

June 28, 2019

Final Report

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Project Title

Ethnography of Immigration Detention and Migrant Advocacy in Japan and Canada: A Comparative Analysis of Civil Society in Illiberal and Liberal Immigration Regimes

Abstract

The primary goal of this project was to compare the conditions of immigration detention in Japan and Canada, as well as the role of pro-migrant civic groups in affecting immigration detention policies. In recent years, emerging global concerns have arisen regarding human rights violations toward migrants, including explained deaths in detention facilities, prolonged detention of asylum-seekers, and detention of minors. These human rights violations have been increasingly documented in major democratic countries including Japan, Australia, the United States, and Canada. However, there also exists significant variation across countries in terms of detention practice as well as behavior of civil society organizations defending migrant rights. This project paid particular attention to the variation by juxtaposing the contrasting cases of Japan's illiberal immigration policy and Canada's liberal immigration policy. Building on existing legal perspectives on immigration detention, this project has demonstrated the significance of a comparative ethnographic lens. Such an approach allows us to visualize the multidimensional variables that shape the conditions of detainees as

well as the capacity and behavior of civil society. I have envisioned the following four analytical tasks. These include: (1) identifying the types of actors involved in migrant advocacy; (2) examining the key social variables that shape the conditions of detained migrants; (3) documenting the daily interactions between detainees and civic groups; and (4) analyzing the actual effects of pro-migrant civic groups on immigration policies. This study thus intended to provide a more nuanced analysis of capacity, behavior, and values of civil society through a distinct global dilemma of immigration detention.

Results of the research project

The results of my research project are manifested in the following ways. **First**, I organized panels on immigration detention in two major international conferences (Association for Asian Studies Annual Conferences in March 2017 as well as in March 2018). Both panels invited scholars of migration from various countries including Japan, Thailand, the Philippines, Singapore, and the United States. We discussed the emerging concerns surrounding immigration detention and the plights of detained asylum-seekers and migrant in Asian migrant-receiving countries.

Second, I organized a total of three workshops in Canada and Japan. These include: (1) “Seminar on Mobility and Human Rights: Interrogating Immigration Detention in Japan” (co-organized with the Stateless Network and Professor Chen Tien-Shi) at Waseda University (Tokyo) on July 8, 2017; (2) “Forum on Migrant Workers’ Rights” (co-organized with the Association for the Rights of Household Workers) at McGill University (Montreal) on November 16, 2017; and (3) “Immigration Detention and Human Rights of Non-Status Migrants: An Emerging International Dilemma” (co-organized with Professor Junichi Akashi) at Tsukuba University (Ibaraki) on July 5, 2018. The main object of these events was to discuss the human rights of asylum-seekers and undocumented migrants. We discussed the plights of migrant detainees in Japan and Canada as

well as the roles of civil society actors in these countries. In all these events, I invited diverse actors and stakeholders including NGOs (migrant advocacy groups), FBOs, human rights lawyers, former detainees, students, and scholars together in the workshops.

Third, I presented papers for major international academic conferences between May 2017 and April 2019. These include: (1) Association for Asian Studies Annual Conferences in March 2017 and March 2018; (2) International Political Science Association World Congress in July 2018; (3) Canadian Council for Southeast Asian Studies Biennial Meeting in October 2017; (4) International Convention of Asia Scholars Annual Meeting in July 2017; and (5) Annual Meeting of the Canadian Association for the Study of International Development in May 2017.

Fourth, I was a co-applicant of the conference grant entitled “International Network for Research and Advocacy and Policy on Immigration Detention.” The project was funded by the Social Sciences and Humanities Research Council (SSHRC) in 2017.

Fifth, based on my field research in Japan, (1) I published a policy brief entitled “Human Rights of Non-Status Migrants in Japan” (co-authored with Erik Kuhonta, ISID Policy Brief PB-2017-07, Montreal: Institute for the Study of International Development, McGill University) in 2017. (2) I contributed a short essay entitled “Immigration Detention in Japan: Rethinking Multicultural Cohabitation” to Joint, Toyota Foundation Journal (No. 29) in 2019. (3) I submitted a report on immigration detention in Japan, under the name of a Japanese NGO Ushiku-no-kai, to the UN Committee on the Protection of Rights of All Migrant Workers and Members of Their Families (Draft General Comment No. 5 on migrants’ Rights to Liberty and Freedom from Arbitrary Detention) in April 2019. (4) Finally, I also wrote a paper entitled “The Migrant Surveillance Regime and the Plight of Migrant Detainees in Japan” and submitted to *Contemporary Japan* (revised version submitted on May 27, 2019). The journal article aims to

examine Japan's formation of a migrant surveillance regime through the lens of immigration detention. I will pay particular attention to the set of policies, practices, and discourses through which Japan's migrant surveillance regime justifies its illiberal forms of control and dominance over precarious mobility of non-status migrants and asylum-seekers, who are collectively labeled as "deportable foreigners".

Sixth, I actively engaged with local NGOs in order to raise awareness for the rights of detained asylum-seekers and migrants. For example, I gave a talk on immigration detention for a Japanese NGO, Amigos (or Kitakanto Iryo Sodankai) in July 2018. I invited Ms. Jenny Jeans (Action Réfugiés Montreal) to provide a lecture at McGill University in March 2019. I served as a commentator for the film screening of "A Piece of Paradise" (a documentary on Filipina immigrants in Canada) held at Immigrant Workers Center in April 2019. I organized a forum on migrant rights with Association for the Rights of Household Workers in November 2017. I also organized a workshop on immigration detention with Stateless Networks in Japan in July 2017. I actively engaged with Ushiku-no-Kai, Ushiku-tomono-kai, as well as Amigos during my field research in Japan (2017-2019). I submitted a report on immigration detention to the UN Committee on the Protection of Rights of All Migrant Workers and Members of Their Families for under the name of Ushiku-no-kai in April 2019. I am continuously working with these local migrant advocacy groups (NGOs) in order to raise awareness of the rights of detained asylum-seekers and migrants.

Journal article (under revision)

The Migrant Surveillance Regime and the Plight of Migrant Detainees in Japan

Introduction

This paper aims to examine Japan's formation of a migrant surveillance regime through the lens of immigration detention.ⁱ I will pay particular attention to the set of policies, practices, and discourses through which Japan's migrant surveillance regime justifies its illiberal forms of control and dominance over precarious mobility of non-status migrantsⁱⁱ and asylum-seekers, who are collectively labeled as "deportable foreigners". Immigration detention is one of the most contentious human rights violations against non-citizens (Crépeau 2012; Flynn 2012). However, it is also considered as a "natural and proper response" of the state to those who have violated its territorial sovereignty" (Cornelisse 2010: 101). I will contextualize Japan's construction of a migrant surveillance regime by interrogating both physical and discursive forms of sovereign power that normalize the predicament of non-status migrants.

Japan's formation of a migrant surveillance regime is rooted in the country's distinct socio-economic and political concerns. As both international and domestic media highlight, Japan's progressively aging, and thus less-productive, population, a

consequence of extremely low fertility rates (*shoshi koreka*), has pushed the government to adopt flexible labor import policies and open its borders in order to overcome the intensified severe labor shortages (*shinkokuna hitode busoku*) (Tian and Chung 2018 ; *The Japan Times 2018d*). The very question pertaining to “whether Japan is becoming an immigrant nation” is probably the most-debated political and economic agenda in the contemporary Japanese public sphere. The growing dependency on migrant workers in diverse low-wage unskilled sectors is evident. The number of officially employed foreigners increased nearly a twofold from 686,000 in 2011 to 1.27 million in 2018 (The Cabinet Office 2018). While 25% of the employed foreigners were permanent or long-term residents, 75% of the employed foreigners were temporary residents including trainees, international students, and professionals in 2017 (ibid.). Despite this visible dependency on foreign workers, the current Shinzo Abe administration repeatedly emphasizes *temporality* regarding the legality for foreign workers (“invited to work on a temporary basis”). The government continues to deny any prospect of Japan becoming an immigrant nation (*The Japan Times 2018d*). As Junichi Akashi claims, one of the most distinct characteristics of contemporary Japan’s immigration policies is the convergence of the expanded absorption of foreign labor and the apparent rejection of immigration (Akashi 2017:12). There thus exists a fundamental tension between the economic priority based on open borders and the nationalistic priority based on controlled borders and migrant surveillance. I argue that Japan’s intensified migrant surveillance is not a contradiction to, but the *solution* to this emerging tension.

The perceived naturalness of migrant surveillance tools, including immigration detention and deportation, is rooted in modern territoriality that seeks to demarcate a *naturalized* legal boundary between the “inside” to the “outside” (Cornelisse 2010: 102-

103). The maintenance of territoriality requires a set of surveillance tools in order to monitor and control undesirable non-citizens who are considered as a “threat” to the state sovereignty. According to Vida Bajc, surveillance signifies “a logic of thought and practice which seeks to reduce uncertainty and complexity in the situation of everyday life” (Bajc 2013:616). Migrants with precarious status are considered as sources of “uncertainty, disruption, and disorder” to be controlled and monitored. This paper will explore that the lens of migrant surveillance, especially immigration detention, is central to understand the ways in which sovereign power, or territoriality, reduces migrants with precarious legal status to uniformed subjects of deportability (De Geneva 2002).

Organization of the paper

The paper is divided into three main sections. First, I will provide a contextual background to Japan’s intensification of migrant surveillance. In particular, I will pay attention to the recent introduction of the *ginou* foreign worker programs in April 2019 and the discursive promotion of *kyosei* (cohabitation) with *kanri* (control) as a solution to the presumed “threat” to Japan’s sovereignty caused by the mass absorption of foreign workers. The first section also includes the institutionalization of *kanri* of non-citizens, especially, the introduction of the centralized foreign resident management system as well as the recent government decision to upgrade the Immigration Bureau to an agency.

Second, my paper will examine Japan’s distinct practices of immigration detention that are central to the reinforcement of the migrant surveillance regime. What is really distinctive about a surveillance regime is that it requires not just centralized *physical* power of the state but also *discursive* power of the state that constructs and disseminates a fear of uncertainty and potential dangers to the society (Bajc 2013: 617). In order to

demonstrate these physical and discursive forms of surveillance, I will discuss (1) the broader legal and socio-political implications pertaining to immigration detention; (2) Japan's construction of migrant deportability that legitimizes human rights violations against foreign detainees; and (3) the distinct manners in which Japan criminalizes asylum-seekers.

In the third part, I will discuss the consequences of such state-sanctioned violence by documenting the plight of migrant detainees as well as the role of migrant advocacy groups that visit detainees regularly. Migrant advocacy groups – mainly small-scale - are integral social actors who support and visualize migrant detainees' everyday survival in highly securitized detention facilities. I will also provide a critical analysis pertaining to the creation of the Immigration Detention Facilities Visiting Committees.

My research is based on *qualitative* methods with strong emphasis on semi-structured and follow-up interviews with migrant detainees and former detainees who were provisionally released from detention as well as personal exchanges (including observation) with migrant advocacy groups, human rights lawyers, and Immigration Bureau's front-line workers and officials. The interviews were conducted during my short-term visits to Japan between 2016 and 2018. In order to understand the formation of a migrant surveillance regime, especially the distinct discursive and actual policy making processes that construct the surveillance regime, I primarily examined domestic and international newspaper articles as well as official reports, statistics, and websites of the Ministry of Justice and of the Immigration Bureau (the current *Nyukoku kanri cho* or Immigration Services Agency).

Contextual background: “*Kyosei* with *Kanri*” as a solution to the expansion of foreign workers

In April 2019, the Japanese government officially introduced the two new residency categories called *tokutei ginou* or “special skills” to invite both high-skilled and low-skilled temporary foreign workers (*Asahi Shimbun* 2018c; *The Japan times* 2018d). The primary goal here is to attract low-skilled *temporary* foreign laborers who are equipped with “skills” as well as “the ability to communicate in Japanese” to rescue the shrinking Japanese economy (*Nikkei Asia* 2018). These low-skilled foreign workers are only *temporarily* fulfilling the anticipated even further severe labor shortages to come in various economic sectors including agriculture, construction, hospitality, nursing, and shipbuilding (*The Japan Times* 2018f). The new agreement includes that foreign trainees under the current Technical Intern Training Program (TITP) will be allowed to upgrade their status to low-skilled *ginou* to obtain additional five years to remain in Japan (*The Japan Times* 2018f). Foreign trainees will be transformed into official temporary foreign “workers” after completing their five-year just being “trainees.” While the government includes the superior *ginou* category for high-skilled workers who are eligible to bring family members and to obtain long-term residency status, the low *ginou* category of foreign workers are not allowed to bring family members and they must leave the country after five years (*Asahi Shimbun* 2018c). The creation of the new *ginou* foreign worker programs is thus indivisibly related to the prioritization of labor flexibility rather than long-term immigration. The recent immigration reforms are viewed as the *win-win* solutions because these policies ensure the sustainable yet temporary flows of foreign labor to the shrinking domestic labor markets *without* genuinely making these individuals as long-term residents or immigrants. Furthermore, I argue that the

introduction of the new residency *ginou* category, tied to the rapid expansion of labor markets, is indivisible to the reinforcement of migrant surveillance.

The intricate interconnection between the recent expansion of foreign labor programs and the intensification of migrant surveillance is indicative in the discursive association of *kyosei* (cohabitation) with *kanri* (control). According to the recent statement by the Minister of Justice in October 2018 – in responding to the introduction of the *ginou* foreign worker programs –, Japan needs to strengthen both *kanri*, or control of, and *kyosei*, or cohabitation with, foreigners in order to overcome the current serious labor shortages (Jiji Press 2018). In theory, cohabitation (*kyosei*) implies the moral and progressive social values that embrace and respect diverse cultural groups. According to the “Basic Plan for Immigration Control” published by the Ministry of Justice in 2015, however, the idea of *kyosei* (cohabitation) is explained as a “symbiotic-society co-existing with foreign nationals through *zairyu kanri seido* (the residency management system)” (The Ministry of Justice 2015:31). It infers that it is possibly for society to realize the “mutual” benefits by living together (*kyosei*) while ensuring the strict management and control (*kanri*) of foreigners. While the idea of *kyosei* oftentimes lacks clear meanings and elaboration of agendas, the rationale for *kanri* is forcefully exemplified by the following two major institutional reforms: (1) the centralization of the foreign resident registration system (*jumin kihon daicho seido*) in 2012; and (2) the Ministry of Justice’s recent decision to upgrade the Immigration Bureau to an agency, the Immigration Services Agency (*Shutsunyukoku Zairyu Kanricho*), in April 2019 (*The Japan Times* 2019).

First, the centralization of the foreign resident registration system aimed to establish a comprehensive control and surveillance over “illegal foreigners” who are seen

as a threat to national security (The Ministry of Justice 2015:31). Prior to the centralization of foreign resident registration, the main concern of the government was the lack of control of migrant *illegality* at the municipal level. Non-status migrants were “issued alien registration cards by municipal governments where they were registered as residents” thus they were able to access to public services including health insurance and driver’s licenses. These services are also crucial to access to job opportunities (*The Japan Times* 2012). Their unregulated access to public services – including public health insurance - was seen as *unethical and improper* on the basis of territorially imagined *illegality* of non-status migrants. Such fear is evident in the recent debate regarding foreigners’ “illegal” access to the National Health Insurance (Asahi Shimbun 2018c). Under these public narratives of illegality, it effectively strips off the humanity of these non-status migrants as rights-bearing subjects. The centralization of foreign resident registration reflects not *kyosei* (cohabitation), but the urgent necessity of *kanri* (control) due to a social threat of uncertainty and disorder that is anticipated by the quantitative expansion of foreign laborers who would access to “our limited resources” and disturb social cohesion.

Second, the newly upgraded Immigration Services Agency is another important mechanism to ensure *kanri* (control) of non-citizens. This new arrangement is seen as a *natural and proper* outcome of the rapid labor market expansion by the *ginou* foreign worker programs that bring a larger volume of temporary foreign laborers from low-income Asian neighbors. Japan’s institutional effort to reinforce *shutsunyukoku kanri* (immigration control) is grounded on the two forms of constructed *fear*. The first narrative of *fear* is related to the popular cultural assumption that the unregulated presence of cultural “others” is a potential source of uncertainty including crimes and

clandestine activities. Thus, *kanri* is imperative to mitigate the mounting fear of uncertainty and disruption, including “*gaikokujin hanzai*” or crimes related to foreigners (Ueda 2005, The Ministry of Justice 2015:27). The second narrative of *fear* is based on the potential gaps between the *quantity* of foreign laborers that fulfill labor shortages and the *quality* of workers in terms of their actual labor productivity and the cultural adaptability in the host country (Isoyama 2018). *Kanri* is thus a prerequisite to ensure the regulated supply of “good” workers who are not just productive but also do not demand rights and go home after the end of their contract. Under these two forms of *fear*, *kyosei* (cohabitation) implies a “burden” of uncertainty on the existing social harmony. *Kanri* (control) is a necessity to mitigate this anticipated “burden”. Migrant surveillance is thus a *constitutive element* in the labor market expansion that potentially sparks risks and fear. The migrant surveillance regime – strongly tied to the punitive and disciplinary vision of *kanri* - serves as the answer to the pressing tension between the growing market demands for foreign laborers and the nationalist desire to uphold Japan’s imagined cultural homogeneity and social cohesion.

Immigration detention: Administrative violence to deprive liberty and freedoms

Immigration detention is a highly contested yet universal *administrative* tool of the state that aims to control, remove, and deter the mobility of “unwanted” migrants and refugees. Immigration detention is defined as “an administrative measure to ensure that migrants cannot abscond while preparation for deportation are being made” (Leekers and Kox 2017: 895). The real practice of detaining a non-citizen for an administrative purpose is parallel to a *criminal* legal proceeding that deliberately punishes an

individual by depriving them of their liberty and freedom (Wilsher 2004; Flynn 2012; Crépeau 2012). The Human Rights Committee stipulates “every decision to keep a person in detention should be open to review periodically so that the grounds justifying the detention can be assessed” (Crépeau 2012:7). However, immigration detention in Japan, for example, significantly lacks procedural guarantees as the government does not establish an *independent and autonomous* administrative or a judicial body to determine and review *the legal necessity* of detention or removal of the non-citizen (Takahashi and Kodama 2009; The UN Committee against Torture 2013:2; Wilsher 2004:900).

This paper contends that immigration detention is a form of violence because it involves a deliberative decision to deprive a person of his or her liberty (Flynn 2012:40-41, Cornelisse 2010: 105). The observation of a migrant surveillance regime requires a critical and manifold lens to uncover both institutional and discursive efforts of the state that transform its illiberal human rights violations into *rational, natural, proper*, therefore, *morally correct* responses. I argue that the naturalness of the human rights violations in detention facilities is rooted in the idea of migrant illegality, a very product of territoriality. Japan’s exercise of territoriality cannot complete without surveillance technology of *kanri* that coercively deprives liberty and mobility of individuals whose legal identity is labeled as “illegal”.

Many countries, including Japan, employ *a mandatory detention* policy toward undocumented migrants, including those who seek asylum. Mandatory detention is oftentimes justified by the state on the basis of an administrative need for identification screening (for asylum-seekers), potential risk of flight and absconding, interference with evidence, and lack of cooperation (Wilsher 2014:901-2; Takahashi and Kodama 2009).

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 (Wilsher 2014:911). Preventive immigration detention is inextricably linked with a legal logic grounded in the **deportability** of individuals whose physical presence is legally prohibited in a territory. Scholars problematize the seemingly **proper and natural** logic of deportability as immigration detention involves severe forms of violence that strip basic human rights from migrants. The legal concept regarding **deprivation of liberty** serves as a cornerstone to our understanding of the magnitude of violence in immigration detention. Article 4(2) of the Optional Protocol to the Convention against Torture (2002) provides that “deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority” (Flynn 2012: 45). Immigration detention thus clearly embodies a materialization of the deprivation of liberty that is monolithically justified by an **administrative** order of immigration laws.

A mandatory detention policy especially is central to the contemporary state’s violation of **proportionality**. It violates the human rights principle of **proportionality**, or “any decision to deprive a person of his or her liberty must be proportionate to the limited administrative aims established in law” (ibid.41). The mandatory detention regime justifies the **necessity** to detain a non-citizen including asylum-seekers merely on the basis of an imagined national security threat and their deportability. It also normalizes the practice of indefinite detention without providing fair judicial proceedings (Wilsher 2004 900-2). While the **administrative necessity** to detain a non-citizen for a short period of detention is largely accepted by international human rights bodies (The

UN Working Group on Arbitrary Detention 2018: 33), the very act of detaining a non-citizen indefinitely is considered as *arbitrary* detention thus a fundamental and serious violation of the principle of proportionality as it potentially causes severe human rights harms and damages (ibid.). The UN Committee against Torture, in their observations to Japan in 2007, concluded that Japan's practice of indefinite detention is "contrary to article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (Bustamante 2011:12). The UN Working Group on Arbitrary Detention considers as *arbitrary* deprivation of liberty when "immigrants and asylum-seekers who are allegedly being held in prolonged administrative custody without the possibility of administrative or judicial remedy" (The UN Working Group on Arbitrary Detention 2018:31). As Galina Cornelisse rightly claims, "immigration detention in liberal democracies in an instance of state violence unchecked" (Cornelisse 2010: 102). Immigration detention in short exposes a set of fundamental contradictions and flaws regarding its lawfulness and validity that rest on the administrative mandate of immigration policy" (Flynn 2012:41).

Japan's immigration detention

In this section, I will contextualize the distinct mechanism in which migrant *deportability*, or "reasonable grounds" for being removed from the territory, is discursively constructed and solidified by law as well as by migrant surveillance tools. Japan's immigration detention is administrated by the Immigration Bureau under the Ministry of Justice. As of May 2019, there are a total of fifteen regional short-term and two long-term immigration detention facilities in Japan (The Immigration Bureau a.). The detention process is adjudicated based on the Immigration Control and Refugee

Recognition Act (ICRRA). Detainment of an individual is grounded on a detention order (*shuyo reisho*) or a deportation order (*taikyo kyosei reisho*) issued by the Immigration Bureau. Article 24 of the ICRRA provides a long list of *deportability*. These include (1) a person who entered Japan irregularly or without obtaining permission for landing; (2) a person whose status of residence has been revoked; (3) a person who has forged or altered a document, has prepared, used or processed a false document, (4) a person who is likely to commit a criminal act; (5) a person who engages in illegal work; and (6) a person who has stayed in Japan beyond the authorized period of stay. An individual who is suspected to be one of the conditions stated under Article 24 will be categorized as *fuhoutaizaisha* or “illegal foreigners”.

According to Article 41 of the ICRRA, under a detention order, the period of detention shall be maximum of 60 days. Once a deportation order is issued, there is *no maximum detention time* set by the law (ICRRA). The legality of detention decisions will be adjudicated based on the following three steps: (1) an immigration inspector’s examination of the specific violation addressed in a detention order with 48 hours from the arrest. (Article 44 & 45), (2) a hearing by a special inquiry officer if the detainee has an objection to the legality of detention (Article 48), and (3) a final decision by the Ministry of Justice if the detainee disagrees with the findings provided by the special inquiry officer (Article 49 of ICRRA). While the ICRRA provides seemingly *proper and legitimate* “reasonable grounds” that determine one’s deportability, I argue that the law’s discursive establishment of *deportability* serves to legitimize the pervasiveness of human rights violations and discrimination against migrants with precarious legal status in detention facilities. Furthermore, as I discussed earlier, Japan’s immigration detention fundamentally lacks procedural guarantee because of both the management of

immigration detention as well as the judicial assessment of detention and deportation orders are controlled by the single authority, the Ministry of Justice (Bustamante 2011:13).

The vast majority of *fuhoutaizaisha* or “illegal foreigners” are individuals who have overstayed their temporary residency permit. Former temporary visitor visa holders made up 67.7% of the total *fuhoutaizaisha* population of 65,270 in January 2017. There are also considerable numbers of foreign trainees (9.9%), students (5.8%), and foreign spouses (5.0%) are also considered as *fuhoutaizaisha* (The Ministry of Justice 2017a: 44-46). The growing number of “run-away” or “disappeared” foreign trainees and students are increasingly considered as a “threat” to public security. These narratives of “run-away foreigners” do not problematize the very root causes of the “run-away” phenomenon, especially the systemic abuses and discriminations such as overwork, underpayment, sexual harassment, and passport confiscation that are prevalent in the current Technical Intern Training Program (*The Japan Times* 2016).

Furthermore, the growing number of asylum-seekers are susceptible to categorization as “illegals” and subject to the mandatory detention policy (*zenchishuyo shugi*) that detains asylum-seekers without holding visa or landing permits upon their arrival (*The Japan Times* 2018c; Japan Association for Refugees 2018). Japan’s refugee policy prioritizes the protection of sovereign territoriality rather than the rights of asylum-seekers that are presumably guaranteed under the *1951 Convention relating to the Status of Refugees* (or the Refugee Convention) that Japan ratified in 1981 (Omata 2015, Flowers 2008). In recent years, the number of asylum seekers in Japan has increased sharply from 1,202 in 2010 to 19,628 in 2017 (*The Japan Times* 2018a). The immigration authorities systematically reject the majority of asylum-seekers’ applications.

Japan's refugee acceptance rate in 2017 significantly dropped to 0.3% despite the massive increase in applications. The country formally recognized 20 applicants as refugees and allowed further 45 individuals to stay based on humanitarian grounds or special permission to stay" (*zairyu tokubetsu kyoka*) (*The Japan Times* 2018a).

The government explains the recent rise of asylum applications as a direct result of the 2010 refugee screening revision that allows an applicant for refugee status to obtain a work permit 6 months after their submission of an asylum application (*The Japan Times* 2017). Both the government and the national media contend that the growing forms of violations of Japan's refugee application system are rooted in the prevalence of "fake refugees" or "*gisou nanmin*" who entered Japan as technical trainees or students. In January 2018, the government amended the refugee screening process that an applicant with a student visa or under TITP will be denied the right to a temporary work permit (*Mainichi Shimbun* 2018; *The Japan Times* 2018a). Thus, most of refugee applicants are not seen as "real refugees" who face a "well-founded fear of prosecution for reasons of race, religion, nationality, membership of a particular social group or political opinion" based on the Refugee Convention. Under this mainstream narrative of refugee illegality, most of the asylum-seekers fall into the category of "deportable foreigners" rather than "individuals deserve humanitarian protection". As Nicolas De Genova contends, "the criteria for granting asylum tend to be so stringent, so completely predicted upon suspicion, that it is perfectly reasonable to contend that what asylum regimes really produce is a mass of purportedly 'bogus' asylum-seekers" (De Genova 2013: 1180-81). Japan's current asylum regime thus deliberately produces a highly homogenized group of *prohibited and deportable* foreigners despite asylum-seekers' evidential precarity and refugeeness that are theoretically subject to the human

rights protection guaranteed under international human rights law. Japan' ICRRA thus monopolizes the formal definition of *fuhoutaizaisha* or “illegal aliens” without taking into consideration the complex root causes and injustices that inhumanly push individuals into the sphere of illegality.

Japan's “success” of migrant surveillance

Japan's intensification of migrant surveillance began in the late 1990s and the early 2000s when the number of undocumented foreign workers was peaked. The institutional efforts to reduce the number of *fuhoutaizaisha* or “illegal aliens” were especially evident in the following two events: (1) the nation-wide immigration surveillance campaign launched in 2004; and (2) the introduction of the severe restriction of the entertainer visa system in the following year. Based on the annual report by the Ministry of Justice, a total of 7,241 deportation orders as well as 4,101 departure orders were issued in 2016 (The Ministry of Justice 2017a: 59-60, 65). The numbers of both deportees and detainees have significantly declined since the early 2000s. For example, in 2004, the Immigration Bureau issued a total of 42,074 deportation orders (The Ministry of Justice 2005:69). The number of deportation orders in 2016 was thus six times smaller than the number in 2004. The statistical number of “illegal foreigners” also dropped significantly from 207,299 in 2004 to 65,270 in 2017 (ibid. 2005:52 & 2017a: 44).

The visible “success” of the Immigration Bureau in terms of reducing the statistical number of “illegal foreigners” is largely owing to the institutionalization of migrant surveillance, including the introduction of the nation-wide campaign called the “Plan to Reduce the Number of Illegal Residents by Half within Five Years” in 2004 (The Ministry

of Justice 2005:91). According to the Immigration White Papers (*Nyukan Hakusho*), the action plan aimed to take a “comprehensive and proactive measurement” in order to “halve the number of illegal foreign residents, potential hotbeds of crimes (*hanzai no onsho*), in the next five years.” The broader goals are to “*restore* Japan’s reputation as the world’s safest nation (*sekaichi anzen na kuni, nihon*)” (ibid. 91). According to the report, the government provides a comprehensive set of migrant surveillance methods including: “tightening monitoring and controls at the border; taking strict measures against illegal entries and illegal residents; and reinforced collaboration with foreign counterparts” (ibid. 91). In order to materialize these plans, the government introduced a bundle of advanced immigration control technologies, including: the Advance Passenger Information System (APIS) – the system detects “suspect persons” with potential risks and violations (*yochuijinbutsu*) before their arrivals to the country by obtaining passengers’ identification information from airlines –; and the secondary examination system – the system allows immigration officials to seriously interrogate the legality of the foreign national’s reason to enter the territory (ibid. 91-92). According to the recent **2017 Immigration White Papers**, the bureau identified the main reasons for “success” in effectively reducing “illegal foreign residents” as being the “strict implementation of landing/residence examinations, proactive public relations activities regarding illegal employment, strengthened detection, as well as the encouragement of voluntary departure of illegal foreign residents under the departure order system” (The Ministry of Justice 2017a: 88). In particular, the establishment of “Special Detention Officer Units (*Tekihatsu homen tai*)” serves to further institutionalize migrant surveillance at the grass-roots levels. They reinforce “the ability to detect illegal foreign residents who are hiding in large urban areas” (ibid.88). According to the Ministry of Justice, these

surveillance methods serve to *recover* public safety of the nation (*kokumin no chian kaifuku*) (The Ministry of Justice 2005:91). Under Japan's official reports and statistics, non-status migrants are discursively homogenized as "criminals", "suspects", and a "potential threat to public safety." Thus, the discourse of foreign criminality that links non-status migrants and high prevalence of crime is effectively reinforced by official reports and statistical analyses (Yamamoto 2007:2).

Second, another important event was the reform of the entertainer visa policy due to the external human rights pressures. In the early 2000s, Japan's production of migrant illegality was gendered. In 2004, a year before the significant immigration reform, the new arrivals of foreign entertainers, largely women from low-income Southeast Asian countries who were temporarily employed as "dancers" or "signers" to serve in bars and other *de facto* sex industries, reached the record high 134,879. Those who entered as "entertainers" but lost legal status amounted 5.4% of the statistical "illegal foreign workers" in 2004 (The Ministry of Justice 2005: 10, 64). In the same year, the U.S. Department of State concluded that the entertainer visa system served as a legal loophole to sexually exploit migrant women. "Entertainers" were thus considered as "trafficked victims" and the *Trafficking in Persons Report* lowered Japan's ranking to a "Tier 2 Watch List" country in 2004 (The U.S. Department of the State 2004:14). Following the international human rights actors' huge outcry regarding the large presence of "trafficked victims", Japan tightened the entertainer visa rule and the number of "entertainers" dramatically dropped by 75%, to 34,994 by 2008 (The Ministry of Justice 2009: 5). Women's representation in the statistical category of "illegal foreigners" also reduced from 41.1% in 2004 to 32.3% in 2017 (The Ministry of Justice 2005: 61 & 2017a: 50).

Japan's intensification of migrant surveillance is also manifest in the refugee deterrence policy, including the increased application of the mandatory detention policy (*zenchi shuyoshugi*) to asylum-seekers. According to the recent report on immigration detention by the Japan Association for Refugees (*Nanmin shien kyokai*) in May 2018, the number of foreign nationals who were directly transferred from the Narita Airport to the Higashi Nihon Immigration Centre, one of the two main long-term detention facilities and about 30 km away from Narita, dramatically increased from 88 in 2016 to 203 in 2017. The vast majority of asylum-seekers who claimed asylum at the airport were not granted a residence permit upon their entry to Japan (Japan Association for Refugees 2018). These asylum-seekers were either denied their entry at the airport or taken to detention facilities. They face prolonged or indefinite periods of detention if they refuse to leave the country (Bustamante 2011:12). The government justifies the deterrence of asylum-seekers by applying a mandatory detention policy as well as biased determination of "a refugee". Detention of asylum-seekers is closely tied the violation of the principle of *non-refoulement* – guaranteed under the Refugee Convention– because immigration detention is a tool to coercively remove detainees from the territory (Flowers 2008).

Concealed violence of immigration detention in Japan: Time, space, and coercion

Japan's immigration law theoretically guarantees that "a person detained in an immigration detention center or detention house should be given *maximum liberty* consistent with the security requirements of the immigration detention center or the detention house" (ICRRA, Article 61-7(1); Miyauchi 2015:215). However, the provision of *maximum liberty* is practically a false premise given the myriad of procedural

violations in detention facilities including mandatory detention, indefinite detention, medical injustice, suicide attempts, unexplained deaths, and restricted access to family members in detention facilities (*The Japan Times* 2018b; *Ibaraki Shimbun* 2018; *Asahi Shimbun* 2018a; Miyauchi 2015:212&215). Michael Flynn highlights that deprivation of liberty in immigration detention facilities involves three central components: ***time, space, and coercion*** (Flynn 2012:47). The countless forms of human rights violations in Japan's immigration detention facilities epitomize these three elements of violence.

With regards to the aspect of ***time***, human rights civil society actors increasingly problematize the prolonged (indefinite) and disproportionate periods of detention (Miyauchi 2015). The violence of prolonged detention especially engenders serious human rights concerns as immigration detention involves a wide range of vulnerable groups and individuals. According to the recent report by the Japan Association for Refugees, one-third of the detainees, or 104 out of 342 detainees who were held in the Higashi Nihon Immigration Center in February 2018, had been detained for more than a year (Japan Association for Refugees 2018).

Main patterns of ***prolonged detention*** are linked to the following three characteristics. First, among the long-term detainees, there are a significant number of long-term residents, including former spousal visa holders, Nikkei Latino youths, denied asylum-seekers, or undocumented migrants, who have biological family ties including spouses and children in the country. Second, given Japan's minimal acceptance of asylum applications, asylum-seekers are also subject to indefinite detention upon their entry of the country as well as upon their asylum application denied. Third, the direct cause of indefinite detention is explained by the disproportionately high denial rates of ***karihomen*** (provisional release or temporary legal permit to be "provisionally" released

from detention) applications. According to the report by the JAR, 70% of the total *karihomen* applications were rejected without being provided any clear explanations for the rejection (Japan Association for Refugees 2018). These divergent and structural barriers are all contributing to the high prevalence of disproportionately prolonged detention in immigration detention facilities (Wilsher 2004: 897).

With regards to the aspects of *space and coercion*, one must highlight the unique power of spatial enclosures – one of the most imperative aspects in the migrant surveillance regime - that enable sovereign states to deprive the detainee’s mobility and liberty (Cornelisse 2010).

According to Flynn, immigration detention facilities are to “confine non-citizens until they can be deported or have their claims assessed” (Flynn 2012:47). Despite the immigration law’s perceived *administrative*, thus non-punitive, function to regulate transnational mobility, immigration detention facilities practically operate as *punitive and disciplinary apparatuses* to remove “undesirable” migrants. Thus, immigration detention facilities are considered as parallel to prisons. Both prisons and detention facilities are sites of sovereign power to control and discipline those who are perceived as “threats” to public order (Cornelisse 2010:117; Walters 2010: 93). In Japan’s immigration detention facilities, detainees’ everyday activities are rigidly regulated and controlled by immigration guards who watch over detainees’ daily behaviors (Oh 2016: 36). Detainees’ physical and mental health deterioration, including the inadequate provision of health care, high prevalence of high blood pressure and heart-related diseases, depression, and suicide attempts, is a widespread phenomenon. Protracted forms of deprivation of liberty in detention facilities thus pose serious harms on detained individuals’ wellbeing and health. However, access to information concerning detention facilities is highly restricted

by the state and detention facilities thus easily become intensified sites of injustices and rightlessness (Cornelisse 2010: 105). The recent hunger strikes by foreign detainees speak of their daily experiences of injustice, struggles, and violence in the hidden enclosure of surveillance and discipline (*The Japan Times* 2018b).

The spatial invisibility and isolation of the detention facility are important characteristics that illustrate the degree to which detainees experience the loss of liberty and social and emotional alienation. Immigration detention centers are largely invisible as they are oftentimes located in absolute physical isolation from the ordinary living sphere (Cornelisse 2010: 105). For example, the Higashi Nihon Immigration Center, one of the two main long-term detention facilities houses, is situated in the middle of the paddy field and more than 50 km away from Tokyo without any reliable public transportation. Regular visitation to the detention facility is simply not affordable for many detainees' family members due to the time-consuming and expensive trip. One would spend a whole day with an expense of more than USD60 in order to make a 30 minute-visit with a detained family member. This also involves potential opportunity costs for left-behind family members in terms of their daily childcare and work (income) responsibilities that they struggle to manage. Being separated from the loved ones, family members are not just emotionally devastated; they have to cope with their highly precarious financial situation due to their loss of breadwinners. Furthermore, the detention center maintains its inflexible visitation hour rule and it does not accommodate family members especially children's visitation. According to a local migrant advocacy group, a detainee is allowed to request a special family room where a detainee can physically touch one's child(ren) at the Higashi Nihon Immigration Center. This arrangement is considered as a "special accommodation (*tokubetsu hairyo*)" to family

members, as there is no usual plastic partition dividing between the detainee and the visitor in the room. However, the usage of the family room is generally limited to once a month per detainee and the visitation hour is restricted for 30 minutes. Thus, there exists hardly any “accommodation” from the perspective of detainees and families with small children. Spatial invisibility and isolation thus allow the detention regime to facilitate detainees’ alienation and disconnection from their existing social and emotional ties.

Under international human rights laws, the concept of *habeas corpus*, or the right to challenge/question the lawfulness of detention, serves as a judicial weapon to overcome prolonged detention. Moral and legal grounds to claim habeas corpus are evident in the myriad of violations that are linked to time, space, and coercion in Japan’s detention facilities. According to Wilsher, *habeas corpus* is deeply tied to “the common-law concern for protecting individual liberty against arbitrary government action” (Wilsher 2004: 898). According to Article 9(1) ICCPR, “no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law” (Wilsher 2004:901). Furthermore, Article 9(4) stimulates a legal proceeding that a court may challenge the legality of the detention (ibid.). The International Covenant on Civil and Political Rights (ICCPR), ratified by liberal states including Japan, also challenges the state’s authority to impose arbitrary detention. However, detainees in Japan’s immigration facilities have little prospect of claiming habeas corpus in order to challenge their prolonged detention. As I discussed earlier, prolonged detention is a clear violation of the principle of *proportionality* concerning deprivation of liberty in detention facilities, and it is rooted in the lack of procedural guarantees, especially the absence of fair autonomous administrative or a judicial body – beyond the Ministry of Justice – to determine the necessity of detention in Japan (Takahashi and Kodama 2009,

Flowers 2008. The monopolized authority of the Ministry of Justice is evident as the Supreme Court of Japan further endorses the Minister of Justice's "capacity to make a discretionary decision about the residency of a foreign national regardless of the claims made by applicants and any evidence to support them" (Yamamoto 2015:11).

Higashi Nihon Immigration Center: Construction of rightless bodies

In this section, I would like to discuss the everyday lives of detainees at the Higashi Nihon Immigration Center (or Ushiku Detention Center), one of the two main long-term and male-only detention facilities. While migrant detainees experience myriad barriers in detention facilities, family members and supporters also experience when they seek to access to detainees. As I mentioned before, the geographical isolation of Ushiku Detention Center oftentimes discourages supporters to visit detainees. Furthermore, the detention facility does not offer flexible visiting hours on Saturday, Sunday, and public holidays. Although the written visiting hours are between 9am and 4pm, the actual process to access detainees is cumbersome. For example, Tanaka, a long-term migrant supporter and regular detention visitor, usually makes three meetings (2 detainees per meeting) in the morning and two or four more meetings in the afternoon. Meetings are strictly limited to 30 minutes and for a maximum of two detainees at a time. A visitor must provide a photo ID, the detainee's full name, nationality, the specific building block number where the detainee lives (Tanaka and Wattlers 2019:17). According to regular visitors to Ushiku Detention Center, if one misspells the detainee's name (including very minor spelling errors) or does not know the specific building block number (detainees are oftentimes moved between building blocks during their detention), the visitor's request would be instantly rejected. Such restrictive control of access to detainees poses serious

concerns, as especially migrant advocacy groups are the crucial lifelines for detainees' everyday survival. The Higashi Nihon Immigration Center has seven visitor rooms including two reserved for lawyers (Tanaka and Wattles 2019: 11). Visitor rooms – which are similar to regular prison visitor rooms in Japan – have four chairs, two for the visitors and two for the detainees, and a plastic transparent partition prohibiting physical contact between detainees and visitors. Each visitor room serves as a site of surveillance where both parties' behavior is monitored and regulated.

I met with a total of 62 detainees in the Higashi Nihon Immigration Center during my repeated visits between 2016 and 2018. These detainees were from the Philippines, Turkey, Sri Lanka, Burma, Nepal, China, Mongolia, Iran, Ethiopia, Nigeria, Peru, and Brazil. They were all males as the Ushiku detention facility has not housed female detainees since 2016. Some of the Kurds and Sri Lankan detainees I met were directly sent to the detention center upon their arrival at Narita Airport. A Sri Lankan male detainee I met in 2016 was detained with his wife upon their arrival at the airport. According to Kosalaⁱⁱⁱ, he claimed asylum at the immigration and he was immediately separated from his wife. By the time I met Kosala in 2016, he had been detained for seven months. Kosala complained that he did not know why he was detained. He assumed that they were qualified to asylum status due to his political condition at home. Kosala was able to meet with his wife only twice during seven months of detention. Each meeting was only for 30 minutes.

I also met several detainees with serious health concerns. A long-term detainee I met in 2018 was detained for more than 2 years. Lim was originally from Shenyang, China, and still in his mid-30s. He was a long-term resident permit holder lived with a Japanese spouse and a nine-year-old son. ^{iv}When I met him at the detention center, Lim

was suffering from heart failure, arrhythmia, and high blood pressure. He claimed that between April and July 2018, he was repeatedly sent to a nearby hospital for emergency due to heart attacks. According to Dr. Y, who is a medical doctor and voluntarily visits detainees at Ushiku Detention Center, Lim's critical heart condition would not bear long-term detention. Despite Dr. Y's as well as the author's letters (both submitted in July 2018) to request the release of Lim from detention, the Immigration Bureau continuously rejected Lim's provisional release request.

Another detainee, who was also very similar to Lim's condition, had been detained more than 2 years and 4 months by the time I met him at the Ushiku Detention Center (I shall call him Jose). Jose was originally from the Phillipines. He entered Japan under a trainee program but he lost legal status later. Jose was suffering from high blood pressure, heart failure, and angina. When I met him in July 2018, he complained about leg numbness and chest pain. He also complained that he was suffering from high fever. His blood pressure reached 190. Jose told an immigration guard about his health issues. The guard told him to go to a private isolated room where the detainee is supposed to be monitored by guards. However, given the past death incidents were all occurred in such private rooms, Jose resisted to be separated from others. After the meeting, I immediately submitted a letter to inform Jose's critical heart failure to the Immigration Bureau (prior to the submission of the letter, I consulted Dr. Y regarding Jose's medical condition as he knew Jose's health issues). On the very next day from the submission of my letter, the Immigration Bureau took Jose to a nearby hospital. However, according to Jose, the meeting with the doctor was unsatisfactory. The doctor did not examine his blood nor have more concrete tests to check heart failure. During his visits to the hospital, he was

always handcuffed and monitored by three immigration guards. Both Lim and Jose's right to be released from detention was rejected despite their serious medical conditions.

Migrant advocacy groups

Detention facilities in Japan usually receive various visitors including family members of detainees, migrant advocacy groups, and lawyers. The migrant advocacy groups that I have observed at the Higashi Nihon Immigration Centers are relatively small-scale, both urban-based and semi-rural based, with secular or religious backgrounds. While some advocacy groups visit the detention center on a monthly basis, some groups regularly visit detainees every week. Among those detainee support groups, *Ushiku-no-kai* (*Ushiku Shuyojo Mondai wo Kangaeru Kai*, or Group for the Ushiku Immigration Center's Issues) is a well-known migrant advocacy group frequently interviewed by the domestic media. *Ushiku-no-kai* is a secular, concerned citizen's group with 80 members of diverse age, gender, occupational, and national backgrounds, including college students, housewives, retired persons, and foreign residents. These members are largely from the local neighborhoods, especially Tsukuba city – about 25 kilometers away from the detention center – in Ibaraki Prefecture. Kimiko Tanaka, who is the founder of *Ushiku-no-kai* and owns a café in Tsukuba City, has been conducting regular detention visits since the establishment of the Higashi Nihon Immigration Center in December 1993 (Tanaka and Wattles 2019: 1).

Another long-standing detainee supporting group, Ushiku Friendship (*Ushiku tomono kai*), is a faith-based small-scale migrant advocacy group that is led by an 85-year-old Irish priest (I shall call here Father M) from the Toride Catholic church not far from the detention center. This group is largely supported by church members. Father M

and his disciple, Mr. K, visit the detention center every Tuesday with a suitcase packed with telephone cards, notebooks, soap, detergent, packages of instant coffee, underwear, and shirts. Both Ushiku-no-kai and Father M receive letters from detainees who request daily essential goods that are *permitted* within the detention facility. The migrant advocacy groups become experts due to their specific detention-related legal knowledge and detained information regarding the detention facility gained through regular contact with detainees, front-line immigration officers, and human rights lawyers. These advocacy groups became my crucial research supporters who have greater access to detainees as well as their extensive experiences with immigration detention.^v

Migrant advocacy groups that regularly visit detention facilities generally have built an extensive list that includes the names of detainees. For example, both Ushiku-no-kai and Father M's group have obtained a list of detainees, including their building block or room numbers through speaking to detainees, former detainees, family members of detainees, and other advocacy groups and lawyers who visit the detention facility. They learn about detainees through letters seeking support. Advocacy groups usually ask detainees about their difficulties and barriers in the detention center (especially health-related issues), the background (reason) for their detention, their pre-detention living experiences, and the condition of their family members in or outside Japan. Volunteers also inquire into the detainee's knowledge of other detainees who may potentially need legal and social support. For example, Tanaka from Ushiku-no-kai regularly brings basic commodities (soaps, notes, and pens) as well as music CDs and community newspapers in non-Japanese language (especially for Kurds detainees). Tanaka and other volunteer members regularly meet as many detainees as possible during the limited visiting hours. They usually arrive at the detention center before 8:30am in order to maximize the

number of detainees they can potentially visit until the end of the visiting hours (Tanaka and Wattles 2019:11-12; the author's observation in the Higashi Nihon Immigration Center in July 2016, July 2017, and July 2018). Tanaka regularly submits formal written protests to the Immigration Bureau in order to discuss myriad of detainees' vulnerabilities including the detrimental physical and mental health impacts of prolonged detention on foreign detainees, inflexible rules concerning provisional release, and coercive deportation (*Ushiku-no-kai's* website). After her full day detention visit, Tanaka usually makes a further trip to Warabi City in Saitama Prefecture – 60 km away from the detention center – to visit families of detainees and former detainees (mainly Kurds). Ushiku-no-kai members also provide regular Japanese language support for Kurds children with precarious legal status (including provisional release or permission for provisional stay).

Protection of rights or legitimized violence? Detention Facilities Visiting Committees

When Jorge Bustamante, the former UN Special Rapporteur of the Human Rights of Migrants, visited Japan's immigration detention facilities in 2010, he stated, "no independent mechanism to monitor human rights violations occurring in detention centers and examine complaints was available." (Bustamante 2011:13). Bustamante's main concern was Japan's violations of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (ibid. 12). In responding to both international and domestic liberal pressure to ensure oversight of immigration detention facilities, Japan established two Immigration Detention Facilities Visiting Committees (*Nyukokusha shuyoshotou shisatsu iinkai*) in 2010 (Hashimoto 2013:20, The Ministry

of Justice 2017a: 91). The creation of detention monitoring bodies was included the ICRRA revision in 2010 (ICRRA, Article 61, Section7-2). According to the Immigration Bureau, the monitoring committees aim to ensure “transparency in the treatment of detainees” and to advance the “proper operation of detention facilities” (The Ministry of Justice 2017a:91).

The creation of monitoring bodies is seen as positive in terms of improving transparency and accountability. Monitoring bodies’ visits thus potentially have “an important deterrent effect and reduce the risk of human rights violations” (APT and UNHCR 2014:21). Each visiting committee consists of 10 members including academics, attorneys-at-law, medical doctors, representatives from the local communities where detention facilities situate, NGO representatives, and international human rights organizations representatives. The main activities of the visiting committees include: to organize visits to immigration detention facilities, to interview detainees, to hold meetings to review human rights concerns in detention facilities and to provide suggestion to the Immigration Bureau. For example, between April 2016 and March 2017, the visiting committee that represents East Japan had a total of 9 visits, interviewed 81 detainees, and provided 27 suggestions to the Immigration Bureau. (The Ministry of Justice 2012).

One of the central problems is pertaining to the independence as well as the autonomy of the monitoring bodies. The Ministry of Justice monopolizes the appointment of these committee members as well as the provision of financial resources to the committees. The centralized power of the Ministry of Justice is particularly clear as the Immigration Bureau arranges the committees’ detention visits as well as their interviews with detainees (Hashimoto 2013:21). Another critical issue here is the limited liberal

capacity and quality of the visiting committees. This is very clear in the annual reports provided by the visiting committees. The vast majority of suggestions are related to relatively minor practical issues pertaining to certain everyday inconveniences that are experienced by detainees in detention facilities. The quality of suggestions is highly questionable. Among the total 86 suggestions provided by the two committees in 2011-2012, at least 4 suggestions were repeated more than 7 times using exactly the same texts. For example, a suggestion to provide halal food to Muslim detainees was copied for 12 times with the same wording (The Ministry of Justice 2012). In short, the existing monitoring bodies in Japan lack the independent and institutional capacity to objectively engage with the broader systemic human rights abuses and international human rights law violations including systemic medical injustice, prolonged detention, and the deprivation of human liberty. While Japan has created detention monitoring bodies, the accountable and transformative capacity is extremely limited due to the dominant role played by the Ministry of Justice. This problem is also evident in terms of the lack of an independent body to review the lawfulness of immigration detention cases.

Conclusion

As I argued at the beginning of this paper, the recent introduction of the *ginou* foreign worker programs in 2019 has aggravated the existing tension between the economic demands for open borders and the nationalist concerns of the potential risks and threat to the territorial order. The intensification of migrant surveillance is imperative to satisfy the two conflicting national priorities. The rhetorical promotion of *kyosei* (cohabitation with foreigners) addresses this distinct amounting tension by embracing the necessity of *kanri* (control). The study of immigration detention – largely

understudied in the literature of Japanese immigration – serves as a critical lens to understand the ways in which the logic of *kanri* is reinforced through both physical and discourse forms.

The very important question to ask here is why immigration detention is seen as a *natural and immediate (territorial) solution* for the state to manage borders, despite the pervasiveness of human rights violations and procedural injustice is evident in detention facilities. Japan's illiberal treatment against non-status migrants and asylum-seekers is seen as a puzzle because the country is a signatory to major international human rights treaties including the Refugee Convention (Flowers 2008). The mainstream discussion of Japan's refugee policies is largely explained by Japan's unique cultural homogeneity (Tian and Chung 2018; Yamamoto 2012). However, the cultural discourse *alone* does not fully explain why Japan still seeks to expand its labor markets to admit more foreign workers while intensifying migrant surveillance. As I repeated in the paper, we should pay attention to how migrant surveillance work well together with the labor market expansion. Immigration detention serves as a crucial *kanri* tool to establish the hegemony of the state to reinforce its absolute control over anticipated risks that are potentially produced by the "liberal" labor market policies.

The study of Japan's immigration detention exemplifies the ways in which the state establishes the *naturalness* of violence against non-status migrants and denied asylum-seekers who are coercively pushed into the space of legal *non-existence* where individuals are physically exist but their legal presence is denied by the state (Coutin 2007:9). Detained individuals' experiences of, or the loss of legal personhood, should be understood as paradoxes or what Hannah Arendt calls "perplexities of the rights of man" (De Genova 2013; Cornelisse 2010; Gündogdu 2011). Perplexities or paradoxes are

grounded on the gaps between the international law's definition of human rights as universal and inalienable and the non-migrants' lived experiences of being rejected as rights-bearing subjects (Güngogdu 2011). *Rightlessness* of non-status migrants is a deliberate outcome of the migrant surveillance regime that denies humanity, human rights, freedoms, liberty, and dignity that are all theoretically guaranteed to everyone regardless legal status under international human rights law (Bustamante 2011; Crépeau 2012:3).

While the government intensifies migrant surveillance and its moral authority to normalize human rights violations in immigration detention facilities, we cannot ignore the growing visible presence of anti-detention civil society groups, oftentimes small-scale and service provision-based groups, as well as more frequent domestic and international media coverage of detention and the plight of non-status migrants.^{vi} The confluence of local-micro forms of service provision and direct legal assistance, national-macro efforts for structural change, and international liberal pressures is imperative to address the intensified violence of the migrant surveillance regime and the rightlessness of non-status migrants and asylum-seekers (Takamura and Kuhonta 2017).

ⁱ This paper is based on my research project entitled "Ethnography of immigration detention and Migrant Advocacy in Japan and Canada." The project has been supported by the Toyota Foundation Research Grant (D16-R-0341, 2017-2019) as well as by the McDonald, Currie Professional Development Fund (2017&2018) from the Institute for the Study of International Development, McGill University.

ⁱⁱ In order to visualize the violence of the state territoriality and migrant surveillance, I will consistently deploy the terms "non-status" or "undocumented" rather than the more frequently used labels such as "irregular", "clandestine", "unauthorized", or "illegal" (De Genova 2002).

ⁱⁱⁱ For the purpose of privacy protection, I use pseudonyms to refer my informants except for the migrant advocacy groups that have agreed to use their names in this paper.

^{iv} It is always highly sensitive to ask a detainee for the reason of detainment. Lim was one of them. While Lim primarily discussed his health conditions and his son's depression due

to Lim's detainment, I was not able to understand why his provision release requests were repeatedly rejected despite his health condition as well as his family ties to Japan.

^v The author organized two seminars on the human rights of migrant detainees at Waseda University (July 2017) and Tsukuba University (July 2018) to invite migrant advocacy groups, human rights lawyers, and former detainees to the discussion table (Asahi Shimbun 2018b).

^{vi} Ushiku-no-kai submitted a report on Japan's immigration detention to the United Nations' "Draft General Comment No. 5 on Migrants' Rights to Liberty and Freedom from Arbitrary Detention" (Ushiku Shuyojo mondai wo kangaeru kai 2019).