kaitei daiyonnhan)*” [Commentary of the Immigration Control and Refugee Recognition Act (4th Edition)]. Nihon kajyo shuppan, pp.638.
- \*4 However there is strong criticism towards such interpretation. Attorney Takeshi Ohashi, Attorney Koichi Kodama insists that such interpretation is contradictory to discussion at the preparatory work of the legislation as well as international standards. Takeshi Ohashi, Koichi Kodama, 2009, “*Zenken shuuyoushugi wa ayamaridearu*” [Mandatory Detention is wrong], *Migration Policy Review*, Vol. 1 Gendaijinbunsha pp.85. It should be noted that on October 29, 2014, a group of lawyers led by Attorney Kodama has established an organization called the “The Promise of Hammersmith” to combat all forms of mandatory immigration detention.
- \*5 Ibid. 1
- \*6 Statistics are from NGO group “Ushiku-no-kai” after information disclosure from the Ministry of Justice. Ushiku-no-kai, 2014, “Nenji katsudou houkoku kai shiryoushu” [Materials for Annual Report], pp.3.
- \*7 Human Rights Protection Committee, Japan Federation of Bar Associations, 2014, “Nyuukan -shuuyou-shisetsu ni okeru iryou-mondai ni kannsuru jincken kyusai-moushitate-jiken” [Research Report on the Request for Individual Relief regarding Problems of Medical Treatment at Immigration Detention Centers] ([http://www.nichibenren.or.jp/library/ja/opinion/hr\\_case/data/2014/complaint\\_141107.pdf](http://www.nichibenren.or.jp/library/ja/opinion/hr_case/data/2014/complaint_141107.pdf), February 9, 2015) pp.10.
- \*8 Ibid. 7. pp.10.
- \*9 Immigration Bureau, Ministry of Justice, 2013, “*Kaku nyuukokusha shuuyousho tou shisatu iinnkai no iken ni taisuru sochi tou houkoku (gaiyou) ichiran-hyou*” [Report on the disposal of the opinion of Immigration Detention Facilities Visiting Committee] (<http://www.moj.go.jp/content/000115413.pdf>, February 9, 2015) pp.1.
- \*10 “Protection of Human Rights”, Japan Federation of Bar Associations home page ([www.nichibenren.or.jp/en/about/activities/protection.html](http://www.nichibenren.or.jp/en/about/activities/protection.html), February 9, 2015)
- \*11 Ibid 7. pp.26-27.
- \*12 Ibid 7. pp.20.

- \*13 Ibid 7. pp.20.
- \*14 Ibid 7. pp.21.
- \*15 Ibid 7. pp.23.
- \*16 Ibid 7. pp.24.
- \*17 Ibid 7. pp.21.
- \*18 Ibid 7. pp.22.
- \*19 Japan Federation of Bar Associations, 2014, "Nyuukann-shuuyou-shisetsu ni okeru iryou-mondai ni kannsuru jinnkenn-kyusai moushitate jiken (kankoku · youbou)" [Request for Individual Relief regarding Problems of Medical Treatment at Immigration Detention Centers(Recommendations and Requests)] ([http://www.nichibenren.or.jp/library/ja/opinion/hr\\_case/data/2014/complaint\\_141107.pdf](http://www.nichibenren.or.jp/library/ja/opinion/hr_case/data/2014/complaint_141107.pdf), February 9, 2015)
- \*20 Ibid 6. Kimiko Tanaka, "Higashi-nihon nyuukoku-kanri centaa de nanmin-shinseisha ga aitsuide shibou" [Two Refugee Applicants subsequently dies at the East Japan Immigration Center], 2014, pp.10.
- \*21 Ibid 6. pp.10.
- \*22 Ministry of Justice, 2014, "Heisei 26 nenn 3 gatsu ni hassei shita higashinihonn nyuukoku kannri sentaa no hishuuyousha futari ga shibou shita kenn ni kannsuru chousa kekka ni tsuite" [The Research Result of the death of two detainees that happened in March 2014 at the East Japan Immigration Detention Center] (Handout from the MOJ at their press conference held on November 20, 2014). Though the MOJ has admitted faults regarding the death of the Cameroonian detainee, they have denied any faults regarding the death of the Iranian detainee.
- \*23 Tomohiro Osaki, The Japan Times, 2014, "Sri Lankan man dies at Shinagawa detention center" (<http://www.japantimes.co.jp/news/2014/12/01/national/social-issues/another-foreigner-dies-at-immigration-bureau/#.VNfgruasUmM>, February 9, 2015)
- \*24 Japan Federation of Bar Association, 2015, "Toukyou-nyuukoku-kannri-kyoku ni okeru hishuuyousha no shiboujiken ni kannsuru kaichou-seimsei" [Presidential Statement regarding the death of detainee at the Tokyo Immigration Bureau] (<http://www.nichibenren.or.jp/activity/document/statement/year/2015/150114.html>, February 9, 2015)
- \*25 UNCAT has expressed their concern for the lack of access to proper health care in their concluding observation towards Japan in 2007. ([http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fJPN%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fJPN%2fCO%2f1&Lang=en)). Special Rapporteur on the human rights of migrants, Jorge Bustamante has also expressed his concerns to the General Assembly that "Many of the detainees that the Special Rapporteur met suffered from various diseases, in some cases very serious, and the majority complained about not receiving adequate health care. They had not been allowed to continue the medication they had been taking before they were detained, and were given light medication instead, which was seriously compromising their health and possibility of recovering. For example, a detainee suffering from diabetes reported he was only given painkillers and his condition had worsened tremendously." *Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante*, 2011, (<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/121/27/PDF/G1112127.pdf?OpenElement>, February 9, 2015), pp.13 (para.51).
- \*26 Japan Federation of Bar Associations, 2014, "Shutsuunyuukoku-kanri ni okerushintai-kousoku-seido no kaizen no tameno ikensho" [Statement on the improvement of the physical restraint system at Immigration Control] ([http://www.nichibenren.or.jp/library/ja/opinion/report/data/2014/opinion\\_140918\\_2.pdf](http://www.nichibenren.or.jp/library/ja/opinion/report/data/2014/opinion_140918_2.pdf), February 9, 2015) pp.4.
- \*27 Ministry of Justice, "Heisei 24 nen ni okeru nanmin-ninteisha suu tou ni tsuite" "Statistic on Number of Refugee Recognition and others 2012" ([http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri03\\_00094.html](http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri03_00094.html)), "Heisei 25 nen ni okeru nanmin-ninteisha suu tou ni tsuite" "Statistic on Number of Refugee Recognition and others 2013" ([http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri03\\_00099.html](http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri03_00099.html)), "Heisei 26 nen ni okeru nanmin-ninteisha suu tou ni tsuite" "Statistic on Number of Refugee Recognition and others 2014" ([http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri03\\_00103.html](http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri03_00103.html), April 4, 2015)
- \*28 Act No. 139 of May 16, 1962, translation of the Act can be accessed at <http://www.japaneselawtranslation.go.jp/law/detail/?id=1922&vm=04&re=01>, February 9, 2015.
- \*29 Ibid. 26. pp.3-4.
- \*30 Naoko Hashimoto, 2013, "Detention monitoring newly established in Japan", FORCED MIGRATION review, Issue 44, pp20-21, *Refugee Studies Centre*, Oxford Department of International Development, University of Oxford.
- \*31 ibid. 30. pp.20.
- \*32 ibid. 30. pp.20.
- \*33 Immigration Bureau, Ministry of Justice, 2012, "Kaku nyuukokusha shuuyousho tou shisatu iinnkai no iken ni taisuru sochi tou houkoku (gaiyou) ichiran-hyou" "Report on the disposal of the opinion of Immigration Detention Facilities Visiting Committee", (<http://www.moj.go.jp/content/000103147.pdf>, February 9, 2015) pp.1.
- \*34 Ibid. 33. pp.7.
- \*35 Ibid. 9. pp.1.
- \*36 Attorney Tadahiro Onitsuka indicates that arranging the date of inspection visitation is often difficult and that there are occasions where inspectors are unable to go on visits that they have requested. Kumiko Niitsu, 2012, "Interview of Tadanori Onitsuka, Member of the Immigration Detention Centers Visiting Committee, the Ministry of Justice," *Center for Documentation of Refugees and Migrants Quarterly*, University of Tokyo, Vol. 5, pp.99.
- \*37 Response from Mr. Kazuo Sakakibara (Director of Immigration Bureau) towards Ms. Keiko Itokazu (member of the House of Counselors) in the Legal Committee of the House of Counselors held on June 5, 2014. ([http://www.itokazukeiko.com/np-repo/record/reco-186th/reco-186th\\_no-15.php](http://www.itokazukeiko.com/np-repo/record/reco-186th/reco-186th_no-15.php), February 9, 2015)
- \*38 ibid. 30. pp.21. Former-Inspector Naoko Hashimoto points out that, "Since the Committee member serve on a part-time basis, and the budget allocated for the overall monitoring system is extremely limited, it seems unrealistic at the current time to establish a secretary totally independent from the Immigration Bureau."
- \*39 Mr. Sakakibara of the Japanese government referred to the "EXPECTATIONS" published by the Her Majesty's Inspectorate of Prisons (HMIP) of the United Kingdom and said "I consider that the standards set down in the United Kingdom's document are also applicable to our country." Ibid. 37.
- \*40 Committee against Torture, "Concluding observations on the second periodic report of Japan, adopted by the Committee at its fiftieth session (6-31 May 2013)," 2013, ([http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fJPN%2fCO%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fJPN%2fCO%2f2&Lang=en), February 9, 2015) pp.3.
- \*41 To note recent development, the MOJ, Forum for Refugees in Japan (FRJ, a network of NGOs and agencies supporting refugees/asylum seekers) and the JFBA has launched a pilot project on alternatives to detention for asylum seekers. As a result, between April 2012 to March 2014, 12 applicants ranging from 4 different countries, were provided housings and other assistance from NGO groups after being granted PS, PPS or Landing Permission for Temporary Refugee. For more information refer to MOJ, FRJ, JFBA "Kukou ni oite nanmin toshite no higo wo motometa mono ni kakaru jyuukyo nokakuhotou ni kannsuru pairotto purojekuto jigyou-houkokusho" "The Report on the Pilot Project Regarding Providing Housing and Other Assistance for People who have Applied for Asylum at Ports", 2015. (<http://www.moj.go.jp/content/001142097.pdf>, April 4, 2015)