

The Japan Federation of Bar Associations' Report on the Japanese Government's Third Report on the Convention on the Rights of the Child and the Japanese Government's First Report on the Optional Protocols to the Convention on the Rights of the Child, on the Involvement of Children in Armed Conflict and on the Sale of Children (Additional Information)

## 1. Introduction

Since about July 2009 it has been noted that the Immigration Bureau of Japan has on occasion been taking an unprecedented hard line in its procedures and that these procedures are resulting in violations of children's rights which are hard to ignore.

## 2. On the issue of detention (Government Report, paragraph 124; JFBA Report, paragraph 57)

There is concern that the detention of minors is on the rise (with 11 minors in detention as of November 5. However, because persons under 20 years of age are considered minors under Japanese law, it is not entirely clear how many of these are 18 years of age).

Among those being detained are applicants seeking refugee status who are 16 years of age.

Furthermore, it was our understanding that for more than 10 years there had been no cases of detaining children of primary or junior high school age except as a temporary measure just prior to the return of persons to their home countries. In addition, even in cases where an entire family was without resident status, we were of the understanding that it had been the policy of the Immigration Bureau of Japan to refrain from detaining children (paragraphs 124, 177 and 492 of the Government Report even state that efforts are made to avoid the detention of children). However, the JFBA knows of at least two cases in Tokyo alone in which children (a junior high school student and a fourth grade primary school student), for whom residence status had been sought and for whom a request for a review of their applications had been filed with immigration authorities, were detained. Both students were even attending Japanese schools at the time. In the case of the junior high school student, a preschool age sibling was also placed in detention. In the

practical business of immigration in Japan, lawyers become involved only in a very small number of cases where persons are subject to deportation against their will. Therefore, it is likely that the actual number of children in detention is even higher.

3. On the handling of special residence permits (No mention in the Government Report; JFBA Report, paragraphs 130 – 135)

In July 2009 the guidelines for special residence permits were amended. Prior to their amendment, unlawful debarkation was treated the same as illegal residence and in families where none of the members had resident status, if the children born in Japan (or who had come to Japan during infancy) were of junior high school age, they were granted special residence permits.

However, in the guidelines amended in July, illegal residence was regarded as a positive factor and illegal debarkation as a negative factor in the approval of special residence permits. Although there are reports of children being granted special residence permits when both parents have illegal residence status even when the children are not of junior high school age since then, in cases where the parents have illegal debarkation status, the procedure has changed and special residence permits are not granted irrespective of the age of the children. Nor are special residence permits granted to families of children who have been born in Japan and are of high school age. Forced departure orders are now issued to such families.

Although we do hear information that this treatment has recently changed somewhat, the matter has not been resolved and there are no indications that cases of families issued with forced departure orders since July are being reviewed. On the other hand, there are ongoing incidences of children alone being granted special residence permits, placing upon families the stressful prospect of separation.

4. Enforcement of return (No mention in the Government Report; JFBA Report, paragraphs 130 – 135)

Despite a split court decision of the first instance and the second instance regarding whether foreign parents of children of Japanese nationality should be returned to their respective countries, there are cases where parents have been forced to return to their countries prior to the decision of the Supreme Court.