

NGO Report Regarding the Rights of Non-Japanese Nationals, Minorities of Foreign Origins, Migrants, and Refugees in Japan

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Solidarity Network with Migrants Japan (SMJ)

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FOREWORD

This NGO report has been compiled by the Solidarity Network with Migrants Japan (SMJ), and contains chapters prepared by various SMJ member organizations for the reference of the Human Rights Committee in its consideration of the sixth periodic reports submitted by Japan under article 40 of the International Covenant on Civil and Political Rights (CCPR/C/JPN/6).

Evolving from the Forum on Asian Immigrant Workers established in 1987, SMJ was established in April 1997 with the aim to promote communication and common action among organizations throughout Japan working to provide assistance and relief and striving to protect, promote, and realize the human rights of migrants, migrant workers, refugees, and their families in Japan. Since then, SMJ has grown into a nationwide network of around 80 NGOs, civil society organizations, labor unions, religious organizations, professional associations, and women's rights organizations, with an individual member base of 320 (2014 figures).

Domestically, SMJ has organized annual conferences and symposia on migrant and migrant worker rights, published books and monthly magazines that have been widely used and consulted throughout domestic civil society circles, organized empowerment events and activities for migrants and non-Japanese national residents, engaged in annual negotiations with government ministries involved in drafting policies that affect migrants and their families, and networked with politicians and bureaucrats from various political parties and ministries. SMJ also recognizes that concerns surrounding migrant rights are also rooted within a broader international context, and has collaborated with regional and international migrant rights organizations and networks to bring awareness of migrant rights issues in Japan to the fore.

The report's contributors, while being active members of the migrant rights advocacy community in Japan, are also migrants, academics, researchers, lawyers, civil servants, and lobbyists who are authoritative experts in not only the various social, economic, political, cultural, and legal challenges that ethnic minorities and non-Japanese nationals, residents, and workers face in Japan, but also on the *intersections* of these complex issues and the *interactions* between the government, Japanese civil society, and migrants/ethnic minorities themselves. Each chapter addresses specific issues that non-Japanese nationals, ethnic minorities of foreign origins, migrants, and refugees face in Japan, and highlights the current state of affairs, the main challenges and problems, and various NGO policy recommendations.

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Arts. 2 (1), 3, 24 and 26 Non-discrimination and equal rights of men and women

Para. 4 *Irregular Migrants' Death during Deportation (Suraj v. Japan)*

Filled 5 August 2011—Decided February 3, 2014 (appealed to a higher court by both sides)

1. Outline of the case

On March 22nd, 2010, a Ghanaian man Abubakar Awudu Suraj (Mr. Suraj) died aboard an aircraft during deportation. The deportation expenses were paid by the government. Before the expulsion Mr. Suraj was pleading *Special Permission to Stay* based on his status as an immediate relative of a Japanese citizen. He lived in marital union with his Japanese wife since 1989. After a written deportation order was issued, he filed a lawsuit for the revocation of the deportation order. He won the case in the district court, but the high court overturned this decision. The decision of the high court was made final and binding. He was then appealing for the review of his case.

2. Court's decision

Following Mr. Suraj's death, his widow and his mother filed a lawsuit for a state compensation on August 5th, 2011. The immigration officers who escorted Mr. Suraj were questioned. In addition a statement was taken from the medical examiner who determined the cause of death. According to the medical examiner Mr. Suraj had a cardiac tumor in 2011. The trial was concluded on February 3rd, 2014. Tokyo District Court declared that the immigration officers' acts on the day of the incident had been 'excessive', 'unnecessary' and 'in violation of laws and regulations.' Further, Tokyo District Court determined that Mr. Suraj's death was due to suffocation caused by restriction of breathing by a gag tied around his mouth and movement limitation posed on chest and diaphragm by forcing him to bend forward while sitting. This court decision challenged directly the decision of Chiba District Public Prosecutor reached on July 3rd, 2012. Chiba District Public Prosecutor decided not to institute prosecution against immigration officers, because Mr. Suraj' death was caused by his cardiac tumor, not related to immigration officers' coercive measure.

3. Compensation to the victims

The court ordered the state to pay Mr. Suraj's widow his mother compensation of 2,506, 253yen (around 24,500 US Dollars) each.

4. Opinion

Racial discrimination was one of the elements that led to Mr. Suraj's death. For example, during the examination of the immigration officers held on 13 September 2013, the officer in charge of escorting Mr. Suraj stated that he was warned by his colleagues that "you must be careful when deporting Africans," so he understood that he needed to take safety precautions when deporting Mr. Suraj. This may explains why Mr. Suraj faced an excessive force: as much as seven immigration

officers lifted him up on his stomach in order to get him on board although he was not physically resisting. Deportation officers used an excessive force to subdue him with restraining equipment, for instance, handcuffs on the ankles. Furthermore, it became apparent from the testimony of the deportation officer that during the deportation process officers used towels, which itself are not allowed in the regulation, however, at the time of Mr. Suraj's deportation they used three towels, which were used to gag him.

The court interpretation of the law might have been biased and racially prejudiced. Lost profit and consolation money for Mr. Suraj's death were kept low because the calculation was based on Ghanaian standard of living, not Japanese one. It is highly possible, that since Mr. Suraj was married to the Japanese citizen he would have been allowed to reenter Japan with a special landing permission after his deportation. In this instance, lost profit should have been calculated with Japanese standard. Similar cases suggest he would be able to reenter Japan within five years, during which the reentry is prohibited for ordinary deportees. Determining lost profit and consolation money based on foreign national's origin is unfair and discriminative, because this means "price of life" is also set according to the person's origin.

Para.7 *Rights of Migrant Women*

1. Introduction

a) Migrant women continue to face multiple types of discrimination and violence, based on their place of origin and gender.. However, the Japanese government has never conducted any studies on migrant women's situation, nor has it prepared any specific laws or measures to support migrant women who settle in Japan through marriage. In addition, many migrant women are also unable to access the support measures provided by the Gender Equality Basic Law though it covers all nationalities.

b) While migrant women are exposed to higher incidence of domestic violence (DV) compared to Japanese women, protection and assistance measures for victims, as well as training of relevant offices on specific support for migrant women, are insufficient. Current visa restrictions make it difficult for migrant women to escape from abusive situations mainly because their status is contingent on their spouses and therefore renders them vulnerable.

c) The 2009 revision of the Immigration Control Law which was enacted in July of 2012 led to tighter migration regulations. For instance, annulment of resident status in case of failing to meet certain requirements: if a person with the status of "spouse or child of Japanese national" or "spouse or child of permanent resident" has failed to "engaging in activities as a spouse" for 6 months or

more (except for the cases in which the foreign resident has justifiable grounds for not doing so), they face revocation of their status. These changes have further deteriorated migrant women's rights and made them more vulnerable to DV.

2. Background

a) Lack of Measures to Protect Migrant Women's Rights and to Support Settlement

Out of 2,066,445 foreigners residing in Japan at the end of 2013, 1,123,008 (54.3 percent) were women. Majority of migrant women settle down in Japan through marriage. There are estimated 30,000 to 40,000 international marriages taking place annually since 2000, which account for approximately five percent of total marriages taking place in Japan. There are also an increasing number of international divorces. Divorce rates between Japanese citizens and foreign nationals grow higher than the marriage rates NGOs provide counseling to number of migrant women. Majority of these cases pertain to international divorces or marriage breakdown. Preponderance of these cases are related to DV among international couples and evident power disparity between Japanese husbands and their migrant spouses. In addition, migrant women often experience discrimination and isolation within their families and communities.

In the aftermath of the Fukushima Daiichi nuclear disaster, NGOs conducted a number of studies that have revealed that majority of foreigners in the disaster-hit areas were migrant women settled down through international marriages, and that they were often isolated and unable to access the assistance and receive support.. One of the reasons why migrant women are left isolated and vulnerable to discrimination and violence is the lack of laws and measures to help them settle down in their communities and protect them from human rights abuses. Typically, these laws are utilized in other developed countries. Although the Third National Plan for Gender Equality in 2010 mentioned the need for special consideration for migrant women, not enough has been done in terms of the development of specific measures.

b) Insufficient protection measures for migrant women from domestic violence

According to the statistics of the Ministry of Health, Labor and Welfare (MHLW) temporary protection rate of DV victims is five times higher for migrant women than Japanese women. In 2008, The Human Rights Committee, in paragraph 15 of the Concluding Observation recommended that in terms of helping victims of DV, the State party should "strengthen long-term rehabilitation programmes and facilities, as well as assistance for victims with special needs, including non-citizens. However, despite the higher incidence of DV against migrant women, they still face difficulties in accessing to support measures. Since migrant women are systemically forced to depend on their Japanese spouses to acquire resident status, consequently an abusive husband may

threaten his wife that he will not help her in acquiring resident status if she does not obey him, and willfully prevents her from obtaining residency/permanent resident status/citizenship or prolongs the legal process. However, the government has not taken effective measures to prevent such harassment by spouses. Furthermore, the 2009 revision of the Immigration Control Law has made migrant women's situation more precarious vulnerable, and lacking appropriate support measures.

The Japanese government, in its 6th report to the Committee, claims in the paragraph 95 that it approves a status change or a special permission to stay for DV victims as a rule, and responds to each claim promptly. In practice, only a number of DV victims have been recognized and thus granted the resident status. For instance, statistics of the Immigration Control Bureau show that in 2010 77 victims of DV received resident status. This number has dropped in 2011 to 66 and in 2012 78 of DV victims were granted the resident status. Moreover, NGOs and experts reported that there is a number of the local immigration bureau offices which do not accept claims of DV and thus do not give special consideration for victims who apply for the resident status. The problems are not limited to immigration bureau but also there are issues related to the conduct of the public DV counseling centers and other related offices in local municipalities. Across these offices the handling of the cases and responses to migrant women differ. In addition, training for the officials is insufficient. For example, the training program of special interpreters for supporting foreign victims of DV, which receives financial aid from MHLW, has been conducted annually only in a few municipalities across the entire country.

c) The Negative Consequences of the 2009 Revision Of Immigration Control Law and Effectuation of Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention)

The 2009 revision of Immigration Control was enacted in July 2012. It requires foreigner residents to report any change related to their registration status, such as, change of address divorce, or death of a spouse within fourteen days. Failing to do so could result in criminal punishment. Furthermore, the revised law introduced annulment of resident status in the following cases: (1) when a person with a status of "spouse of Japanese citizen" or "spouse of permanent resident" fails to follow the activities defined by their status continuously for more than 6 months; or (2) resident status holder fails to report new address or change of address within 90 days. The government explains that annulment may not be executed if such failures are found for legitimate reasons, including the need to escape from DV. However, the Immigration Bureau makes it difficult for the migrant women to make a claim that they are DV victims. Thus, the revision increases the fear among the migrant women that they may lose their resident status.

Furthermore, on June 14th, 2011, the Ministry of Justice issued a notification "On treatment of application for renewal of residence duration by those in litigation or consultation over divorce." This publication worsened the legal situation of women whose relationship with spouses deteriorated and who had separated.

Moreover, it remains unclear what criteria are being utilized to change a person's status from that of the "spouse of Japanese citizen" to the "permanent resident" after the divorce. There are cases in which divorced migrant women are not allowed to renew their resident status if they do not have custody of a child with former Japanese spouses. Consequently, a number of divorced migrant women eventually become separated from their children. Because of the fear of losing resident status, many migrant women hesitate to report DV or run from their abusive husbands, which makes DV problems faced by migrant women more serious and unnoticed.

In addition, effectuation of the Hague Convention in April 2014 may make migrant women in Japan further vulnerable because measures to protect migrant women and their children from DV and child abuse are not sufficient. The Convention may prevent migrant women from escaping from their spouses and further violate their rights.

3. Recommendations to the Japanese Government (GOJ)

- i. GOJ should collect the data and conduct a research on the situation of migrant women. The results should guide the development of concrete measures to "prepare an environment in which foreign nationals can live safely" as laid out in the 3rd Basic Program for Gender Equality.
- ii. GOJ should conduct a survey on the problems of DV facing migrant women; should sponsor a research on kinds of measures that is taken by local municipalities to help victims of DV. In addition, GOJ should provide appropriate training on the problems of DV to the relevant offices.
- iii. GOJ has a duty to set up specialized offices that can provide comprehensive services for migrant women facing DV, including counseling, protection and living assistance.
- iv. GOJ should reconsider rules on resident status of spouses of Japanese citizens, such as the annulment of resident status based on 2009 revision of Immigration Control Law, from the standpoint of DV prevention and protection of victims.
- v. In order to ensure that the Immigration Bureau respond to DV victims in an appropriate manner, migrant women should be informed about their rights and GOJ's policies. Officials should be provided training and clear guidance on how to recognize DV victims.
- vi. GOJ should engage in research on how effectuation of Hague Convention affects migrant women and children, and takes effective measures in order to prevent DV and other abuses and to redress victims.

In the following cases the Immigration Bureau did not approve requests to change resident status of migrant women who were divorced or bereaved from "spouse of Japanese citizen" to "long-term resident."

Case 1

A Korean woman came to Japan in March 2011 on short-term stay visa, and in the same month got married to a Japanese man. As a spouse of a Japanese citizen she became eligible for a change of her legal status from a visitor to a resident. This change was approved in July. However, in May her husband started using violence against her. In addition, because the couple's apartment was damaged due to the Tsunami disaster, they moved to his parents' home. His parents also verbally abused her. In December, she was able to secure living arrangements separate from her husband. However, in February 2012, the husband managed to confine her and beat her. The attack lasted for hours. The police has arrested him, but they convinced his wife to drop the accusation. In April 2013, she got divorced from her husband. In July, she applied to have her visa as spouse of a Japanese citizen renewed, but her request was turned down. The Immigration Bureau explained that the reason that her visa was denied was because of the short duration of her marriage. In addition, the bureau felt justified in its decision because the woman did not consult with the Bureau before divorce. If she had consulted with the Bureau she might be recognized as a DV victim. However since she got divorced without consulting the office, she is no longer recognized as a DV victim. After all, it is unclear how the victim was supposed to know her rights as a victim of DV.

Case 2

In February 2009, a Korean woman visited a public women's center to ask for protection from DV from her husband. In addition, from February to September 2009 she called number of NGOs for counseling. She was exposed to brutal violence from her husband on daily bases. Her neighbors witnessed the violence and called the local law enforcement on several occasions. The police had to intervene multiple times. She was overstaying her visa, but legally married to the Japanese spouse for several years. In April 2010, she presented her case to the Immigration Bureau. In July she was granted a special permission to stay. Although she did not report DV to the Bureau, however, the bureau had been provided the information about the domestic abuse from other sources. She separated from her spouse. With the money she inherited from her father, she rented an apartment for her husband. The separation brought the end to DV. Meanwhile, the husband became severely ill and was in need of welfare assistance. His case worker convinced the women that her husband would have a better chance of receiving welfare benefits if they would be divorced. She followed the caseworker's advice and in November, 2011 eventually got divorced. In January 2014, her request to change resident status to long-term resident was turned down. The Immigration Bureau explains that the reason why it declined her visa request was because she had been effectively married to her former husband only for six months, namely, between April 2010 when she presented her case to the Bureau and September 2010 when she separated from her husband.

(Information provided on May 5, 2014)

Para.10 *Rights of Migrant Workers*

1. Introduction

In reply to the list of issues, The Japanese government stated in paragraph 82 that “[t]he [Ministry of Health, Labour, and Welfare] MHLW suggests that business establishments above a certain size appoint leaders who play a central role in ensuring a fair selection and recruitment system in their business establishments. Prefectural Labor Bureaus and Public Employment Security Offices hold training sessions for those leaders.” This system, however, lacks effectiveness.

2. Background

First, as The Japanese government mentioned, business establishments “above a certain size,” – which is above around 50 employees, depending on prefectures—are “suggested” to have such leaders. According to the official figure, around 10 million employees out of 40 million are employed in companies less than 50 employees in Japan. This means roughly a quarter of the whole employees in Japan are out of such system by MHLW. Given the fact that many migrant workers are working in small and medium size businesses, they cannot be ensured for fair selection and recruitment process.

Second, there is no incentive for businesses to appoint such leaders who ensure a fair selection and recruitment system. In this system, Prefectural Labor Bureaus and Public Employment Security Offices are supposed to give guidance to businesses with the cooperation of municipalities; however, this is after all “suggestion” or guidance, which poses no punishment against businesses that failed to appoint the leaders. Even though employers face an administrative penalty, such penalty is limited to not being allowed to announce job vacancy or recruit through Public Employment Security Offices: employers can easily find a way out by using private employment agencies instead.

3. Recommendations to the Japanese Government (GOJ)

GOJ should take effective measures to ensure fair selection and recruitment system, so that migrant workers are not discriminated through recruitment process.

Arts.7, 9 and 13 Expulsion and detention of aliens

Para.18 *Deportation, the Principles of Non-refoulement, Rights of Asylum Seekers and Irregular Migrants*

1. Introduction

Regarding the list of issues paragraph 18 (a), Japanese government (GOJ) replied to the Human Rights Committee (the Committee) that during the deportation procedures the foreign nationals are asked their opinions about where they are going to be deported. Afterwards, the supervising immigration inspectors decide the destination; thereby ensuring conformity with the principles of non-refoulement. However, after the decision regarding the destination for deportation is made, the only way to object to the decision is to file a suit against the orders of the authorities. In practice this means that the deportation can be carried out during the period of six months, that is often during the time during which the lawsuit is being prepared.

Regarding the list of issues paragraph 18 (b), there is a growing concern about the independence of procedure whereby asylum seekers file an objection to the denial of their status as a refugee.

Regarding the list of issues paragraph 18 (c), there has been no report that the Immigration Bureau took disciplinary measures against its officers who, during a deportation operation, used restraining devices prohibited by Article 20 of Act on Treatment of Inmates, and whose excessive force to subdue the deportee resulted in his death. The Immigration Bureau does not have a system that ensures effective remedy and compensation for the deportees that are ill-treated.

2. Background

List of issues paragraph 18 (a)

If a foreign national wishes to express that there is “a fear of prosecution” in a destination where s/he will be deported and that the deportation order has a fault, s/he needs to file a suit for the revocation of the deportation order. However, even if a foreign national successfully filed a law suit, the possibility of deportation still persists, unless the court accepts the stay of her/his appeal for the stay of enforcement of the deportation order. Therefore, there is a fear that the enforcement of deportation order that does not comply with the principles of non-refoulement may take place during abovementioned procedure.

A foreign national most likely has no choice but to mandate a lawyer in order to file a lawsuit for revocation of the deportation order. Most of asylum seekers cannot even mandate lawyers for application of refugee status; many fail to file a suit for the revocation of the deportation order within the specified period. The statute of limitations for filing a lawsuit is six months; therefore a deportation operation without foreign nationals' wills may not be compatible to the principles of non-refoulement.

Moreover, it is immigration inspectors, not refugee inquirers, who initially decide whether or not there is "a fear of prosecution" in destination countries within the procedure of Enforcement of Written Deportation Order. It is unclear how immigration inspectors decide on destinations and whether or not they have an opportunity to analyze current situation of asylum seekers' countries of origin. The context in which the decision about the destination is made and its procedure remain ambiguous. Thus, it seems that "appropriate destination" is decided in incorrect manner.

List of issues paragraph 18 (b)

As indicated by The Japanese government's reply to the Committee, in 2005, Refugee Examination Counselor System was introduced to deal with appeals of objections against denials of refugee status,. However, there have been a growing concern that the committee's decision is actually influenced by the Immigration Bureau, because the System is not independent from the Bureau, its secretariat rests within the Bureau, and information of asylum seekers' countries of origin is provided by the Bureau.

Furthermore, in 2013, Ministry of Justice overturned the decision by the counselors favoring giving seven applicants refugee status. Though the counselors operate as a consultative body without rights to make an authoritative decision, their opinions had been upheld till then.

On June 9, 2014, The Japanese government proposed a bill related to the current system of appeal against negative asylum decision. According to this bill, even though facts explained by an asylum seeker in his/her written document submitted in filing the objection have been found as true, the Japanese government "does not need to offer an opportunity of oral hearing for asylum seekers, if it is determined to be inappropriate to provide such an opportunity, because these facts do not involve a ground for refugee status or because of other reasons". This may strip away asylum seekers' chances of oral hearing. Moreover, "other reasons" can also deprive the chances of oral hearing. What constitutes "other reasons" is unclear, which can be interpreted in unlimited way by the authorities. The Refugee Examination Counselors are said to be the ones who actually make a decision on which asylum application is "determined to be in appropriate." There is a room for arbitration. Coherency of decisions depends on the availability and commitment of individual counselors. Further, the counselors are not full-time employees and they have to deal with a number of appeals during a limited time. As a result, the counselors often end up leaving

administrative work at the Immigration Bureau. This dependency opens a way for de-facto influence by the Bureau, the authority which makes a negative asylum decision in the first place.

List of issues paragraph 18 (c)

On March 22nd, 2010, a Ghanaian man (Abubakar Awadu Suraj) died by suffocation (though The Japanese government appealed the court decision that determined it as such) during deportation operation. During the operation, Immigration Bureau physically restrained him in excessive manner by using illegal restraining devices (towels and cable tie), which are not allowed according to Article 20 of Act on Treatment of Inmates, in addition to handcuffs, and forced him take a fatal restraining physical position. Later, his family brought a state compensation suite. The court examination of the immigration officer revealed a customary usage of illegal restraining devices against deportees even before Mr. Suraj's death. Furthermore, in practice immigration officers can stop video recording of their operation at any time. In case of Mr. Suraj's death, the video was stopped right after Mr. Suraj's body was carried by the officers into the aircraft, after which he died. Accordingly the court examination revealed that the deportation has been operated in a lawless manner.

For such cases, effective remedy and compensation are largely absent. Ill-treated foreign nationals and their families have no choice but file a law suit in order to seek the truth and attain justice for an unfair treatment. The wife and the mother of Mr. Suraj filed a suit, and bear heavy financial burden such as revenue stamps, initial retainer fee for lawyers, and translation fee. The two women managed to continue the court procedure by asking for the suspension of payments and borrowing money. In practice, only those who are fortunate to encounter volunteer lawyers or have support from NGOs can appeal for just remedy against unjust treatment by authority.

In another case, The Japanese government collectively deported 75 undocumented Filipinos with chartered flight. Among them were those who were preparing for filing an action for the revocation of deportation order and those who did not agree with their deportation orders because of the potential to lead to family separation. Effective remedy and compensation were not available to those deportees.

Furthermore, many of these deportees had lived in Japan for more than 20 years. 30 Filipinos refused deportation because they had been in a relationship with or de facto state of marriage with other foreign nationals with legal status. Seven Filipino deportees reported that they have children in Japan.

All male deportees were handcuffed when they were escorted out from the detention room for eight to nine hours and un-cuffed 30 minutes before the arrival at Manila Airport. The handcuffs were not released even when the detainees ate food or when they used the restroom. The door of the restroom was kept open while deportees were inside, being under surveillance by the Immigration officers.

As mentioned in the Japan's reply to the list of issue paragraph 18(a), a foreign national to

whom a deportation order has been issued must be “deported promptly to the destination” according to the Article 52, paragraph (3) of the Immigration Control Act. This means that foreign nationals continue to face deportation at any time, unless they successfully file a suit for revocation of written deportation order and the court accepts the revocation.

The Japanese government prioritizes its immigration policy, especially during deportation procedure, over non-refoulement principle or protection of family unification, stipulated in international human rights laws.

3. Recommendations to the Japanese Government (GOJ)

- i. GOJ should refrain from deportation against the will of foreign nationals during the statute of limitations for filing a suit for revocation of written deportation order, in order to ensure full respect of the principles of non-refoulement.
- ii. GOJ should thoroughly investigate existence of “a fear of prosecution” in deciding deportees’ destinations and clarify the base of such decisions and procedure.
- iii. Appeals of objections against denials of refugee status should be processed independently from the authority of the Immigration Bureau, which has a bias since it makes contested decision not to give the refugee status in the first place.
- iv. GOJ should stop undue treatment during deportation; and take measures to assure the unity of families.
- v. GOJ should establish independent organization that specializes in investigation, resolution (including failing a suit) and compensation for incidents that occurred under the immigration authority.

Para.19 *Rights of Detainees*

1. Introduction

To ensure detainees’ access to legal aid, the Bar Associations make free consultation visits to some of the detention facilities as part of their voluntary initiatives. However, detainees’ access to legal aid is not guaranteed at all detention facilities. Mandatory detention of people to whom the deportation order was issued is legally authorized. People are detained without any limitation on duration of detention, and the monitoring of long period detainees by the authority is conducted only semiannually. Furthermore, as the standard for assessing absconding risk is unclear, it is likely that individuals are detained unnecessarily. Undocumented parent and child who show no absconding risk are detained separately; parents in the Immigration Bureau detention facilities, and the children in child care facilities. For instance, the cases where only fathers were detained amounted to 15 as of

31 October 2013; the cases where children were sent to care facilities amounted to 11 in the year 2012 according to Ministry of Justice. Even pregnant women without any absconding risk are reportedly being detained. For instance, one pregnant woman was in detention as of 31 October 2013 according to Ministry of Justice.

Medical services provided at detention facilities are especially of concern. Most of facilities do not have full-time physicians and instead have part-time physicians who only work during the daytime. Even if detainees request to see a doctor at an outside medical facility, they are expected to wait for a very long time.

2. Background

Prolonged detention is mainly caused by the legal system, which allows for mandatory detention without any limitation on how long they would be detained after the deportation order is issued. Another problem with this system is that it is not the court that adjudicates whether an individual should be detained or not, but rather the authority at the Immigration Bureau. As of October 31, 2013, according to the Immigration Bureau data, 302 out of 973 detainees (31 percent) were in custody for more than six months, and 149 people (15.3 percent) were in custody for more than one year.

As to alternatives to detention, the Japan Federation of Bar Association, the Ministry of Justice, and the civil society have discussed and implemented an alternative to detention pilot project, in which those who apply for refugee status at an airport would not be detained. However, in practice, there are only few cases to which the Immigration Bureau has decided to apply the alternative to detention; in the two-year pilot program, there were only 12 people to whom the alternative to detention applied. Furthermore, because the program is not included in the national budget, it is funded solely by NGOs.

In cases where both the parent and the child, or only the parent are undocumented but do not show any absconding risk, the parents are detained in the Immigration Bureau detention facilities and their children are placed in child care facilities, thus separating the children from their parents. Furthermore, even pregnant women without any absconding risk are being detained. In 2014, it was reported that a pregnant woman who was detained despite of severe nausea (morning sickness). As she was engaged to a Japanese man, she had no absconding risk.

In order to ensure detainees' access to legal aid, the Bar Association currently provides the legal counseling and bears the financial burden. Their service is only available at some detention facilities. Even at facilities where detainees have access to the Bar Association via telephone, they are expected to communicate in Japanese. Therefore, access to legal aid in detention facilities is still very limited.

One of problems regarding the treatment of detainees is medical services. Two people died while they were detained at Higashinihon (East Japan) Immigration Center; one died on March 28,

2014 and the other on March 30, 2014. The one who died on March 28 was a 33-year-old Iranian man who choked on food during a meal. After complaining of hernia-related pain and a headache, he was prescribed sleeping pills, antidepressants, and painkillers; the concern of overdose of these medications lingers on though not confirmed. His steps were incredibly infirm to the point that he needed assistance. The individual who died on March 30 was a 40-year-old Cameroonian man, who had stated that he has HIV AIDS and also suffers from severe diabetes, which made it barely possible for him to walk from his bed to the bathroom. Another detainee in the same block, protested that the Cameroonian man be given medical care at an outside medical facility. A staff member promised to take him to a hospital, and transferred the Cameroonian man to a different block. Subsequently, on March 30, a staff member at the Higashinohon (East Japan) Immigration Center found in the infirmary a man who had become ill. The man was then transferred to a hospital in an ambulance, but later died. As March 29th and 30th were a weekend, the detention facility's part-time physician was unavailable.

Higashinohon (East Japan) Immigration Center has the capacity to hold 600 detainees and currently holds 250~300 detainees. Thus, only one temporary physician is insufficient for such a large facility. It is becoming increasingly common for detainees to have to wait for more than a month, after they request to go to an outside medical facility. In other detention facilities, a physician is present for only twice a week. In all detention facilities, the use of painkillers and antidepressants is common. Therefore, improvement of medical services at the Immigration Bureau detention facilities is an important issue that requires immediate attention.

The Immigration Detention Facilities Visiting Committee has two regional committees, each covering half of the country. The Committee reports that the regional committees made seven visits and five visits respectively, from July 2012 to June 2013, and that each held four forum discussions. As the Immigration Detention Facilities Visiting Committee, this is not sufficient. As the Immigration Bureau is responsible for the Secretariat work of the Committee, its independence is a concern. The Committee needs to be a permanent institution independent of the Immigration Bureau. Unless it is capable of conducting fact-finding investigations and follow-ups of recommendations, the Committee cannot be an effective institution.

3. Recommendations to the Japanese Government (GOJ)

- i. GOJ should establish a government-funded system that ensures detainees' access to legal aid
- ii. GOJ should implement alternatives to detention effectively and take measures to prevent long period detention
- iii. GOJ should take immediate measures to improve both medical system within detention facilities and access to medical treatment
- iv. GOJ should take an action to make the Immigration Detention Facilities Visiting Committee a permanent institution that is independent of the Immigration Bureau

Art.8 Elimination of slavery and servitude

Para. 23 *Human Trafficking*

1. Introduction

Regarding the list of issues paragraph 23 (a), even with the implementation of the “Action plan against Trafficking in Persons 2009”, no effective results have been seen. With this plan, the government made clear its intention to include trafficking for the purpose of labor exploitation, but after 4 and half years, no such prosecutions have been made.

Regarding the list of issues paragraph 23 (b) on identification of victims, the “Victim Identification Manual” was published in June 2010. Although the Immigration Agency’s measures have not been published, with the government using a stricter definition of trafficking, and with the brokers becoming more sophisticated, the number of recognized cases has fallen.

At present, most women victims are admitted into public women’s shelters, with no resident interpreters, and no concrete measures are taken to prevent becoming a victim again. They are simply given food and shelter and at most cooperate with the police/prosecutor investigations as they wait for their return to their home country. They do not receive any legal support to claim unpaid wages nor to sue for damages caused in the course of trafficking. Women do not receive any services for recovery from the damage. Referrals to the government agency or NGO in the country of origin are not sufficient.

No protective measures exist for male victims.

The IOM contributions are mostly used for travel back to the home country, and no effective support for social reintegration have been verified.

Regarding the list of issues paragraph 23 (c), some training for police and immigration officers have been implemented. However, training for judges and prosecutors is close to nothing. (What the government refers to as “training” is nothing more than 10 minutes of explaining the UN Protocol and Japan’s Action Plan.)

Regarding the list of issues paragraph 23 (d), information related to the criminal prosecution of arrested victims (regarding the indictment and sentencing) are not made public so are unclear.

2. Background

(1) Number of cases identified as trafficking in persons

Statistics on trafficking released by the government are limited to the number of victims and investigations the government identified as trafficking. The government identifies trafficking when there are criminal offences involved and its scope is very limited. As a result, cases that the government understands as involving trafficking are not reflected in the statistics when they are not

identified as trafficking cases. The number of cases identified as trafficking has decreased due to the government's strict definition and also the increased sophistication of the traffickers' methods. The government does not intend to review its narrow identification standards nor conduct active searches for victims.

(2) Identification of victims

Victims of trafficking are not eligible for any protection unless recognized as "victim" by the government. People in the public sector still have a classical image of trafficking being "foreign women chained and forced into prostitution".

There have been cases where Immigration, Police and the Prosecutor made different and inconsistent conclusions. The conclusion differs depending on which agency met with the victim first.

Trafficking in persons by utilizing the "Entertainer" visa became an issue. Recruiters then started to use other visa status' such as "spouse of Japanese national", "Long-term residence". There are brokers arranging marriages with Japanese men, arranging for recognition of children by Japanese men, and adoption by Japanese. A large number of these recruiters are exploitative in nature. There are cases of Japanese women trafficked but these cases are not recognized.

Quite a large number of foreigners, both women and men, are engaged in work in very poor working conditions. This is not limited to trainees. Among them are cases of trafficking. The government included labor exploitation within the scope of trafficking in their Action plan against Trafficking in Persons 2009. However there has not been a single case of a labor trafficking victim recognized by the government in spite of the numbers of labor trafficking cases reported by NGOs.

(3) Training of staff

Training of staff at related government agencies is limited to Police and Immigration. There is no training of staff at the Labor Standard Office and there is hardly any training given to staff at Women's shelters, nor to Prosecutors and Judges.

(4) Victim protection

Women victims are now rarely admitted at private shelters where staff have experience in dealing with trafficking cases and can provide help in various languages. In public women's shelters where the majority of victims stay, there are no resident interpreters. Women are simply given food and shelter. All they are able to do is cooperate with police/prosecutor investigations and wait for their return to their home country. They do not receive any legal support to claim unpaid wages nor to sue for damages caused in the course of trafficking. Women do not receive any services for recovery from the damage nor programs to prevent becoming a victim of trafficking in the future. Referrals to the government agency or NGO in the country of origin are not sufficient.

As for male victims, no protective measure exists at all.

The Japanese government states that "a possible victim of trafficking should be treated with

care and protection of human rights even though the person might be found not to be a victim” (“Treatment of Victim Protection,” Meeting among related departments on Trafficking in Persons, July 1 2011). How each agency takes this into consideration is not clear.

(5) Prevention of trafficking in persons

Eradication of the demand for trafficking is at most importance for Japan where trafficking in persons is rampant. However, its provision is very weak.

For sexual exploitation, the majority of demands rest on men. But, there are women who accept and watch without taking any action. The society accepts sexual exploitation and criticizes those who speak up against it. Social norms are shaped by the legal and social systems. The legal system that allows sexual exploitation to continue indicates there are serious problems in it. In the legal framework related to sexual exploitation, there are certain constraints if the victim of exploitation is under 17 years of age. Rape, assault, prostitution, trafficking or prostitution for the aim of production of child pornography, production, possession, transfer of child pornography for the aim of production is punishable by criminal law. However, simple possession is not subject to violation of law. When the victim is over 18 years of age, there are hardly any legal constraints. Rape and assault is subject for criminal charge but a required condition for the application of the law is much too limited which prevents its application to actual cases. There is no law that controls the activities of mediators for international marriage, recognition of children and international adoption.

For labor exploitation, the government amended the immigration law in 2009 to stop exploitation among trainees. However it is only a part of labor exploitation that has been mentioned over and over before the amendment of the law. The root of the problem still remains. Foreign workers are treated as cheap labor and its demand continues.

The government has produced materials for human rights education. It is reported that public sectors conducted advocacy campaign to stop trafficking in persons through school education, to employers, and the general public who are the consumers of sexual services. However the education is far from enough and does not lead to preventing trafficking.

3. Recommendations to the Japanese Government (GOJ)

- i. GOJ should establish a procedure of identifying victims of trafficking in persons through analyzing various cases of trafficking. Care and protection should be given if needed even before identification as a victim.
- ii. Trainings should be given to all Labor Standard Officers, Prosecutors, Judges and others who are in positions to enforce the law towards the identification of trafficking in persons and victim protection. The training should include rights and reflect needs of victims.
- iii. GOJ should establish a shelter which provides care and support for victims of trafficking. The staff should be experienced in handling cases of trafficking in persons and capability in

- various languages should be ensured. Shelters for men should also be established.
- iv. A legal support system to claim for unpaid wages and indemnity must be established. Illegal profit should be confiscated and put into a fund which can be used to compensate victims if they cannot claim their indemnity or unpaid wages from the perpetrator.
 - v. Trafficking in person for sexual exploitation
 - The Anti-Prostitution Law, Appropriate Entertainment Business Law, Controls on Pornography should be revised.
 - There should be close monitoring of activities by brokers mediating international marriage, recognition of a child, international adoption, and appropriate measures must be established.
 - vi. Trafficking in persons for labor exploitation
 - Abolish the false trainee system
 - Upon establishing a new system, human rights protection such as the application of labor standard laws, prohibition of racial discrimination, elimination of brokers' intervention, and approval of family accompaniment should be ensured.

Para. 24 *Rights of Migrant Workers under Technical Intern Training Program*

1. Introduction

(1) Overview

In July 2010, the Industrial Training and Technical Internship Program, which had repeatedly come under criticism for various human rights violations including human trafficking, has been reformed to a new system called Technical Intern Training Program, centered on technical internship by “technical interns”. However, there is an extremely wide gap between the Government’s public discourse and the reality; while the system is claimed to be aimed for “international cooperation”, which means to assist the development of professionals who would contribute to the economies of the developing countries, in practice the technical interns are being used as “extremely cheap labor” in Japanese medium, small and micro companies which are suffering from labor shortage. Thus the trainee system remains controversial.

This program is responsible for an increase in number of human rights violations, including exploitation of unskilled labor, confiscation of passports, low wages, raking off from wages in many forms, enforced savings, unpaid overtime work, intensified restrictions through regulations of “guarantee deposit” and “penalty charges”, sexual harassment and sexual violence, arbitrary termination of contracts of those who claim their rights – resulting in their forced return to their own country without any compensations or even payback of “guarantee deposit.”

(2) Comments on the Japanese Government’s replies to the list of issues

① Paragraph 264

The Japanese Government states that trainees are now covered by labor protection laws, and that the structure of the guidance and supervision provided by supervising organizations has been strengthened.

However, even under the former system, labor protections laws already covered trainees from their second year in Japan, and even so, violation of labor protection laws and human rights violations have been widely taking place.. Therefore, it is not true that protection of trainees have been practically strengthened as a result of the amendment of the Immigration Control Act.

Moreover, while the Government's Reply states that the guidance and control of the employers by supervising organizations was strengthened, treatments such as low wages, unpaid labor, forced saving, forcibly sending unwilling trainees back to their home countries, denial of access to means of communication including mobile phones, restrictions on mobility of trainees and including prohibiting them from going outside at night or staying outside overnight, are carried out under the leadership of supervising organizations themselves. Therefore, guidance and control of the hiring companies (or, "implementing organizations" within the system) by supervising organizations has no actual effect at all.

On the contrary, in regards to the structure of the guidance and control provided by supervising organizations, the public sector evaluation carried out in April 2013, by the Ministry of Internal Affairs and Communications has pointed out that "Within the auditing of supervisory organizations, there is still a lack of a framework to ensure a just and fair auditing of organizations performing trainings which have certain interests. Moreover, the auditing ability of supervisory organizations is inadequate". In concrete terms, in regards to cases which have been recognized by the Immigration Bureau of the Ministry of Justice as wrongful acts and which had been audited by the supervising organizations at the same time, the supervising organizations failed to point out the wrongful acts in as many as 81 out of 83 agencies.

② Paragraph 65

The Japanese Government states that cases such as sexual exploitation and forced labor faced by trainees are recognized as wrongful acts and are met with strict measures.

However, up to the present, there has never been a single case which has been recognized as a wrongful act falling under the "Prohibition of Forced Labor" in Article 5 of the Labor Standard Act. Namely, "[a]n employer shall not force workers to work against their will by means of physical violence, intimidation, confinement, or any other unfair restraint on the mental or physical freedom of the workers." In fact, the penalty for wrongful acts is merely a "suspending acceptance of technical interns" and there are no provisions on direct punishments for offenders, which results in a serious lack of effectiveness of this system.

Furthermore, the Labor Standards Inspection Agencies undertook on-site investigation on work places where technical interns work: 3,145 places in 2010, 2,748 places in 2011, 2,776 places

in 2012. The office found cases of violation of the labor laws among these work places: 2,328 cases in 2010, 2,252 cases in 2011, 2,196 cases in 2012. Though the office directed employers for necessary correction, none of the cases were recognized as violation of Article 5 of the Labor Standard Act. Therefore, definition of forced labor by Labor standards Inspection Office can be considered to be too restrictive, posing a doubt that even actual forced labor cases in the international standard are not considered as cases in need of guidance or redress.

③ Paragraph 266

The Government replied that it is strengthening the surveillance structure and proactively clarifying the real conditions in the workplace.

However, the surveillance by the Immigration Bureau is very limited in terms of clarifying the reality of working conditions experienced by the technical interns. Categories of wrongful acts include “Confiscation of passports and residence cards”, “Collection of guarantee deposits”, and forcibly sending technical interns back to their home countries against their will. All of these actions are supposed to fall into the larger category of “Acts that seriously violate human rights”. Yet, since July 2010, when the new Immigration Control Act came into effect, the number of cases recognized as these three actions has been reported as zero every year.

It was only in 2013 when cases that fall under these three categories were finally reported: one case of “confiscation of passports and residence cards,” two cases of “collection of guarantee deposits,” and two cases of “acts that seriously violate human rights.”

This result does not mean that there have been little cases of such wrongful act; it means that the Immigration Bureau is failing to recognize the wrongful acts which are widely committed. In fact, the Immigration Bureau has not acknowledged as wrongful acts and neglected even the cases where a forcible sending home of technical interns was recognized in the court.

④ Paragraph 268

The Government claims that an organization undertaking the Appropriate and Effective Promotion Program of Technical Intern Training Program (In effect, the Japan International Training Cooperation Organization (JITCO)) carries out peripatetic audits, and informs relevant administrative bodies of serious violations.

However, the public sector evaluation carried out by the Ministry of Internal Affairs and Communications has revealed that the peripatetic audit by JITCO is ineffective: according to the evaluation, out of 60 cases which were acknowledged as wrongful acts in 2011, JITCO’s audit had failed to point out 59 cases.

While there are approximately 30,000 organizations performing trainings, JITCO’s peripatetic audits cover only 9,000 organizations annually, and aim to have each organization audited only once in every three years. In addition, JITCO’s visit for audit is informed announced to the accepting organizations in advance, allowing the company to prepare to avoid having any violations discovered.

There are even number of cases where companies camouflage payroll books and order the technical interns to answer questionings with replies in favor of the accepting organization.

In addition, the public sector evaluation carried out by the Ministry of Internal Affairs and Communications has revealed that the reports given to the relevant administrative bodies by JITCO were inadequate; out of 23 major cases that were revealed from 2009 to 2011, only 8 reports were made.

⑤ Paragraph 269

The Government stated that Labor Standards Inspection Agencies “adopt strict attitudes, including sending cases to the public prosecutor’s office, in response to serious and heinous violations of labor standards-related laws and regulations.” In fact, the agencies pointed out 2,196 cases of violation of labor related laws out of 2,776 work places of technical interns in 2012. This higher rate of violation among work places of technical interns implies the irrelevance of the whole system which the government insist is “international cooperation and contribution.”

In addition, only 15 cases where implementing organizations are involved were sent to prosecutor’s office because of violation of labor standards-related laws, while 1,133 of such cases were sent to prosecutor’s office as a whole (only 1.3 percent). In general, the cases sent to prosecutor’s office from Labor Standards Inspection Agencies are very limited in the first place: the agencies undertook regular inspection to 134,295 work place in 2012; it pointed out 91,796 cases of violation of labor standards-related laws (rate of violation was 68.4 percent); only 1,133 cases were sent to prosecutor’s office out of 91,796 cases (1.2 percent). In the cases of work places of technical interns, only 15 cases were sent to prosecutor’s office out of 2,196 cases (0.7percent), much lower than 1.2percent . According to these figures, it can hardly be said that the Labor Standards Inspection Agencies “adopt strict attitudes, including sending cases to the public prosecutor’s office.”

⑥ Paragraph 270

In regards to sexual harassment, the Government stated that the Prefectural Equal Employment Offices take a tough line in regards to this issue.

However, the authority given to Prefectural Equal Employment Offices through the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment is very weak; namely, it is limited to offering advice, guidance and recommendation. There has been 9,981 consultations related to sexual harassment received in Prefectural Equal Employment Offices throughout Japan in 2012 in total (among which 6,387 is from employees), while the number of applications for conflict-solution assistance is 231, and the number of applications for arbitrations is 45. Moreover, the information whether or not complaints from technical interns are included in this number or how many complaints are reported by technical interns, is not made public.

Furthermore, while there are counseling corners for foreign residents in each prefectural labor

department, there are no Prefectural Equal Employment Offices which are capable of consultation in English or other languages.

2. Background

(1) Program overview and international criticisms

In recent years, the number of migrant workers with resident status of trainees and interns entering Japan was at its peak of more than 100,000 people annually, slightly decreasing after the Lehman crash in September 2008 to around 80,000 annually in 2009-2012. As a result, the number of foreign trainees and interns living in Japan used to be at a level exceeding 200,000 in its peak, while nowadays assumed to be approximately 170,000. By nationality, technical interns from China are the largest in number, accounting for almost 60percent - 70percent . There are also a large number of technical interns from Vietnam, Indonesia, Philippines and Thailand.

In recent years, human rights violations entailed by this system drew strong concerns from the United Nations (the U.N.), and its problems have been repeatedly pointed out by various U.N. bodies including the Concluding Observations by the Human Rights Committee (August 2009, Paragraphs 39-40), the report of Ms. Joy Ngozi Ezeilo, the Human Rights Council Special Rapporteur on Trafficking in Persons (May 2010, Paras 26-46, 43, 49, 104, 118, 119), and the report of Mr. Jorge Bustamante, Special Rapporteur on the Human Rights of Migrants (March 2011, Paras 38-41). In addition, the Trafficking in Persons Report by the U.S. Department of State has mentioned this issue every year since 2007.

These documents share the same concerns over labor exploitation and trafficking in persons, and demanding effective measures and improvement of the system by the Japanese Government.

Especially, the report by Mr. Bustamante touches upon “payment of very low wages...the obligation to perform excessive and underpaid or unpaid overtime, restrictions on freedom of movement and private life, such as limitations in the use of phones or mail or in the possibility to leave the place of work and residence”, and also reports on “violence and sexual abuses, including rapes”. The report also mentions the revision of the immigration system in 2010, and states that “the structure of the programme effectively remains the same, and does not introduce a mechanism through which technical interns can directly have access to an effective protection system” (Paragraph41).

(2) The problematic nature of this system revealed by the Japanese Government itself.

Since 2006, the Labor Standards Bureau of the Ministry of Health, Welfare and Labor annually issues the report on the “Situation of Supervising and Referral to Prosecutors for Ensuring Labor Conditions of Foreign Technical Interns”. This is an organized data from investigations of the implementing organizations by the labor standards inspector. According to the report, out of 2,276 cases investigated in 2012, violations of legislations related to labor standards were found in

79.1percent or 2,196 cases, and 15 cases were sent to prosecutors.

Also, the Immigration Bureau of the Ministry of Justice issues a document called “On Recognition of Wrongful Acts”, disclosing the situation on unjust acts related to the training and technical internships. At its peak in 2008, 452 cases were recognized as wrongful acts, then the number temporarily decreased (163 cases in 2010), only to start increasing again in 2011 and recording as many as 230 cases in 2013. The contents of the wrongful acts include “Committing violence against a technical intern and causing physical injuries including facial and head contusion requiring 18 days of medical treatment”, “Confiscating technical interns’ passports without their consent”, “Not paying wages to ten technical interns for nine months, resulting in accumulated unpaid wages of 8,600,000 yen”.

In addition, the wages of technical interns are required to be on “the equal level as Japanese employees” by a ministerial order based on the Immigration Control Act, but in reality their wages are at the level of minimum wage, at a lower level than newly-hired, junior-high graduate Japanese employees. (JITCO White Paper)

(3) Issues found from the consultations from technical interns to NGOs.

High number of cases involves employers who force technical interns to work for long hours with low wages, and furthermore pay them only approximately half of the minimum wage for overtime labor. In addition, there are also a considerable number of cases where unjustly large amount of money is taken away from these low wages, in various forms including charge for living arrangements, utility cost and bedding rental fee are withheld from wages, and certain amounts are further subtracted as forced saving, and as a result, the actual income falls below the living standard. .

Moreover, there are cases where employers take away identification documents including passports in the name of “safekeeping”. In addition, sending organizations are systematically organizing contracts in which technical interns who are unable to complete their programs lose a large amount of money as guarantee deposit, or are made to pay penalty fees (there are even cases where the intern was made to sign a debt certificate of as much as 800,000 yen).

There are also many cases where technical interns who make complaints to accepting organizations regarding the working conditions are threatened to be forcibly send back to their home countries or are actually forcibly send back. As a result, the power balance between technical interns and accepting organizations become extremely uneven, forming a major contributing factor to human rights violation.

A major contributing factor is related to the policy that ties the technical interns to their receiving organization and does not allow them to choose or change their accepting organizations. Consequently, there is no freedom of choice regarding the workplace.

As described above, the Technical Intern Training System bears many problems; despite the fact, public institutions which can provide consultation for these problems and solve them remain

inadequate. Immigration Bureaus have limited human resource, and their language support system is poor. Although consultation corners are established in supervisory organizations after the reform of the system, it lacks in actual effect because in many cases, the supervisory organization itself is the performer of the wrongful act.

3. Recommendations to the Japanese Government (GOJ)

- i. Given that the gap between the professed aim of the program (international cooperation) and actual aim of accepting cheap labor is causing human rights violation in various ways, GOJ should abolish the Technical Intern Training Program and reform the system to one that straightforwardly accepts foreign workers, in order to seek a fundamental improvement of the situation.
- ii. At the least the following measures should be undertaken with regards to the current system:
 - Establish a basic law on technical internship and a governmental institution that bears all responsibility related to the system
 - Establish a public consultation institution with adequate authority, and accept consultations in each language
 - Take concrete measures to stop accepting organizations from forcibly sending technical interns to their home countries against their will before the completion of the program period
 - Make a bilateral agreement with sending countries, encourage the improvement of sending organizations and make efforts to ensure soundness of the system.
- iii. There is currently a move towards the launch of an “urgent measure”, which would enable technical interns who completed their program to work for additional 2-3 years under the resident status of “designated activities visa”, in order to fill the labor shortage in the area of construction given the Tokyo Olympics/Paralympics to be held in 2020. However, under a system based on the Technical Intern Training Program which bears multiple problems including human rights violations, there is a high chance that there will be situations which cannot avoid international criticism. Therefore, the systems of the “urgent measure” should be planned completely separately from the Technical Intern Training Program.

Art.12 Issues where committee's recommendations are not implemented

Rights to Return to "One's Own Country" (General Comment 27)

1. Introduction

The Human Rights Committee's (the Committee) Concluding Observation adopted after consideration of Japan's fifth periodic report (CCPR/C/JPN/CO/5) stated that "[t]he Committee is concerned that many of its recommendations made after the consideration of the State party's fourth periodic report have not been implemented. The State party should give effect to the recommendations adopted by the Committee in the present as well as in its previous concluding observations

However, a number of the recommendations have not been implemented. Among them is that of paragraph 18. When the Committee considered the fourth periodic report of Japan in 1998, it stated that "Article 26 of the Immigration Control and Refugee Recognition Act (Immigration Control Act) provides that only those foreigners who leave the country with a permit to re-enter are allowed to return to Japan without losing their residents status and that the granting of such permits is entirely within the discretion of the Minister of Justice. Under this law, foreigners who are second- or third-generation permanent residents in Japan and whose life activities are based in Japan may be deprived of their right to leave and re-enter the country. The Committee is of the view that this provision is incompatible with article 12, paragraphs 2 and 4, of the Covenant. The Committee reminds the State party that the words "one's own country" are not synonymous with "country of one's own nationality". The Committee therefore strongly urges the State party to remove from the law the necessity to obtain a permit to re-enter prior to departure, in respect of permanent residents, for instance persons of Korean descent born in Japan" (CCPR/C/79/Add.102).

The Japanese government ignored the recommendation by the Committee when it revised the Immigration Control Act in 2009. Reentry to Japan for foreign nationals, including permanent residents, remains to be considered as a form of a "permission," given based on the discretion of the Minister of Justice.

2. Background

As of December 2013, about 1,038,000 foreign nationals live in Japan permanently. Those who have lived in the country for a long term hold "permanent resident status" (around 665,000), and those from former Japanese colonies –mainly from Korea and Taiwan-- hold "special permanent resident status" (around 373,000). For most of these foreign nationals living in Japan permanently, Japan is the basis of their livelihood, not their countries of their nationalities.

Not being guaranteed a return to Japan, these permanent residents, under some circumstances

may need to give up their plans to travel abroad. This means they are deprived of freedom of movement between Japan and other countries. When the fingerprinting system was in operation in the 1980's, The Japanese government took retaliatory measures against foreign nationals who refused to be fingerprinted, not permitting their reentry to Japan. For example, there were 107 of such cases recorded between 1982 and 1988.

The Committee “urged” Japan to “remove from the law the necessity to obtain a permit to re-enter prior to departure, in respect of permanent residents like persons of Korean origin born in Japan,” and adopted General Comment 27 regarding article 12 of the Convention in 1999. The wording of the article 12, paragraph 4, does not distinguish between nationals and aliens. Thus, for each person "his/her own country" is broader than the concept "country of his/her nationality". It further stated “It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to a given country, cannot be considered to be a mere alien. Moreover, the language of article 12, paragraph 4 permits a broader interpretation that might embrace other categories of long-term residents”.

However, the Japanese government ignored the recommendation by the Committee and General Comment 27 when it revised Immigration Control Act. Re-entry permit system that entirely rests within discretion of Minister of Justice still remains and introduced “a special re-entry permit system” (paragraph.230-232 in the sixth periodic report). Though the Japanese government explains, “a re-entry permit will not be required in principle,” it no way recognizes the rights to re-enter Japan for foreign nationals.

For example, one of migrant women with “permanent resident” status who is married to Japanese lost her resident status after a special re-entry permit system became in effect. Even though she explained to immigration officer at the airport she would re-enter Japan, her travel was regarded as permanent departure from Japan. It was only after a Member of the Diet and NGOs addressed the issue and negotiated with Ministry of Justice, she regained her permanent residency. The Ministry of Justice dealt with the issue afterward by issuing a ministerial notice among immigration officers at the border, which says, “a smooth departure procedure is being undermined and some cases of losing resident status have been reported”.

As this example illustrates, it is important to remember that “the right of a person to enter his or her own country” in the principle has never been realized.

3. Recommendations to the Japanese Government (GOJ)

- i. GOJ should amend relevant legislations to allow all foreign residents to freely leave and re-enter Japan during their duration of stay.
- ii. Especially, GOJ should urgently amend relevant legislations to clearly recognize the right of return for foreign residents with permanent residents and special permanent residents.

Arts.24 and 26 Rights of the child

Para.25 *Migrant Children's Nationality, Inheritance Rights and Birth Registration*

1. Introduction

(1) Acquisition of nationality

The Nationality Act was amended on December 12th, 2008 (effective January 1st, 2009), making it possible for children born out-of-wedlock and without acknowledgement by the father prior to birth to acquire Japanese nationality, if the father acknowledges the child by the child's age of maturity (20 yrs. old) and the acknowledgement is reported to the Minister of Justice (Japanese Nationality Act, Art.3, Sec.1)

(2) Inheritance

The Civil Code was amended on December 5th, 2013 (Civil Code, Art.900, Sec.4), making the share of inheritance among legitimate and illegitimate children equal.

(3) Birth Registration

A lawsuit was filed challenging Article 49 of the Family Registration Act as an illegal form of discrimination. The lawsuit argues that Article 49 requires the parent to indicate whether the child is legitimate or not in the birth registration form., The court of first instance (Tokyo District Court) upheld the plaintiffs' position; however the Tokyo High Court reversed and rejected the plaintiffs' position, and the Supreme Court in 2009 rejected the plaintiffs' appeal. A lawsuit challenging the constitutionality of the same provision was commenced in 2011; however, the plaintiffs' position has been rejected by both the court of first instance and by the appellate court, and the case is now on appeal to the Supreme Court.

2. Background

On April 12, 2005 we instituted a joint lawsuit against the Japanese government at the Tokyo District Court, arguing that Article 3 of the Japanese Nationality Act violated Article 14 of the Japanese Constitution (equal protection under the law), as it discriminated against children acknowledged after birth in the acquisition of Japanese nationality on the basis of the parent's marital status. The District Court sided with the plaintiffs, while the Tokyo High Court reversed and rejected the plaintiffs' position. On June 4th, 2008, the Supreme Court of Japan held that Article 3, Sec. 1 of the Japanese Nationality Act violated Article 14 of the Japanese Constitution in making the marriage of parents a prerequisite for acquisition of nationality. Abiding with the decision, the Nationality Act was amended on December 12, 2008 (effective January 1st, 2009), permitting

children to acquire nationality if they were acknowledged by their father even if the parents had not been married.

However, while after the amendment of the Japanese Nationality Act in 2008, children acknowledged by their father could have their application for nationality filed by their mother alone, the legitimate children could not have their application submitted by the mother alone due to the requirement for the joint exercise of parental authority under Article 818, Sec. 3 of the Civil Code. This would require the active cooperation of the Japanese father, which would ironically make it more difficult for the legitimate children to acquire Japanese nationality compared to children who are born out of wedlock. In many cases, the Japanese fathers of legitimate children residing abroad are in Japan without any communication between them, or are not on good terms, and the children could not receive the cooperation of the fathers in applying for Japanese nationality. It is virtually impossible to receive cooperation from such fathers in the process of applying for Japanese nationality at Japanese Embassies and Consulates. It is therefore necessary that the Ministry of Justice and the local Legal Affairs Bureaus, as well as Japanese Embassies and Consulates refrain from unreasonably insisting on the joint exercise of parental authority, and to provide flexibility depending on the circumstances.

In addition, the review process for acquisition of Japanese nationality by children who had been acknowledged by their father have become unreasonably demanding especially in the case of voluntary acknowledgment, under the name of preventing fraud recognition. In some cases the Japanese Embassies and the local Legal Affairs Bureaus that are charged with processing the applications have demanded excessive documentation beyond what is required by Ministry of Justice regulations, resulting in the elapse of 2 to 6 years from the time of application to the final decision.

In a lawsuit challenging the constitutionality of Article 49 of the Family Registration Act which requires the indication of whether the child is legitimate or not in the birth registration form, both the court of first instance and the appellate court refused to compel the government to certify the residency of a child whose form lacked this information. Nonetheless the government by its discretion registered the child on the family registry on January 10th, 2013, and certified the residency on January 21st. However, the Family Registration Act remains un-amended, and the suit has been appealed to the Supreme Court of Japan.

3. Recommendations to the Japanese Government (GOJ)

- i. GOJ should provide flexibility for the acquisition of nationality by the legitimate children without unreasonably insisting on the exercise of joint parental authority.
- ii. The Embassies, Consulates, as well as the local Legal Affairs Bureaus of GOJ refrain from requiring excessive documentation beyond what is required by the Ministry of Justice regulations in the process of acquisition of nationality under Article 3 of the Nationality Act by children born out-of-wedlock, especially by children who received voluntary

acknowledgment of paternity.

- iii. The Embassies, Consulates, as well as the local Legal Affairs Bureaus of GOJ should take no longer than a year from the time of application to the decision whether to grant nationality, in the process of acquisition of nationality by children born out-of-wedlock under Article 3 of the Nationality Act, especially by children who received voluntary acknowledgment of paternity.
- iv. GOJ should accept birth registration forms that do not indicate whether the child is legitimate or not, and shall promptly record the birth in the family registry as well as certify residency.
- v. GOJ should delete the rubric indicating whether the child is legitimate or not from the birth registration form

Art.26 Issues where committee's recommendations are not implemented

Foreign Nationals Carrying Documentation at All Times

1. Introduction

Recommendations presented by the Human Rights Committee (the Committee) remain ignored by the Japanese legislation. In Paragraph 9 of the Concluding Observation for after the Third Periodic Report of Japan, the Committee pointed out that “The requirement that it is a penal offence for alien permanent residents not to carry documentation at all times, while this does not apply to Japanese nationals, is not consistent with the Covenant”.

Moreover in 1998, in Paragraph 17 of the Concluding Observation for the Fourth Periodic Report of Japan, the Committee stated that it “reiterates the comment made in its concluding observations at the end of the consideration of Japan’s third periodic report that the Alien Registration Law, which makes it a penal offence for alien permanent residents not to carry certificates of registration at all times and imposes criminal sanctions, is incompatible with article 26 of the Covenant. It once again recommends that such discriminatory laws be abolished.”

Conversely, the Japanese government ignored these recommendations in the amendment of the Immigration Control Act in 2009. As a result, permanent residents are required to carry their “Resident Cards” at all times. If they breach this requirement, a penal charge of up to 200,000 yen will be imposed as a criminal punishment, and if they refuse to present the card, they will face a penal charge of up to 200,000 or imprisonment of up to 1 year.

Moreover, although special permanent residents were exempt from the requirement to carry their “Special Permanent Resident Certificate” at all times, they are still required to present it when requested, and if they breach this requirement they will face up to 200,000 yen of penal charge or imprisonment of up to 1 year.

In addition, both permanent residents and special permanent residents face up to 200,000 yen of penal charge or imprisonment of up to 1 year if they fail to renew their resident cards or special permanent resident certificate. Furthermore, if they are sentenced with imprisonment of up to 1 year, they will be subject to the provisions for deportation.

The Japanese government claims that the amended law “is expected to enable respective municipalities to provide enhanced administrative services to foreigners” (Sixth Periodic Report Paragraphs 26-27). However, under the amended law, the permanent residents and special permanent residents are facing requirement to carry resident cards at all times or to present their special resident certificate, with a possible threat of a severe criminal punishment.

2. Background

In 2009, as the amendment of the Immigration Control Act was discussed at the Diet, the Japanese government has responded to questions as follows: “Resident cards are a foundation of the new residence management system which enables the Minister of Justice to continuously keep track of accurate information of mid to long term foreign residents”.

In fact, as seen in <Chart 1>, after the enforcement of the amended law (July 2012), the number of foreigners sent to prosecutors for the charge of “not carrying their resident cards” has increased (the breakdown of their resident status is not disclosed).

In one of the cases encountered by NGO, the foreign national were questioned by a police officer on the street. Since the person happened not to carry the resident card, this individual retrieved the card from home and presented the card to the police. However, the foreign national was interrogated in a police station for a number of hours, had the fingerprints taken for all the 10 fingers and even DNA collected.

In the past, the average number of Korean minority residents who were sent to prosecutors for the charge of not carrying Alien Registration Certificates per year was as many as 3,242 (1954-80). Moreover, the requirement to carry the document severely affected migrants’ daily lives and is perceived as a system of surveillance and intimidation. Currently, while the Alien Registration Act has been abolished, foreign nationals are targeted by the similar system under the amended Immigration Control Act.

In addition, as shown in <Chart 2>, comparing the composition ration of countries origin of the foreigners in general and the composition ratio of countries of the foreigners who were sent to prosecutors for “not carrying their resident cards”, the rate of foreigners from Asian and African countries who were sent to prosecutors are significantly higher. This is clearly a case of racial profiling.

<Table 1> Number of cases sent to prosecutors for not carrying or refusing to present resident cards (Before/ after the enactment of the amended Immigration Control Act)

	Not carrying or refusal to present Alien Registration Certificate	Not carrying or refusal to present passports	Not carrying or refusal to present resident card	Refusal to present Special Resident Certificate
January –December 2011	15	438		
January- June 2012	3	406		
July-December2012		248	* See Note	0
January-September 2013		266	582	0

Source: Documentation from National Police Agency * Note: During the period of 6 months after the enforcement of the amended law, “Not carrying resident cards” was categorized as “other”, therefore could not be calculated.

<Table 2> Number of foreigners by country of origin, and the number of foreigners sent to prosecutors for not carrying resident cards etc

	Countries of origin of foreigners except for special permanent residents (As of the end of 2012)	number of foreigners sent to prosecutors for not carrying or refusing to present resident cards (July 2012- September 2013) * See note
Asia	1,258,269 (76.2%)	980 (89.4%)
Africa	10,855 (0.7%)	22 (2.0%)
Europe	56,671 (3.4%)	31 (2.8%)
North/South America	313,438 (19.0%)	59 (5.3%)
Oceania	12,415 (0.7%)	4 (0.3%)
No nationality	653 (0.0%)	0
Total	1,652,301 (100%)	1,096 (100%)

Source: Documentation from National Police Agency, *Statistic of Foreign Residents*, 2013 Edition by Japan Immigration Association

3. Recommendations to the Japanese Government (GOJ)

- i. GOJ should abolish all criminal punishments for not carrying or refusing to present resident cards and passports for all foreigners.
- ii. There is an urgent need for a legal amendment that abolish the requirement for permanent residents to carry their resident cards at all times and present them, and the requirement for special permanent residents to present their certificates.

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