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Japan: 198 joined hunger strike in protest of prolonged detention at immigration facilities

Amnesty International notes with alarm that 198 irregular migrants or asylum-seekers have taken part in hunger strikes over the past four months in Japan to protest their extended and indeterminate detention and the conditions in immigration facilities. As of 25 September, 36 were still on hunger strike.

Many asylum-seekers and irregular migrants have been detained at immigration facilities, in many cases for periods of over a year. According to Japan's Immigration Services Agency, at the end of June there were 1,147 undocumented individuals detained and facing deportation, and 858 were refusing deportations. This includes asylum-seekers whose claims have already been finally rejected, as well as people who had filed their application after receiving their deportation orders. As of 8 May 2019, 179 out of 465 detainees at the Tokyo detention centre were asylum-seekers whose claims were still pending.

The UN Committee on the Elimination of Racial Discrimination (CERD) has previously recommended to Japan that all asylum applications receive due consideration, that the authorities introduce a maximum period for immigration detention and that efforts be made to prioritize alternative measures to detention.

The hunger strike started spontaneously in May 2019 among detainees in immigration centres across Japan. The number of hunger-strikers kept increasing and accelerated after the death of a Nigerian man in a detention centre in Nagasaki on 24 June. On 1 October, immigration authorities reported that the Nigerian man had died as a result of the hunger strike.

Any detention for the purpose of immigration control should only be used when legal, necessary and proportionate to its objective. States should take into account individual circumstances when considering the necessity and proportionality of immigration detention. Under Japan's Immigration Control and Refugee Recognition Act, it is only legitimate to detain undocumented foreigners temporarily until such time as their deportation becomes possible and only if there are reasonable grounds to suspect their intention to flee.

Amnesty International believes that immigration detention may only be justified in relation to a transfer/deportation procedure that has been initiated, is in progress and has a reasonable prospect of being executed within a short timeframe, and only for the few hours necessary to

immediately enforce the procedure – that is, the physical transfer of the migrant on a bus, boat or plane outside the territory of the country.

However, according to the Tokyo Bar Association, the government's administrative detention policy stipulates that all non-nationals falling under deportation orders shall be detained without assessing individually the necessity of detention. The Tokyo Bar Association also notes that the law permits detention “until such time as deportation becomes possible” under Article 52(5), hence legally enabling indefinite detention of undocumented foreigners who have received deportation orders. In practice, according to the Bar Association, Japan can detain for years irregular migrants and asylum-seekers whose deportation is not yet scheduled.

Detaining undocumented foreigners and asylum-seekers for purposes or through procedures other than ones both prescribed by law and in line with international human rights standards constitutes arbitrary detention in violation of international law such as Article 9 of the International Covenant on Civil and Political Rights, which is binding on Japan.

Within a few days of the death of the Nigerian man, four Iranians who also had been on hunger strike were granted a provisional release for two weeks. On 22 July, the Tokyo Regional Immigration Bureau again detained two of them after rejecting their applications for extension of the release.

Amnesty International opposes attempts to coerce detainees to end hunger strikes, as such measures violate their right to freedom of expression and may also amount to cruel, inhuman or degrading treatment or punishment in violation of international human rights law and standards. Japan must ensure that no restriction on the liberty of asylum-seekers and migrants is imposed unless lawful, necessary and proportionate. Authorities should end the practice of re-detention of hunger strikers after a short-term release, which can further increase the negative psychological impact on those who have been detained for prolonged periods of time.

Background

Amnesty International has previously noted the low number of refugee applications that are approved in Japan, and the UN Committee on the Elimination of Racial Discrimination (CERD) has noted the same with concern. Japanese authorities reported in March 2019 that 42 out of 10,493 claims were approved in 2018.

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