



16 July 2024

The honorable Irene Khan, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Re: Japanese Government's Denial of Issuing Passport to Journalist Junpei Yasuda and Its Underlying Law, i.e., Article 13, Paragraph 1, Item 1 of the Passport Act of Japan

Dear Special Rapporteur Irene Khan,

The International Justice Clinic ("IJC") at the University of California, Irvine School of Law respectfully submits this letter on the request and with the consent of Junpei Yasuda, a Japanese journalist, in collaboration with his legal counsels. Under the direction of Professor David Kaye, who is a former UN Special Rapporteur on freedom of expression, the Clinic has been researching and promoting compliance with international human rights law. Clinic students have supported the Clinic in researching and drafting this letter.

Mr. Yasuda is an independent journalist who over the years focused on reporting from conflict zones such as those in the Middle East and Southeast Asia. As detailed in **Section I** (The Summary of Facts), the Minister of Foreign Affairs (MFA) of Japan rejected Mr. Yasuda's passport application submitted in 2019, following his release from over three years of captivity by an armed group in Syria. Consequently, he has been unable to travel outside of Japan for any purpose, including leisure or reporting. Mr. Yasuda has been deprived of at least two unalienable, mutually reinforcing fundamental rights: freedom of movement (more specifically, freedom to leave a country) guaranteed under Articles 12(2) of the International Covenant on Civil and Political Rights (ICCPR) and freedom of expression guaranteed under 19(2) of ICCPR. Japan ratified the ICCPR in decades ago.

When rejecting the application, the MFA cited an entry ban imposed on Yasuda by the Turkish government when he returned to Japan via Istanbul. The MFA also cited other factors—which all occurred during or in association with his journalistic work abroad. Indeed, Article 13, paragraph 1, item 1 of the Passport Act, on which the MFA's denial was based, grants the minister to deny a passport application by anybody subject to an entry ban by any country. The Japanese government has persistently argued that Article 13, paragraph 1, item 1, and the ban on Mr. Yasuda from traveling abroad are necessary to protect Japan's trust in international society based on speculation that individuals subject to an entry ban like Mr. Yasuda may cause trouble abroad. As detailed in **Section 3** (The Legal Analysis), such justifications fail the strict standards set out in Articles 12(3) and 19(3) of the ICCPR. That means that both the law and the MFA's rejection of Yasuda's application are illegal.

As we emphasized in **Section 2** (The Importance of Your Intervention), your intervention in the present case through the Communication Procedure is imperative for restoring Mr. Yasuda's freedom of movement and expression. The impact of your intervention also extends to Japanese journalists or other professionals who are currently in or wish to visit conflict zones to supply accurate, verifiable information to the world. Such work is vital for many reasons, including combating disinformation or misinformation during armed conflicts. While showing solidarity with Mr. Yasuda, they fear that their next passport applications might be denied based on Article 13, paragraph 1, item 1 of the Passport Act as they perceive a prevalent risk of arbitrary entry bans by



countries during their work in conflict zones. Your intervention can contribute to removing the associated chilling effect.

We thus respectfully submit this letter to ask you to seek clarification from and provide support to the Japanese government to remediate the violation and prevent future recurrences. **Section 4** outlines our suggested questions and recommendations which can be posed to the Japanese government.

Thank you very much for your consideration. If you have any questions on this submission, please contact Hinako Sugiyama (hsugiyama@law.uci.edu), Digital Rights Fellow at the International Justice Clinic.

Respectfully,

The International Justice Clinic at the University of California, Irvine School of Law

I. The Summary of Facts and Procedural History at Domestic Courts

Yasuda Junpei is an independent journalist who over the years focused on reporting from conflict zones such as those in the Middle East and Southeast Asia. He started his career at a newspaper company in 1997. He then started reporting from conflict zones like those in Afghanistan and Iraq in 2002. After he transitioned to freelance journalism in 2003, he reported from Iraq during the Iraqi war between 2003 to 2005, conflict zones in Afghanistan in 2010, and Syria in 2012.

His work has been circulated to a wide audience in Japan. For example, in 2012, his footage in Syria was broadcasted for 20 minutes by a major TV company in Japan to demonstrate how the Syrian government indiscriminately attacked civilian objects. As newspapers and news agencies in Japan with overseas networks increasingly tend to be wary of reporting from conflict zones to ensure the safety of their employees, important facts have often been reported by independent journalists like Yasuda.¹

In 2015, Yasuda decided to visit Syria again to report on the activities of an anti-government group. He had to enter Syria without obtaining the government's permission, as many other journalists had to.² Upon entering northwestern Syria from Turkey in June 2015, Yasuda was captured by an armed force.³ He was one of 26 journalists who disappeared in northern Syria that year.⁴ Yasuda endured captivity for three years and four months before finally being released and returning to Japan via Turkey in October 2018. Journalists in Japan were closely monitoring Yasuda's situation and showing solidarity with him.⁵

On 7 January 2019, Yasuda submitted a passport application to the Minister of Foreign Affairs of Japan (MFA). However, on 10 July 2019, the MFA rejected his application based on Article 13, paragraph 1, item 1 of the Passport Act of Japan. Article 13, paragraph 1 allows the ministry to deny a passport application by anyone subjected to an entry ban imposed by any country, one of the grounds for which the MFA can reject applications. Other grounds in that paragraph include, for example, item 7, which permits the MFA to reject applications if the MFA finds that an applicant is likely to harm national security or public order of Japan "significantly and directly." The MFA did not cite item 7 as a basis of the rejection of Yasuda's passport application. The MFA only cited Article 13, paragraph 1, item 1 and the five-year entry ban

¹ Interview conducted with Masayoshi Ishikawa, the representative of Japan Federation of Newspaper Workers' Unions and a staff writer at Chugoku Shimibun. Notes on file with authors. The Unions are the only major union association in Japan representing staff writers at various newspaper companies. The culture of life-time employment also underscores the importance of the work performed by independent journalists. Staff writers often fear possible retaliation from management when they express critical voices. David Kaye, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, U.N. Doc [A/HRC/35/22/Add.1](#) (15 June 2017), para. 32.

² For example, the Voice of America, [Rights Groups: Syria Escalating Violent Campaign Against Journalists](#) (21 February 2012) ("The Syrian government does not permit foreign reporters to travel freely and has kept most of them out"). See also, the Guardian, [Syrian government accuses John McCain of entering country illegally](#) (6 January 2015).

³ Committee to Protect Journalists (CPJ), [Junpei Yasuda Freelance, Went missing in Syria](#) (23 June 2015).

⁴ Reporters Without Borders, [RSF's 2015 Round-up: 54 journalists held hostage worldwide](#) (15 December 2015).

⁵ For example, Japan Federation of Newspaper Workers' Unions, [Calling for the immediate release of Mr. Yasuda](#), (22 March 2016); ["Toward a society where we can all celebrate Mr. Yasuda's return"](#) (25 October 2018). Both in Japanese only.

imposed on Yasuda by Turkey in October 2018—he never received a notification of such a ban or had any opportunity to submit a defense to the Turkish government.

As a result, he has been unable to travel for any purpose, including reporting. Meanwhile, journalists who were captured in Syria around the same time and are not Japanese have been able to travel outside their home countries and some of them are reporting from conflict zones.⁶

Yasuda told: “there are places where indiscriminate bombings occur, and people experience sudden and horrific loss of family members in a way that it’s difficult to imagine how they used to be before. I was born and raised in Japan and never experienced anything like that. [...] Driven by a hope to understand those events, I became an independent journalist and began reporting overseas. The denial of my passport application is tantamount to a denial of myself, a rejection of half of my life story.”⁷ Yasuda also told: “I’m in my late 40s, a crucial time in my career, and for five years I’ve been unable to fulfill my profession;” and “During this time, other journalists have entered Ukraine and been providing vivid reports. I’ve been struck with the stark contrast with my situation, being kept in Japan. The frustration is so overwhelming that my motivation for reporting is wearing out.”⁸

As backgrounds, the Passport Act was enacted back in 1951. Article 13, paragraph 1, item 1 has not undergone substantive parliamentary review until today, despite a major update to the Passport Act itself in 1989. The 1989 amendment abolished the issuance of one-time passports with designated destinations and made it explicit in the Act that multiple-time passports without limitations on destinations are the principle. The amendment was aimed to address the increase in international travel by Japanese citizens and align Japan’s passport system with those in other countries. This shift caused a drastic expansion of the MFA’s discretion under Article 13, paragraph 1, item 1. Namely, under the original Passport Act enacted in 1951, the MFA was only allowed, based on an entry ban, deny an application of passport of which destination was the country that imposed an entry ban on the applicant. However, post-amendment, it permits the MFA to deny the issuance of a multiple-time passport without limitations on destinations, effectively enabling the MFA to ban international travel altogether. Parliament overlooked such a consequence at the time of the amendment and continues to do so today.

As a result, Article 13, paragraph 1, item 1 served as a powerful tool for the Minister of Foreign Affairs to suppress independent journalists who traveled to conflict zones against the Ministry’s

⁶ For example, Antonio Pampliega, a Spanish independent journalist, was captured by an armed group in Syria in July 2015 and released in May 2016. He reported from Iraq later in the same year. El Salto, [Antonio Pampliega: “Before going through a kidnapping again, I will shoot myself”](#) (11 July 2017). Linsey Snail, an American independent journalist, was captured by an armed group in Syria in July 2016 and subsequently imprisoned by the Turkish government based on her entering Turkey from Syria. She was in Iraq for work in September 2018. CPJ, [Freelance journalist Lindsey Snell detained in Turkey after leaving Syria](#) (1 September 2016). CPJ, [US journalist Lindsey Snell released from Turkish prison](#) (12 October 2016). Daily Beast, [Interpol Helps Dictators Hunt Down Dissidents—and Me](#) (16 November 2018). Ricardo García Vilanova, an independent Catalan photographer, was under captivity of an armed group in Syria from 2012 to 2013. He has been publishing his photos of Ukraine under attack by the Russian Federation. Centre de Cultura Contemporània de Barcelona, [Photojournalism in the Ukrainian war](#) (30 November 2022).

⁷ Teyong Han, [Lawsuit: Freedom to Travel for a Journalist!](#) (30 April 2024), in Japanese only.

⁸ The Asahi Shimbun, [Junpei Yasuda, who returned to Japan five years ago, continues to face a travel ban. The argument of self-responsibility hinders reporting in dangerous areas](#) (20 August 2023), in Japanese only.

evacuation recommendation. In addition to Yasuda, the MFA has denied a passport application based on Article 13, paragraph 1, item 1, or confiscated an existing passport under a different clause, of at least two other independent journalists with expertise in reporting from conflict zones.⁹

Other journalists in Japan have condemned the MFA's oppression of journalists. For example, the Japan Mass Media Culture Information Workers' Union Conference (MIC) issued a public statement in response to one of these cases, stating that without journalism, the public would all be forced to rely on biased information provided by the parties involved in the conflict, posing a risk of distorting judgment. The statement continues that the denial of passports, effectively banning all overseas travel, is unprecedented and can only be described as an authoritarian preventive measure to obstruct reporting.¹⁰ Masayoshi Ishikawa, representative of Japan Federation of Newspaper Workers' Unions and a staff writer at Chugoku Shimbun, condemns the MFA's conduct as "extremely draconian violation of freedom of expression protected under Japanese Constitution." He also emphasizes that restricting international travel not only deprives independent journalists focusing on reporting from conflict zones of professional opportunities but also strips them of their livelihoods.¹¹

In 2020, as Yasuda was unable to receive any more clarification from the MFA, he filed a case against the Japanese government at the Tokyo district court, seeking an order requesting that the government issue him a passport. He claimed, in essence, that Article 13, Paragraph 1, Item 1 of Japan's Passport Act violates the right to freedom of movement protected under the Japanese Constitution and Article 12(2) of the International Covenant on Civil and Political Rights (ICCPR), and therefore invalid. He also argued that the rejection of his passport application also violated his right to freedom of movement.

At the district court, the Japanese government argued that:

- Article 13, paragraph 1, item 1 of the Passport Act is necessary to safeguard Japan's trust in the international community. A country imposes an entry ban on a person the country considers harmful. Therefore, issuing a passport to such individuals and allowing them to continue traveling poses the risk of disrupting international order and public safety, thereby undermining Japan's trusted relationships with the international community.
- The rejection of Yasuda's passport application was necessary to safeguard Japan's trust in the international community. The underlying facts, such as his five-year entry ban from Turkey imposed in 2018, noncompliance with evacuation recommendations by the Japanese government, his captivity in Syria in 2015, and his unauthorized entry into Syria and Turkey in 2012—despite Yasuda having no choice but to enter Turkey from Syria to secure his life due to an unexpected change in the military situation, along with refugees, and immediately reporting to the police—lead to the probability that, if allowed to travel abroad, Yasuda would disrupt international order by repeatedly entering other countries such as Turkey and

⁹ TIME, *Don't Even Think About Going to Syria, Japan Tells Its Journalists* (11 February 2015) (Reporting the MFA staff accompanied by police threatened a journalist to dissuade him from going to Syria); and CPJ, *Japan prevents freelance journalist from traveling to report in Yemen* (6 February 2019).

¹⁰ Japan Mass Media Culture Information Workers' Union Conference (MIC), *We protest the passport return order for a journalist and demand its retraction* (13 February 2019), in Japanese only.

¹¹ Interview conducted with Masayoshi Ishikawa. Notes on file with authors.

other Middle Eastern nations without permission, thereby damaging Japan's trust in the international community.¹²

On 25 January 2024, the district court delivered a judgment, concluding that:

- Article 13, paragraph 1, item 1 of the Passport Act is constitutional and compatible with Article 12(3) of the ICCPR. The clause qualifies as law within the meaning of that Article and is necessary to safeguard Japan's trust in a country imposing entry bans on a Japanese citizen by prohibiting the individual from traveling to that country. Such an interest ultimately contributes to the protection of national security, public order, and the rights of people in Japan.
- The Minister of Foreign Affairs' denial of Yasuda's passport application was unlawful. While there was a risk that allowing him to travel to Turkey or its neighboring countries would harm Japan's trust in Turkey, the MFA could have issued a passport with a ban on travel to Turkey and its adjacent countries to prevent him from entering Turkey directly from Japan or via countries adjacent to Turkey. A total ban on his international travel was therefore excessive to mitigate the risk. The MFA thus abused their administrative discretion by rejecting Yasuda's passport application. The court did not assess the compatibility of the rejection with the Japanese Constitution and the ICCPR.¹³

Both Yasuda and the Japanese government have appealed the decision to the Tokyo High Court, and the government has still yet to issue a passport to Yasuda.

II. The Importance of Your Intervention

At least the following two aspects of the present case make your intervention imperative to remediate the violations of Yasuda's rights to freedom of movement and expression. Your intervention is also essential to fulfill the Japanese government's commitment to respecting and ensuring those rights.

a. **Despite the clarity of the gross violations of human rights, the Japanese government persistently fails to recognize them.**

As we detail in **Section 3** (The Legal Analysis), Article 13, paragraph 1, item 1 of the Passport Act as well as the Minister of Foreign Affairs (MFA)'s denial of Yasuda's passport application constitute a gross violation of rights to freedom of movement and freedom of expression. Both rights are robustly protected under Articles 12 and 19 of the ICCPR and both the clause of the Passport Act and the Minister's rejection, which severely restrict those rights, are immediately illegal unless the government demonstrates that it meets the strict tests under those articles.

On the other hand, the Japanese government has consistently provided remarkably poor justifications that never meet the required standards. In essence, the government simply labels an individual who have been imposed an entry ban from another country, like Yasuda, as a dangerous person whom the government speculates might engage in illegal activities abroad. And the government prohibits them from traveling abroad as it thinks Japan's trust in the

¹² Tōkyō Chihō Saibansho [Tokyo District Court] 25 January 2024, Reiwa 2 (gyo-u) no. 10 (January 25, 2024), available at <https://www.call4.jp/file/pdf/202401/dc4e328df6d66f820f96fc15b6d5cfd2.pdf>, in Japanese only.

¹³ *Id.*

international community would be damaged if he can travel abroad. This same weak argument was reiterated in the appeal documents submitted to the Tokyo High Court in April of this year, even after Professor David Kaye submitted a letter to the Tokyo District Court,¹⁴ emphasizing the critical importance of Yasuda’s right to freedom of expression in this case, which demands the most rigorous scrutiny. Such a persistent attitude casts a gloomy outlook on the likelihood of the Japanese government acknowledging and addressing its egregious violation of Yasuda’s human rights on its own.

The judicial mechanisms as their own may not be effective enough to ensure the government acknowledges the gross human rights violation and rectifies its misconduct. Although the district court ruled that the rejection of the passport application was illegal, it omitted the assessment of its compatibility with the ICCPR or Japanese Constitutions altogether. Furthermore, the court judged that Article 12, paragraph 1, item 1 of the Passport Act complies with Article 12(3) of the ICCPR as well as the Constitutional equivalent of that clause, applying the so-called three-part test extremely loosely to an extent which is incompatible with the Human Rights Committee’s interpretation (see [Section 1](#) (The Summary of Facts and Procedural History at Domestic Courts)). Either the Tokyo High Court or, if a certiorari petition is filed and granted, the Japanese Supreme Court, may consider conducting an in-depth assessment of the ICCPR and the Constitution and find gross violations of human rights. However, there is no guarantee that this will occur, considering that, despite the robust civil society efforts, the domestication of the ICCPR in Japanese courts is still underway.¹⁵ Even if those courts find human rights violations, it will take a significant amount of time, during which the gross violation of Yasuda’s rights will continue. And if not, there is no other recourse for Yasuda. Japan has been failing, despite calls from civil society, to establish a national human rights institution (NHRI) in accordance with the Paris Principles or to accept the competence of any treaty bodies to receive individual complaints. There is no regional human rights mechanism in Asia.

b. Article 13, Paragraph 1, Item 1 of the Passport Act and the abusive application of this law have been chilling journalists and other professionals who are in or wish to work in conflict zones.

Next, the impact of your intervention extends to other Japanese journalists as well as other professionals who are in or plan to visit conflict zones for their work such as those working for international humanitarian NGOs.

Many Japanese professionals have been also expressing fear that their own passport applications might be denied based on Article 13, paragraph 1, item 1 of the Passport Act. The fear is supported by the fact that the underlying facts cited for the rejection of Yasuda’s application (e.g., an entry ban from another country, noncompliance with evacuation advisories by the Japanese government, and unauthorized entry into other countries) are experiences that

¹⁴ David Kaye, Letter “[Case about a request to revoke rejection of a passport issuance application](#),” Tōkyō Chihō Saibansho [Tokyo District Court] Reiwa 2 (gyo-u) no. 10 (15 May 2023).

¹⁵ Ayako Hatano, Hiromichi Matsuda and Yota Negishi, “[The impact of the United Nations human rights treaties on the domestic level in Japan](#)” in Christof Heyns, Frans Jacobus Viljoen, and Rachel Murray (eds), *The Impact of the United Nations Human Rights Treaties on the Domestic Level: Twenty Years On* (2024), pages 627-631 (“Japanese courts have been reluctant to apply international law to domestic cases;” and “the awareness among judges on international human rights law does not seem high in general as there are not many chances” since Judges generally regard international law as a “last resort” to rely on in order to reach the right conclusion).

journalists and other professionals working in conflict zones might encounter in the course of their work.

Yoshihiro Kando is an independent journalist with decades of experience. He has previously worked for a major domestic newspaper company as well as foreign media outlets and has reported from the Middle East and India. He noted that the mere existence of Article 13, paragraph 1, item 1 of the Passport Act, along with the MFA's denial of Yasuda's passport application, has instilled widespread fear among journalists for foreign journalistic work. Kando also emphasized that this chilling effect would be particularly severe for independent journalists, who are typically more susceptible to government pressure as they lack the support of media companies they belong.¹⁶

Yuko Shirakawa is a professional nurse working for Médecins Sans Frontières (Doctors Without Borders), where she has been providing medical services in conflict zones since 2012. She commented on an online article reporting Yasuda's case in a major news outlet: "When I applied for the renewal of my passport, I had prepared myself for the risk that my overseas work might come to an end. I seriously thought the government would tell me, 'Your passport renewal is not allowed.'" "Medical professionals like us had to enter Syria without the Syrian government's approval, just like Yasuda, to deliver medical services to people in Syria." She continued, "The justification provided by the government in Yasuda's case does not fully make sense to me. It sounds like they are penalizing individuals merely for entering high-risk zones. Such justification has been causing me the fear of potential passport denial in the future."¹⁷

Masayoshi Ishikawa is the representative of the Japan Federation of Newspaper Workers' Unions and a staff writer at Chugoku Shimbun. While expressing solidarity with Yasuda, Ishikawa highlighted that Yasuda has faced public criticism rooted in a misbelief that journalism in conflict zones constitutes wrongdoing that disrupts social order. He emphasizes that if the government continues to deny journalists the right to travel abroad, it only reinforces such perception. That would widen the division between the public and journalists and demotivate many journalists from reporting from abroad, hindering the supply of verifiable information to Japan. As a result, the public opinion in Japan can be biased, contributing to Japan's isolation in the international community.¹⁸

Your intervention supports the Japanese government in fulfilling its duty to *ensure* freedom of expression (ICCPR Article 2(1)), thereby removing such a chilling effect and ensuring the supply of accurate and verifiable information by journalists in conflict zones. As an international court and United Nations bodies have long recognized and reaffirmed, such information is often difficult to obtain, distribute or disseminate but vital for a wide range of purposes.¹⁹ Such purposes include: "bringing to the attention of the international community the horrors and

¹⁶ Interview conducted with Yoshihiro Kando. Notes on file with authors.

¹⁷ *Supra* note 8.

¹⁸ Interview conducted with Masayoshi Ishikawa. Notes on file with authors.

¹⁹ For example, [Prosecutor v Brdjanin and Talic \(Decision on Interlocutory Appeal\)](#), Case No IT-99-36-AR73.9, International Criminal Tribunal for the Former Yugoslavia (ICTY) (11 December 2002), para. 36. Quashing a subpoena of a war correspondent, the Appeals Chamber emphasized the importance of "protecting the ability of war correspondents to carry out their functions." It noted that "accurate information is often difficult to obtain and may be difficult to distribute or disseminate."

reality of the conflict;”²⁰ “assist[ing] those who would prevent or punish the crimes under international humanitarian law;”²¹ serving the public’s right to receive information;²² providing the United Nations with “complete information concerning armed conflicts;”²³ enabling “a more effective implementation of humanitarian law in armed conflicts,”²⁴ and “[protecting] civilians and conflict prevention by acting as an early warning mechanism in identifying and reporting potential situations that could result in genocide, war crimes, ethnic cleansing and crimes against humanity.”²⁵

Furthermore, reports by journalists in conflict zones play a key role for countering the prevalent misinformation and disinformation during the armed conflict, as highlighted in one of your thematic reports.²⁶ Such an information is essential for fact-checking and ensuring access to diverse, reliable information, ultimately fostering the information literacy and resilience among the public.

Reflecting the importance of journalism in conflict zones and states’ duty to ensure freedom of expression (ICCPR Article 2(1)), the UN Security Council, UN Human Rights Council, and General Assembly have repeatedly called for the promotion of a safe and enabling environment for journalists to perform their work independently and without undue interference.²⁷ As an

²⁰ *Id.*

²¹ *Id.*

²² *Id.*, para. 37.

²³ United Nations General Assembly, Res. 2673 (XXV). U.N. Doc [A/RES/2673\(XXV\)](https://digitallibrary.un.org/record/658844?ln=en) (9 December 1970). Japan voted in favor of it. <https://digitallibrary.un.org/record/658844?ln=en>.

²⁴ International Committee Red Cross, *Report on the Work of the Conference, Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts*, para. 3.78 (1972). Experts from Japan also participated in the conference (see page 15). The recognition of vital role of war correspondence during the conference paved the way for the adoption of the 1977 Additional Protocol I to the Geneva Conventions, of which Article 79 is the most recent and comprehensive guarantee of humanitarian protection to journalists in conflict zones. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 U.N.T.S. 3.

²⁵ United Nations Security Council, U.N. Doc [S/RES/2222](https://www.un.org/press/en/2015/sres2222.doc.htm) (27 May 2015). See Letter from the Permanent Representative of Lithuania to the United Nations addressed to the Secretary-General, U.N. [Doc. No. S/2015/307](https://www.un.org/press/en/2015/sres2222.doc.htm) (1 May 2015). In the meeting where the resolution was adopted, the representative of Japan affirmed the democratic value of journalism in conflict zones, stating “Attacks on journalists were attacks on the foundations of democracy.” UN Meetings Coverage and Press Releases, *In All-Day Debate, Security Council Voices Alarm at Growing Threats to Journalists, Unanimously Adopting Resolution 2222* (27 May 2015). Regional bodies also recognize the importance of journalism in conflict zones. For example, in 1996, the Council of Europe emphasized in [its Recommendation No. R \(96\) 4 of the Committee of Ministers to member states on the protection of journalists in situations of conflict and tension](https://www.coe.int/en/web/council-of-ministers-recommendations/cm/rec201613) (3 May 1996) that the importance of the role of journalists in informing the public about violations of national and international law and human suffering in situations of conflict and tension, and the fact that they thereby can help to prevent further violations and suffering. The Council has reaffirmed such a role in its more recent Recommendations adopted in 2007 and 2016 (Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis](https://www.coe.int/en/web/council-of-ministers-recommendations/cm/rec201613) (26 September 2007). [Recommendation CM/Rec \(2016\) of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors](https://www.coe.int/en/web/council-of-ministers-recommendations/cm/rec201613) (13 April 2016).

²⁶ Irene Khan, The report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Disinformation and freedom of opinion and expression during armed conflicts, U.N. Doc [A/77/288](https://www.un.org/press/en/2022/a77288.doc.htm) (12 August 2022), paras. 54 and 108.

²⁷ United Nations Security Council, U.N. Doc. [S/RES/1738](https://www.un.org/press/en/2006/sres1738.doc.htm) (23 December 2006). United Nations General Assembly: U.N. Doc. [A/RES/68/163](https://www.un.org/press/en/2014/a-res68163.doc.htm) (21 February 2014); U.N. Doc. [A/RES/69/185](https://www.un.org/press/en/2015/a-res69185.doc.htm) (11 February 2015); U.N. Doc.

implementation of such a norm, the Council of Europe adopted a set of recommendations, first in 1996²⁸ and subsequently in 2022,²⁹ for its member states to ensure compliance with this positive obligation. One recommendation requests EU member states to facilitate journalist access to conflict zones by promptly issuing visas and other necessary documents, as well as facilitating the import and export of professional equipment, which stands in stark contrast to Japan’s rejection of Yasuda’s passport application. We believe that your intervention supports Japan fulfill such a duty.

III. The Legal Analysis

a. Article 13, Paragraph 1, Item 1 of the Passport Act Violates the Rights to Freedom of Movement and Freedom of Expression of the Japanese citizens.

1. *The Passport Act can deprive Japanese citizens of their right to freedom of movement and restricts their right to freedom of expression.*

Article 12(2) of the ICCPR protects the right to “be free to leave any country, including his own.” The Human Rights Committee made it clear in 1999 in its General Comment 27 that this right is protected regardless of “any specific purposes” or “the period of time the individual chooses to stay outside of the country.”³⁰ Importantly, the Committee also clarifies that “since international travel usually requires appropriate documents, in particular a passport,” the right to leave a country “must include the right to obtain the necessary travel documents.” The General Comment further continues that “[t]he refusal by a State to issue a passport [...] may deprive this person of the right to [...] travel elsewhere.”³¹ Article 13, paragraph 1, item 1 of the Passport Act of Japan provides one of the grounds for which the Minister of Foreign Affairs may reject passport applications, namely when the applicant is subject to an entry ban from another country. Thus, this clause restricts the right to movement of Japanese citizens subject to such an entry ban and is presumably illegal unless it passes the strict test under Article 12(3) of ICCPR³².

The Human Rights Committee characterizes in its General Comment 27 that “liberty of movement is an indispensable condition for the free development of a person”³³ and “[the right

[A/RES/70/162](#) (10 February 2016); U.N. Doc. [A/RES/72/175](#) (29 January 2018); U.N. Doc. [A/RES/74/157](#) (23 January 2020); U.N. Doc. [A/RES/76/173](#) (10 January 2022); U.N. Doc. [A/RES/78/215](#) (22 December 2023). United Nations Human Rights Council: U.N. Doc. [A/HRC/RES/21/12](#) (9 October 2012); U.N. Doc. [A/HRC/RES/27/5](#) (2 October 2014); U.N. Doc. [A/HRC/RES/33/2](#) (6 October 2016); U.N. Doc. [A/HRC/RES/45/18](#) (12 October 2020). Other actions taken by United Nations bodies include, for example, United Nations Plan of Action on the Issue of the Safety of Journalists and the Issue of Impunity, [CI-12/CONF.202/6](#) (April 2012) (Endorsed by the UN Chief Executive Board, the highest-level coordination forum of the United Nations system, and has been welcomed in resolutions of the General Assembly, the Human Rights Council, and UNESCO).

²⁸ Council of Europe, [Recommendation No. R \(96\) 4 of the Committee of Ministers to member States on the protection of journalists in situations of conflict and tension](#) (3 May 1996).

²⁹ Council of Europe, [Journalism in Situations of Conflict and Aggression: Principles from the Relevant Council of Europe and Other International Standards](#), Council of Europe (7 March 2022).

³⁰ Human Rights Committee, General Comment 27, Freedom of movement (Art.12) (hereinafter “General Comment 27”), U.N. Doc. [CCPR/C/21/Rev.1/Add.9](#) (2 November 1999), para. 8.

³¹ *Id.*, para. 9.

³² *Id.*, para. 11.

³³ *Id.*, para. 1.

to movement] interacts with several other rights enshrined in the Covenant.”³⁴ This interlocking nature with other rights even more strongly applies to the right to travel abroad, considering that physical presence remains fundamental for individuals to experience and interact with people and society in different countries. The ability to travel abroad indeed impacts various important aspects of one’s life, such as meeting loved ones or friends, visiting a place one longs for, or engaging in professional activities.

Consequently, the deprivation of the right to travel abroad caused by Article 13, paragraph 1, item 1 of the Passport Act, impacts a wide range of human rights. One of the particularly significant rights affected is the right to freedom of expression, protecting the freedom to “seek, receive, and impart information and ideas of all kinds” “*regardless of frontiers.*” (ICCPR Article 19(2)). This interconnectedness of freedom of movement and expression applies to everyone, but it is especially relevant when journalists seek to travel abroad to report directly and accurately on the voices of people and situations in other countries, like Yasuda.

The Human Rights Committee also underscores this interlocking nature of freedom of movement and of expression, especially in terms of journalists. For example, in its General Comment 34, the Committee alerts that it is “normally incompatible with [Article 19(3)] if states restrict the freedom of movement of journalists, either domestically or internationally.”³⁵

2. Article 19, paragraph 1, item 1 of the Passport Act cannot pass the stringent three-part test set out in ICCPR Articles 12(3) and 19(3).

ICCPR Articles 12(3) and 19(3) require the application of essentially a similar stringent test to the restriction of the right to freedom of movement and of expression. Namely, any restriction must be (i) provided by law and (iii) necessary and proportionate to protect (ii) a legitimate objective, i.e., either of respect for the rights or reputations of others or the protection of national security or of ordre public, or of public health or morals (so-called “three-part test”).

The drastic consequences of the application of Article 13, paragraph 1, item 1 of the Passport Act, i.e., total deprivation of the right to travel abroad, request a careful application of this three-part test. As explained below, it fails to meet *any* element of the three-part test and therefore illegal.

Legality

To be qualified as “law” in the meaning under Articles 12(3) and 19(3) of the ICCPR, the law must be “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly” and must not confer “unfettered discretion for the restriction of freedom of expression on those charged with its execution.”³⁶

While Article 13, paragraph 1, item 1 of the Japanese Passport Act is a law, it is too vague to meet the quality of “law” required under Articles 12(3) and 19(3) of the ICCPR. It states that the Minister of Foreign Affairs *may* reject a passport application when the applicant is subject to an

³⁴ *Id.*

³⁵ Human Rights Committee, General Comment 34, Article 19: Freedoms of opinion (hereinafter “General Comment 34”), U.N. Doc. [CCPR/C/GC/34](#) (12 September 2011), para. 45.

³⁶ General Comment 27, para. 13; General Comment No. 34, para. 25.

entry ban imposed by another country, without providing any further guidance on what sort of factors the MFA will take into consideration and how they will do so.

Since the decision on who is permitted to be in the territory of a State generally remains prerogative of that state³⁷, the MFA is supposed to exercise its own judgment to choose whose passport application to reject amongst those submitted by individuals with an entry ban. Indeed, countries often impose entry bans on foreign individuals, sometimes purely for arbitrary reasons. For example, the Turkish government reportedly imposed entry ban on over 100,000 foreigners from 150 countries who expressed critical views against the government.³⁸ The Russian government blacklisted more than thousands of public officials in the US, Japan, and other countries in response to the sanctions imposed on Russia by those countries.³⁹ These factors illustrating the wide discretion of the MFA. Indeed, according to the government, only four individuals were denied passport applications based on this clause,⁴⁰ at least two of them being independent journalists (one is Yasuda).

The lack of guidance thus grants blanket discretion to the MFA to decide whether to issue a passport or not to individuals with an entry ban. At the same time, it is impossible for citizens to control their behavior to avoid passport application rejection.

Legitimacy

ICCPR Articles 12(3) and 19(3) require the interest sought by the measure causing the rights restriction to fall under either of the protection of “rights or reputations of others” or of “national security or of ordre public, or of public health or morals.” National security means “political independence or the territorial integrity of the State at risk,”⁴¹ and public order is broader than national security and means the set of rules which “ensure the peaceful and effective functioning of society within the State.”⁴² The most importantly, the Human Rights Committee clarifies that to meet the test, a state must demonstrate “in specific and individualized fashion the precise nature of the threat”⁴³, and it cannot be invoked as “a pretext for imposing vague or arbitrary limitations.”⁴⁴ The Human Rights Committee has repeatedly rejected the vague claims of merely speculative national security risks.⁴⁵

The Japanese government claims that Article 13, paragraph 1, item 1 of the Passport Act aims to protect Japan’s trust in the international society. According to the government, if an individual

³⁷ William A. Schabas, *Nowak’s CCPR Commentary: U.N. International Covenant on Civil and Political Rights 3rd ed Nowak Commentary* (November 2019), page 300.

³⁸ Middle East Forum, [Turkey’s Secret Blacklist Targets Foreign Critics with Entry Bans and Deportations](#) (7 January 2024).

³⁹ CNBC, [Biden tops list of Americans banned from traveling to Russia, but Trump is not on it](#) (21 May 2022).

⁴⁰ Shoko Egawa, [Case against the government’s deprivation of a journalist’s passport – this also is the issue of the public’s right to access information](#) (19 January 2024). In Japanese only.

⁴¹ United Nations Commission on Human Rights, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (1984), [E/CN.4/1985/4](#), para. 29.

⁴² Sarah Joseph, Melissa Castan, *The International Covenant on Civil and Political Rights (3rd Edition): Cases, Materials, and Commentary* (July 2013), para. 18.55.

⁴³ General Comment 34, para. 35.

⁴⁴ *Supra* note 41, para. 31.

⁴⁵ For example, Human Rights Committee, *Kim v. Republic of Korea*, Views, U.N. Doc [CCPR/C/56/D/574/1994](#); and *Jong-Kyu Sohn v. Republic of Korea*, Views, U.N. Doc. [CCPR/C/54/D/518/1992](#) (1995).

has been banned from entering another country, it indicates that the country considered the individual harmful, and issuing a passport to such an individual would jeopardize Japan's trust.

Two defects in this logic cause it to fail the test. First, the interest in safeguarding Japan's trust in international society is thin, vague, and broad that it only tangentially relates to national security or public order at best. There are no circumstances indicated that demonstrate the potential damage to Japan's trust leads to specific risks to its national security or public order (for example, Japan faces heightened geopolitical tensions with a certain country, which necessitates military cooperation from other countries to defend itself from potential conflict).⁴⁶ Second, even if maintaining Japan's trust is important for national security or public order, there is a huge leap between allowing individuals with entry bans to travel abroad and damage to Japan's trust in international society. Given that countries often impose entry bans quite arbitrarily, an entry ban itself would not indicate any likelihood that the person would cause trouble abroad in a way that harms Japan's trust when allowed to travel abroad.

Additionally, if the MFA is concerned about national security or public order, it is more straightforward to rely on another clause in the Passport Act which is designed for the protection of national security and public order, i.e., Article 13, paragraph 1, item 7. That provision allows the Minister to deny a passport application when the MFA determines that an applicant is likely to "directly or significantly" harm the national security or public order. Furthermore, Article 13, paragraph 2 requires that, if the MFA intends to reject a passport application based on item 7, it must consult with the Minister of Justice for a check and balance to prevent the MFA's abuse of power. If the MFA can take advantage of an entry ban—imposed on an applicant for whatever reasons—and can rely on item 1 to reject the person's application, it can circumvent the additional requirement under item 7 of "directly and significantly" as well as the obligation of prior consultation with Minister of Justice, overturning the careful balance established in item 7 for the respect of the fundamental rights. The existence of item 7 further highlights that item 1 would fail the legitimacy test.

To further underscore the irrelevance of an entry ban to the decision of whether to issue a passport, none of the other G-7 countries (i.e., the United States, Canada, the United Kingdom, France, Germany, and Italy) have laws that give such a significant weight to an entry ban when making passport issuance decisions.⁴⁷

Necessity and proportionality

ICCPR Articles 12(3) and 19(3) request that the measure taken is necessary to the aim sought, meaning that it must be appropriate and the least intrusive method to achieve the aim.⁴⁸ The measures taken must be also proportionate, meaning that a benefit achieved by the restriction of rights is balanced by the degree of infringement of fundamental human rights.⁴⁹ Article 13, paragraph 1, item of the Japanese Passport Act is not either necessary or proportionate.

⁴⁶ Tokyo District Court expressed in its judgment that the maintenance of Japan's trust *ultimately* contributes to national security and public order (emphasis added). *Supra* note 12, page 44.

⁴⁷ [Plaintiff's Brief No. 1 "Other countries' legislation concerning restriction of passport issuance,"](#) Tōkyō Chihō Saibansho [Tokyo District Court] Reiwa 2 (gyo-u) no. 10 (4 December 2020).

⁴⁸ General Comment 27, para. 14; General Comment 34, para. 34.

⁴⁹ *Id.*

As above, the Japanese government claims that Article 13, paragraph 1, item 1 of the Passport Act serves the interest of safeguarding Japan’s trust in the international community. On the contrary, a law that allows the government to deprive the right to travel abroad, merely because of an entry ban imposed by another country, would rather harm Japan’s trust. The existence of such a law goes against Japan’s legal duty under the ICCPR and Japan’s political commitment to protect and promote human rights,⁵⁰ damaging Japan’s good standing in the international community. Even under the Japanese government’s logic that Japan’s trust will be damaged by allowing an individual imposed an entry ban from another country to travel abroad, such damage would not extend to the trust with that country. Banning international travel as a whole is excessive.

Furthermore, the benefit pursued by Article 13, paragraph 1, item 1 (i.e., protecting Japan’s trust in the international society), can be never proportionate to the draconian consequences of that clause.⁵¹ The total denial of the right to international travel, as well as the widespread chilling effect on individuals traveling abroad—especially when the destination a country with weaker rule of law or geographical tension with Japan, where travel bans may be arbitrarily imposed (see [Section 2](#) (The Importance of Your Intervention))—is clearly overwhelming and cannot be balanced with the abstract and speculative nature of the interests pursued.

b. The Denial of Yasuda’s Passport Application Violates His Rights to Freedom of Movement and Freedom of Expression.

Separately from the Passport Act’s compatibility with the ICCPR, the Minister of Foreign Affairs’ rejection of Yasuda’s passport application violates his rights to freedom of movement and freedom of expression. Overall, the issues contained in Article 13, paragraph 1, item 1 of the Passport Act that we pointed out in the prior section have all been grossly materialized through its application to Yasuda.

1. The rejection of Yasuda’s passport application deprived his rights to freedom of movement, and collaterality, the freedom of expression.

The MFA’s rejection of Yasuda’s passport application completely denied his rights to travel abroad (Article 12(2) of the ICCPR) and his freedom of expression (Article 19(2) of the ICCPR). As seen above, the interconnected nature of these two rights applies sharply to journalists who seek to travel abroad for reporting. Yasuda, whose expertise lies in reporting from conflict zones, falls within the core group of journalists whose freedom of expression is gravely impacted by the restriction on international travel, as his physical presence in foreign countries is a prerequisite for him to engage in journalism in conflict zones.

⁵⁰ *Supra* notes 23 to 25. Japan has consistently supported international resolutions and norms that recognize the high value of journalism in conflict zones.

⁵¹ In the case of *Stamose v. Bulgaria*, the European Court of Human Rights found that a Bulgaria’s law, which automatically denies passport applications if an applicant violated another country’s immigration law, violated Article 2, paragraph 2 of [Protocol No. 4 of the European Convention on Human Rights](#) (a similar clause to Article 12(2) of the ICCPR). Applying the proportionality test, the Court stated, “it appears quite draconian for the Bulgarian State – which could not be regarded as directly affected by a passport applicant’s violation of another country’s immigration law – to have also prevented him from traveling to any other foreign country [...]” European Court of Human Rights, [Stamose v. Bulgaria, Application no. 29713/05](#) (27 November 2012), para. 34.

Consequently, the right of people in Japan to access information is limited because they are unable to receive information about conflict zones from Yasuda anymore. The impact is significant, considering that Yasuda is one of the few independent journalists in Japan, who represent rare sources of pluralistic and diverse views.

2. *The restriction of Yasuda's rights to freedom of movement and freedom of expression never satisfies the three-part test.*

The same stringent test under ICCPR Articles 12(3) and 19(3), which we applied in the prior section to the Passport Act, will be applied to assess the MFA's rejection of Yasuda's passport application.

Legality

As we see in the prior section, Article 13, paragraph 1, item 1 does not suffice as "law" in the meaning of Articles 12(3) and 19(3) therefore the rejection of Yasuda's passport application was not "prescribed by law."

Legitimacy

The Japanese government has claimed that the rejection of Yasuda's passport application was necessary to protect Japan's trust in the international society. Specifically, by citing underlying facts such as his five-year entry ban from Turkey imposed in 2018, his noncompliance with the evacuation advisory by the Japanese government, and his captivity in Syria in 2015, and his unauthorized entry into Syria and Turkey in the past, the government argue that allowing him to travel abroad would likely lead to further visits to Turkey and other Middle Eastern countries without permission, posing a risk to damage Japan's trust. Such speculative justification fails the legitimacy test, which requires the existence of the specific, individualized risks to either of the enumerated grounds under Articles 12(3) and 19(3).

As we outlined in the prior section, the government's justification for Article 13, paragraph 1, item 1 fails the legitimacy test because, first, it is unclear how sustaining Japan's trust is important to protect national security and public order. Second, it is also unclear why allowing an individual imposed an entry ban to travel abroad would result in damaging Japan's trust. Even worse, in Yasuda's case, the entry ban was imposed by the Turkish government, which is notorious for its abuse of national security grounds to oppress journalists or critics.⁵² Indeed, Yasuda has never been given any due process rights to dispute or even examine the grounds of the entry ban imposed in 2019. It is thus particularly baseless to assume Yasuda's future misconduct abroad when a passport is issued to him.

Necessity and proportionality

The rejection of Yasuda's passport application is neither necessary nor proportionate. Exactly the same assessment of Article 13, paragraph 1, item 1 is applicable here. First, depriving Yasuda of his ability to travel internationally, not only to Turkey but any other countries, is clearly excessive and not necessary. Also, it rather damages Japan's trust in the international community, by taking the measure that contradict with Japan's legal obligation under the ICCPR

⁵² *Supra* note 38.

and prior political commitment to the protection of journalism in conflict zones which Japan demonstrated in international fora.⁵³

Second, the deprivation of Yasuda's right to travel abroad and limitation of his freedom of expression, along with the widespread chilling effect on journalists and other professionals intending to travel to conflict zones (See **Section 2**: The Importance of Your Intervention) is overwhelming. Such a negative impact is never proportionate to the thin, vague, and broad interest of protecting Japan's trust.⁵⁴

IV. Our suggested questions and recommendations to be posed to the Japanese government

Suggested questions

Concerning the Article 13, paragraph 1, item 1 of the Passport Act:

- What steps will the Ministry of Foreign Affairs take to prevent the abusive use of Article 13, paragraph 1, item 1 of the Passport Act? How will they ensure full compliance with the ICCPR, especially Articles 12(2)(3) and 19(2)(3), and the equivalent clauses in the Japanese Constitution until the necessary legislative changes to the Passport Act are enacted?
- How does the MFA plan to create an enabling environment for journalists or other professionals to carry out their activities, particularly in foreign countries with geopolitical instability or weaker rule of law?
- How and when does the MFA investigate and hold accountable those responsible for the past abuse of the Passport Act to oppress journalists who traveled to conflict zones?
- What measures will the MFA implement to expedite the legislative review of the Passport Act of Japan, specifically Article 13, paragraph 1, item 1, to ensure compliance with the ICCPR, especially Articles 12(2)(3) and 19(2)(3), and equivalent clauses in the Japanese Constitution?

Concerning the Ministry of Foreign Affairs of Japan's rejection of Yasuda's passport application:

- When does the MFA plan to issue a passport to Yasuda and provide full compensation in accordance with relevant civil laws in Japan for his inability to travel abroad since 2019?
- How and when does the MFA plan to investigate and hold accountable those responsible for the denial of Yasuda's passport application?

Suggested recommendations

Concerning Article 13, paragraph 1, item 1 of the Passport Act:

- The Japanese Parliament should promptly review the Passport Act, especially Article 13, paragraph 1, item 1, to ensure compatibility with the ICCPR, especially Articles 12(2)(3) and 19(2)(3), as well as the equivalent clauses in the Japanese Constitution.

⁵³ *Supra* notes 50.

⁵⁴ *Supra* note 51.

- The Ministry of Foreign Affairs should take immediate and effective actions to ensure that the Passport Act is applied in a manner that fully complies with the ICCPR, especially Article 12(2)(3) and 19(2)(3), as well as the equivalent clauses in the Japanese Constitution.
- The MFA should take positive actions to create an enabling environment for journalists or other professionals to carry out their activities, particularly in foreign countries with geopolitical instability or weaker rule of law.

Concerning the Ministry of Foreign Affairs of Japan's rejection of Yasuda's passport application:

- The MFA should issue a passport in response to Yasuda's application submitted in 2019 and provide full compensation in accordance with relevant civil laws in Japan for his inability to travel abroad since 2019.
- The MFA should acknowledge and disseminate both to the public and within the Ministry that the rejection of Yasuda's passport application violated Articles 12(2)(3) and 19(2)(3) of the ICCPR, as well as the equivalent clauses of the Japanese Constitution.