Japan Federation of Bar Associations Report on Comments by the Government of Japan regarding the Concluding Observations of the Committee on the Elimination of Racial Discrimination (CERD/C/JPN/10-11)
(Alternative Report)

March 18, 2020

Japan Federation of Bar Associations

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I. National Human Rights Institution (Paragraph 10)

1. Recommendations

> The Government of Japan should make clear the time frame for early establishment of a national human rights institution truly independent from the government in compliance with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (The Paris Principles) (hereinafter referred to as "Paris Principles").

2. Reasons

(1) Summary of Comments by the Government of Japan

The Government of Japan has repeated the comments on the Tenth and Eleventh Periodic Reports of the Government of Japan under the International Convention on the Elimination of All Forms of Racial Discrimination[1], arguing that the Government of Japan continues to review appropriately the framework for a human rights remedy system, bearing in mind also the discussions conducted thus far.

(2) Problems in Comments by the Government of Japan

Since abolishing a bill to establish a human rights committee submitted to the Diet in 2012, the Government of Japan has made little effort towards enactment and each of the human rights treaty bodies, including the Committee on the Elimination of Racial Discrimination (hereinafter referred to as "Committee") repeatedly made recommendations to establish a national human rights institution in compliance with the Paris Principles, but there has been no progress until today. In particular, the Convention on the Rights of Persons with Disabilities, ratified by Japan, requires the Member States to establish an institution that monitors the status of implementation of the Convention and carries out human rights redress in compliance with the Paris Principles (Article 33, paragraph 2), and the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), the Convention ratified by Japan, requires establishment of a National Preventive Mechanism (NPM), but Japan has not ratified the Optional Protocol and there is no national institution corresponding thereto in Japan. The Government of Japan reports in the Additional Report on details of the organization of the human rights protection body in the Ministry of Justice and the number of consultations, but

[1] https://www.mofa.go.jp/mofaj/files/000272984.pdf (Japanese)
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fJPN%2f10-11&Lang=en (English)

the body is merely a bureau of the Ministry of Justice and independence from the government is not guaranteed. The body can only take measures for requests, instructions and reports to other institutions, which cannot be considered as an institution in compliance with the Paris Principles.

The JFBA adopted at the 62nd Human Rights Protection Conference held on October 4, 2019 a "Resolution Requesting the Implementation of an Individual Complaints Procedure and the Establishment of a National Human Rights Institution"[2]

Since the Government of Japan accepted the Follow-up of Recommendations concerning Promotion of Establishment of National Human Rights Institution at the Universal Periodic Review (UPR) in 2017 by the United Nations Human Rights Council, it is an urgent task for the Government of Japan to establish as soon as possible a national human rights institution in compliance with the Paris Principles.

II. Situation of the Ainu People (Paragraphs 15, 16)

1. Recommendations

The facts that the Act on Promotion of Measures for the Realization of a Society in which the Pride of the Ainu People is Respected (hereinafter referred to as "Ainu Measures Promotion Act") was enacted and came into effect in May 2019, that the Ainu Measures Promotion Act specified that the Ainu are indigenous people, and that the Ainu Policy Promotion Headquarters was established are commendable to a certain extent. However, as clear responses from the Government of Japan were not indicated to the following Concluding Observations of the Committee, the Government of Japan should give clear responses to the following as well as review and implement specific measures therefor: [1] Step up efforts to eliminate discrimination against the Ainu in employment, education and access to services; [2] Ensure monitoring of the implementation and impact of current efforts, such as the "Third Promotion Policy for the Improvement of Ainu People's Life," and provide information on this and other measures taken to improve the living standard of the Ainu in its next periodic report; [3] Adopt measures to protect the land and natural resource rights of the Ainu, and continue to step up efforts for the realization of their rights to their culture and language; [4] Increase the proportion of Ainu

[2] https://www.nichibenren.or.jp/document/civil_liberties/year/2019/2019_2.html (Japanese)
https://www.nichibenren.or.jp/en/document/statements/2019_2.html (English)

representatives on the Council for the Ainu Policy Promotion and other consultative bodies.

2. Reasons

(1) Summary of Comments by the Government of Japan

Based on deliberation in the Council for Ainu Policy Promotion, the "Ainu Measures Promotion Act" was enacted in April 2019 and came into effect in May 2019. The Act recognized the Ainu people as indigenous people and aims at comprehensively advance a wide range of measures, including regional revitalization and the promotion of industry and tourism and the Act incorporated new subsidies, harvesting products from state-owned forests and salmon fishing, etc., based on the requests of the Ainu people. The "Ainu Policy Promotion Headquarters," headed by Chief Cabinet Secretary was established to comprehensively and effectively promote Ainu measures.

(2) Problems in Comments by the Government of Japan

[1] It is commendable that the Ainu Measures Promotion Act was enacted and came into effect whereby the Ainu were specified as indigenous people. However, Comments by the Government of Japan did not directly respond to the opinions of the Committee. As it seems that the Government of Japan disrespects the opinions of the Committee, the Government of Japan should respond honestly and sincerely.

It was reported that on January 13, 2020, Deputy Prime Minister, Finance Minister and Minister of State for Special Missions, Taro Aso, stated, "There is no other nation but Japan where a single race has spoken a single language at a single location and maintained a single dynasty with a single emperor for over 2,000 years."[3] The Government of Japan should take as soon as possible measures to prevent recurrence of incorrect statements by ministers, bureaucrats and Diet members, etc., based on incorrect knowledge, and make concrete efforts towards measures to realize the rights of the Ainu, including the contents of the Ainu Measures Promotion Act.

[2] It remains a major task to resolve the gap in employment, education and access to services and the gap in living standards between the Ainu living in Hokkaido

[3] Mainichi Shimbun, "Statement of Mr. Aso, 'There is no other nation but Japan where a single race has spoken a single language at a single location and maintained a single dynasty with a single emperor for over 2,000 years' may spark criticism" (January 13, 2020), https://mainichi.jp/articles/20200113/k00/00m/010/149000c

and other residents in Hokkaido.

According to the "Hokkaido Ainu Living Conditions Survey," conducted by the Hokkaido Government in November 2017, regarding the university enrollment rates in particular, there was a difference of more than 12% as 45.8% for people other than the Ainu and 33.3% for the Ainu and regarding awareness of life, 74.9% of the Ainu answered "living in extreme poverty" and "rather poor" in total.[4]

Further, 64% of the respondents indicated economic factor and 22% indicated gender (multiple answers) as the "factor of compound discrimination," and regarding "what is desired for reconstruction of Ainu Policy," 67.6% of the respondents indicated infant and child education, 36.4% indicated living and employment stability, 28.8% indicated preservation and succession of culture, 16.5% indicated improvement of living environment and 14.0% indicated measures for promotion of industry (multiple answers).

Comments by the Government of Japan did not mention at all the above matters, but education and stable life are extremely important and urgent tasks, and further specific measures are required.

[3] Regarding the protection of rights over land and natural resources of the Ainu and the realization of their indigenous rights related to their culture and language, the Government of Japan is planning to open the "National Ainu Museum and Park" (UPOPOY), but this cannot be an alternative compromise.

Although the Committee recommended the Government of Japan to protect rights over land and natural resources of the Ainu, indigenous rights were not specified.

In September 2019, it was reported that salmon fishing was carried out without permission from the Hokkaido Government, based on indigenous rights[5] and it was also reported that thereafter, in February 2020, the Hokkaido Government brought a charge to the Hokkaido Prefectural Police for the suspected violation of the Act on the Protection of Fishery Resources and the Hokkaido Water Fishery Coordination Rules and the papers were sent to the Public Prosecutors' Office.[6] In

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[4] Hokkaido Government "On the Results of Conducting the 'Hokkaido Ainu Living Conditions Survey' in 2017 (Summary)",
http://www.pref.hokkaido.lg.jp/ks/ass/H29_ainu_living_conditions_survey_digest.pdf

[5] Tokyo Shimbun, "Indigenous rights or illegal fishing? Ainu caught salmons without permission; about a dozen for a ceremony" (Evening ed. September 2, 2019),
https://www.tokyo-np.co.jp/article/national/list/201909/CK2019090202000252.html

[6] Tokyo Shimbun, "Suspected of salmon fishing without permission, the papers on a male Ainu sent to a

January 2020, it was reported that the Hokkaido Urahoro Ainu Association would bring a lawsuit against the Government of Japan and the Hokkaido Government, seeking confirmation that regulations under the Act on the Protection of Fishery Resources shall not be applied, based on the indigenous rights of the Ainu, to salmon fishing in the downstream area of the Tokachi River, which is now regulated by the Act.[7]

In light of these developments, it is an urgent task for the Government of Japan to directly recognize the indigenous rights of the Ainu and respond accordingly.

[4] In order for the entire Government of Japan to address the tasks set forth in item [1] through [3] above, opportunities for many Ainu representatives to express their opinions at various levels should be guaranteed and many Ainu people should be invited to forums for Ainu measures as members or witnesses.[8]

III. Intersecting Forms of Discrimination and Violence against Women (Paragraphs 25, 26)

1. Recommendations

The Government of Japan should make clear the reason when it determined to revoked the resident status of "Spouse or Child of Japanese National" or "Spouse or Child of Permanent Resident" by reason that the foreign national fell under the category of "the person stayed in Japan for more than six (6) months without continuously engaging in activities as a person with the status of spouse" and "there is no justifiable reason," indicated in the Immigration Control and Refugee Recognition Act (hereinafter referred to as "Immigration Control Act"), Article 22-4, paragraph 1, item 7.

The Government of Japan should recognize a "justifiable reason" not only for DV (domestic violence) but also for cases where a Japanese husband or a husband with permanent residence is culpable and a spouse of such husband should be excluded

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Public Prosecutors' Office" (Evening ed., February 26, 2020), https://www.tokyo-np.co.jp/article/national/list/202002/CK2020022602000268.html

[7] Hokkaido Shimbun, "Confirmation of Indigenous Rights of the Ainu, the Urahoro Association will bring a lawsuit over salmon fishing regulations in April" (January 14, 2020), https://www.hokkaido-np.co.jp/article/382633

[8] JFBA, "JFBA Report on Response to the tenth and eleventh Report of the Japanese Government of the International Convention on Elimination of All Forms of Racial Discrimination" (March 15, 2018), https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/Racial_discrimination_ja_10.11.pdf (Japanese)
https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/Racial_discrimination_en_10.11.pdf (English)

from the subject of revocation of the status of residence.

The Government of Japan should recognize a "justifiable reason" not only in "cases during divorce mediation or litigation," but also in cases of "amicable settlement," "a claim for spousal maintenance" and "a claim for child custody (designation of a custodian, visitation or contact with child, and a claim for child support expenses)" made to a family court and a spouse involved in such cases should be excluded from the subject of revocation of the status of residence.

The Government of Japan should guarantee a status of residence during the period of dissolving marriage relationships in mediation and litigation, etc.

The Government of Japan should make clear the operation of granting stable resident status such as a "long-term resident," etc., for a foreign national spouse who is separated or divorced, considering her previous residence records, etc.

2. Reasons

(1) Summary of Comments by the Government of Japan

The Immigration Control Act provides for that a status of residence may be revoked in the following cases: where "Spouse or Child of Japanese National" and "Spouse or Child of Permanent Resident" residing in Japan for more than six (6) months without continuously engaging in activities as a person with the status of spouse[9] (except for cases where a justifiable reason exists for residence without engaging in such activities), where a person who newly became a mid- to long-term resident with permission for landing, etc., has not notified the place of residence to the Commissioner of the Immigration Services Agency within ninety (90) days of the date of receiving permission of landing (except when a person has a justifiable reason for not giving notification), and where a mid- to long-term resident has not reported the new place of residence to the Commissioner of the Immigration Services Agency within ninety (90) days from the date of leaving the previous place of residence, which has been notified to the Commissioner of the Immigration Services Agency (except when a person has a justifiable reason for not giving notification) (Article 22-4, paragraph 1, item 7 through item 9) (Paragraphs 17 and 18).

Regarding the above, the Government of Japan states, while appropriateness of revocation of status of residence is determined comprehensively taking into account

[9] The Act does not specify what these activities mean, but we understand that it refers to "living together and spending daily life together," based on the "justifiable reason" illustrated by the Immigration Services Agency.

specific circumstances of respective persons subject to revocation, as concrete examples of not revoking due to "a justifiable reason," it refers to cases "where a person needs to seek temporary shelter or protection from spousal violence (so-called DV (domestic violence))," and cases "where a person needs to seek shelter or protection from spousal violence (so-called DV (domestic violence) and states that it disseminates the information by posting such specific examples on the website of the Immigration Services Agency (Paragraphs 19 and 20).

The Government of Japan has not mentioned anything in response to concerns and recommendations by the Committee other than the above.

(2) Problems in Comments by the Government of Japan

[1] According to the Immigration Services Agency, for five years from 2014 to 2018, there were 145 persons whose status of residence of "Spouse and Child of Japanese National" or "Spouse and Child of Permanent Resident" was revoked by reason of falling under the Immigration Control Act, Article 22-4, paragraph 1, item 7.[10] However, the reason why it was determined that such persons "stayed in Japan for more than six (6) months without continuously engaging in activities as a person with the status of spouse" and that there was no justifiable reason are not publicly explained.[11]

The operation of a revocation system lacking transparency itself makes vulnerable the status of women with foreign nationality having the status of spouse.

[2] The Government of Japan shows, as concrete examples of not revoking the status of residence, those who need shelter or protection due to "spousal violence (so-called DV (domestic violence))," etc.

In the first place, cooperation from a husband with Japanese nationality or a husband with permanent residence is essential for his wife with foreign nationality to acquire such status of residence as "Spouse or Child of Japanese National" or "Spouse or Child of Permanent Resident" or to extend the period of such status and under such system, it is easy for a husband with Japanese nationality or a husband with permanent residence to control his wife with foreign nationality. Therefore,

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[10] Immigration Services Agency, "'Number of Cases of Revocation of Status of Residence' in 2018", http://www.moj.go.jp/content/001303052.pdf

[11] *Id.* This document only refers to the case "where a person residing with the status of residence of "Spouse, etc., of Japanese National" continued to reside in Japan for more than six (6) months after divorce from the Japanese spouse," regarding the Immigration Control Act, Article 22-4, paragraph 1, item 7 as a concrete example of revocation of status of residence in 2018 and it does not mention violence by spouse.

relationships between a husband with Japanese nationality or a husband with permanent residence and his spouse with foreign nationality are those in which spousal violence (herein after referred to as "DV") tends to occur, which is inherently "control by force."

In fact, however, the degree of severity may be questioned even in cases of physical violence with such objective evidence as a medical certificate and photographs. Moreover, for mental, economic or sexual and any other various forms of nonphysical violence, it is difficult to obtain objective evidence and it is highly probable that the fact of violence will not be correctly recognized. In particular, with respect to women with foreign nationality, in addition to DV similar to that against Japanese women, there are various forms of violence, including depriving them of their passports, not allowing them to keep money, demanding assimilation to Japanese life, from foods to customs, prohibiting associations with the same nationals, prohibiting use of their mother tongue, prohibiting sending money to their home country or making telephone calls to their family, prohibiting return to their home country or not giving money to return to their home country. It is highly probable that these factors are not considered at all.[12]

According to the statistics of the Cabinet Office, the number of consultations which Spousal Violence Consultation Centers in Japan received in 2018 from "victims who cannot speak Japanese fluently" was 1,996 cases (out of which consultations by women were 1,987 cases).[13] Under such circumstances where even for Japanese women, only some women consult with the Center, women with foreign nationality rarely consult with the Center due to language barriers. Considering such circumstances, the number of consultations is only the tip of the iceberg and it is extremely difficult for spouses with foreign nationality who are the victims of DV to prove DV with proper support.

Even where a Japanese husband or a husband with permanent residence is an offender of DV, if the period of separation continues for a considerable period of time, it is highly likely that his spouse with foreign nationality will not be permitted

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[12] *See supra* note 8 above and JFBA "How to Utilize Concluding Observations and the Future Tasks based on Review of the Seventh and Eighth Periodic Reports" p.35, https://www.nichibenren.or.jp/library/ja/publication/booklet/data/pam_04_170418.pdf

[13] Cabinet Office, Gender Equality Bureau, "Results of the Number of Consultations on Violence by Spouse received by Spouse Violence Consultation Centers (2018)", http://www.gender.go.jp/policy/no_violence/e-vaw/data/pdf/2018soudan.pdf

to extend the period of residence related to the status of residence as "Spouse and Child of Japanese National" or "Spouse and Child of Permanent Resident" after the Immigration Services Agency determines "the marriage relationship has lost substantial foundations of social life."

In addition, as there is a system of revocation of status of residence (the Immigration Control Act, Article 22-4, paragraph 1, item 7 through item 9), it is in fact difficult for a woman with foreign nationality who is a spouse of a Japanese national or a permanent resident to seek shelter, call the police, or ask for protection from support agencies even in order to flee from her Japanese husband or husband with permanent residence, an offender of DV.

[3] Actual causes for divorce vary. In case where there is culpability on the part of the Japanese husband or husband with permanent residence, not only DV, but also "not giving living expenses" and "extramarital relationships with other women" are also typical causes. The system which permits revocation of status of residence of women with foreign nationality who were forced to accept separation or divorce due to the above-mentioned causes other than DV is too harsh and eventually puts their culpable husbands in a favorable position, which lacks reasonableness.

[4] The Immigration Services Agency indicates "during mediation for divorce or litigation for divorce" as a case which has a "justifiable reason" and is not subject to revocation of status of residence.[14] This refers to cases under divorce mediation or divorce litigation. However, in fact, as there are a considerable number of cases in which a woman only files a petition for amicable settlement between a husband and wife, a claim for spousal maintenance or a claim for child custody (designation of a custodian, visitation or contact with child and a claim for child support expenses) while she worries about and cannot decide to file a petition for divorce mediation after separation and the period of separation elapses for six (6) months. Therefore, a "justifiable reason" should be recognized in these cases as well. Where marriage relationships seem to have failed, if a woman is made to return to her country without completing the procedures for dissolving a marriage relationship, as the procedures for dissolving a marriage relationship in Japan thereafter will be more difficult for both parties. Therefore, it is reasonable to promote procedures

[14] Immigration Services Agency Website, "Q&A of Procedures for Residence Control System", http://www.immi-moj.go.jp/tetuduki/zairyuu/qa.html (Japanese)
http://www.immi-moj.go.jp/english/tetuduki/zairyuu/qa.html (English)

for dissolving a marriage relationship by guaranteeing the status of residence in the process of procedures, such as divorce mediation and/or litigation.

Further, for those who desire to continue to reside in Japan after separation or divorce, operation of granting stable resident status such as a "long-term resident," etc., taking into account her previous records of residence should be clarified[15] and an arrangement of residential status in order should be promoted.

IV. Technical Intern Training Program for Foreigners (Paragraph 32)

1. Recommendations

The Government of Japan should immediately abolish the Technical Intern Training Program and consider alternatives to the Program that will accept foreign workers, sufficiently taking into account protection of human rights of foreign workers; provided, however, that in abolition of the Program, measures should be taken so that technical interns currently residing in Japan will not suffer from disadvantages.

Regarding operation of the Technical Intern Training Program until abolition, proper disposition should be imposed on supervising organizations and training implementation organizations, whose violation was found as a result of the on-site inspection in order to secure the effectiveness of on-site inspection. It should be specified in laws and basic policies, that the on-site inspection shall be conducted by unannounced inspection without prior notification of conducting the on-site inspection.

Execution of a bilateral agreement should be set as a condition for acceptance of interns. Such bilateral agreement should be specific with legally binding force by providing for that acceptance of interns from a country shall be suspended entirely if there was any violation of the agreement on the side of the country.

2. Reasons

(1) Summary of Comments by the Government of Japan

The Government of Japan states that it has taken the following measures to ensure proper implementation of the Program and protect technical interns and has

[15] JFBA, "Statement on the Commencement of the Resident Card and the System of the Basic Resident Registration for Foreign Nationals" (July 9, 2012),
https://www.nichibenren.or.jp/document/statement/year/2012/120709.html (Japanese)
https://www.nichibenren.or.jp/en/document/statements/120709.html (English)

conducted on-site inspection of supervising organizations and implementating organizations by the Organization for Technical Intern Training upon enforcement of the law (Paragraph 8).

The Government of Japan also states that there were supervising organizations and implementating organizations, whose violation was found as a result of on-site inspection and to which a recommendation for improvement was given and that there were some supervising organizations and implementating organizations whose licenses/accreditations was revoked (Paragraph 9).

The Government of Japan states that it has prepared bilateral agreements with countries which dispatch technical interns, conducted surveys on cases of disappearance and death of technical interns and reinforced responses by the government (Paragraphs 10 and 11).

(2) Problems in Comments by the Government of Japan

The causes for frequent occurrence of disappearance and death under the Technical Intern Training Program are such human rights violations as harsh working conditions, including low wages, long working hours and dangerous work, excessive control and harassment. It is necessary not only to strengthen measures corresponding to cases of disappearance and death, but also to prevent the occurrence of such human rights violations, and as these are structural problems of the Technical Intern Training Program, the Program itself should be abolished immediately.

The JFBA has continuously asserted abolition of the Technical Intern Training Program in the following statements, since "Recommendation for Abolition of the Technical Intern Training Program"[16] as of April 15, 2011: "Statement of Opinions Requesting Early Abolition of the Technical Intern Training Program"[17] as of June 20, 2013; "Statement of President on the 'Bill on Proper Implementation of Technical Intern Training for Foreigners and Protection of Technical Intern Trainees'"[18] as of April 24, 2015; Statement of President on Establishment of New Program of 'Acceptance of Foreign Human Resources'"[19] as of May 15, 2018; and "Declaration Calling for the Introduction of a New System to Accept Foreign Workers and the Establishment of a New Society in which People from Various National Backgrounds

[16] https://www.nichibenren.or.jp/library/ja/opinion/report/data/110415_4.pdf
[17] https://www.nichibenren.or.jp/library/ja/opinion/report/data/2013/opinion_130620_4.pdf
[18] https://www.nichibenren.or.jp/document/statement/year/2015/150424_2.html
[19] https://www.nichibenren.or.jp/document/statement/year/2018/180515.html

can Live Together"[20] as of October 5, 2018, but the Technical Intern Training Program, having structural problems, has existed until today and the number of technical interns accepted has increased. In cases of a petition for human rights redress related to Chinese agricultural technical interns and a petition for human rights redress related to the working environment of technical interns, which the JFBA handled, the JFBA recognized human rights violation against technical interns and issued recommendations to the Minister of Justice and the Minister of Health, Labour and Welfare, as of November 28, 2014[21] and February 26, 2020[22] respectively.

The Technical Intern Training Program, which has structural problems that cause human rights violations should be immediately abolished and a new program of acceptance of foreign workers as an alternative to the Program should be considered; provided, however, in abolishing the Program, measures should be taken so that the technical interns currently residing in Japan will not suffer from disadvantages.

In establishing a new program, it shall be designed, taking into account sufficient consideration for human rights protection of foreign workers.

If the current Technical Intern Training Program is allowed to exist for the time being until abolition of the Technical Intern Training Program, the on-site inspection currently conducted has the following problems.

[1] First, although accurate statistics are unknown as of December 31, 2018, only some supervising organizations and implementating organizations were subject to on-site inspection (in particular training implementation organizations). Compared with the extremely large percentage of recognition of violations of the inspected matters, the number of supervising organizations whose license was revoked and implementating organizations whose accredited plan was revoked was extremely small, which casts doubt on the effectiveness of on-site inspection.

[2] If the schedules of on-site inspection are notified prior to implementation, organizations subject to such inspection may make it look as if it appears that they abide by the Program and laws only during the inspection. It should be specified in

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[20] https://www.nichibenren.or.jp/document/civil_liberties/year/2018/2018_1.html (Japanese)
https://www.nichibenren.or.jp/en/document/statements/2018_1.html (English)

[21] JFBA "Case of petition for human rights redress of Chinese agricultural technical interns (Recommendations)" (December 1, 2014),
https://www.nichibenren.or.jp/library/ja/opinion/hr_case/data/2014/complaint_141128.pdf

[22] JFBA "Case of petition for human rights redress of working environment of technical interns (Recommendations)" (February 26, 2020),
https://www.nichibenren.or.jp/library/pdf/document/complaint/2020/complaint_200226.pdf

laws and basic policies, that on-site inspection shall be conducted as unannounced inspection without prior notice.

Currently, bilateral agreements only provide for non-binding targets of governments and the contents of bilateral agreements actually executed remain as abstract "promises." In order to effectively make dispatching organizations follow proper procedures, collection of expenses before dispatch and deposit money in the dispatching countries should be regulated and specific and legally binding provisions should be incorporated into bilateral agreements such as suspension of acceptance entirely from a dispatching country if there has been any act that violates the bilateral agreement on the side of the country.

V. Refugee Issues (Paragraphs 35, 36)

1. Recommendations

The Government of Japan should interpret Article 1 of the Convention Relating to the Status of Refugees (hereinafter referred to as "Refugee Convention") and conduct examinations in compliance with the international standards in refugee status recognition procedures.

The Government of Japan should permit applicants for recognition of refugee status to provisional stay in Japan, actively utilize such alternatives to detention as provisional release to avoid detention to the maximum extent possible.[23]

The Government of Japan should establish the upper limit of detention of six months in principle even where the Government of Japan detains applicants for recognition of refugee status.[24] The Government of Japan should construct a medical system in which detainees can receive adequate treatment in a timely manner at medical institutions independent from the immigration authorities.

The Government of Japan should provide applicants for recognition of refugee status with adequate life security and permit them to work, at least six months after they submitted their applications.[25]

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[23] JFBA, "Proposals on Refugee Status Recognition System and Status of Refugee Applicants in Japan" (February 21, 2014),
https://www.nichibenren.or.jp/library/ja/opinion/report/data/2014/opinion_140221_2.pdf (Japanese)
https://www.nichibenren.or.jp/library/en/document/data/140221_opinion.pdf (English)

[24] JFBA, "Cases of Petition for Human Rights Redress for Long-term Detention at Omura Immigration Center (Recommendations)" (November 25, 2019),
https://www.nichibenren.or.jp/library/ja/opinion/hr_case/data/2019/complaint_191125.pdf

[25] *See supra* note 8.

2. Reasons

(1) Summary of Comments by the Government of Japan

The Government of Japan argues that there are abused or misused applications for recognition of refugee status and the Government of Japan states that citing as an example Syrian refugees, the Government of Japan ensures prompt protection for persons in genuine need and that in 2018, the Government of Japan recognized 42 refugees and even in cases where applicants were not recognized as refugees, the Government permits them to continue to stay in Japan if it is necessary to protect them (Paragraph 21 through Paragraph 23).

The Government of Japan states that while it promptly permits applicants to be recognized with refugee status to work when they are highly probable to be refugees or require consideration from a humanitarian perspective, the Government of Japan does not permit applicants who abuse or misuse the system to be recognized with refugee status to work (Paragraph 24 through Paragraph 27).

Further, the Government of Japan states that it grants provisional stay and provisional release to applicants for recognition of refugee status without status of residence (Paragraphs 28 and 29) and that in treatment of detainees in the immigration detention facilities, the Government of Japan respects their lifestyle, makes strenuous efforts to check their status of health and behavior to prevent accidents as well as provides immigration control officers with education on human rights, etc. (Paragraphs 30 and 31).

In addition, the Government of Japan states that it offers support for living expenses, housing expenses (including provision of temporary resident facilities) and medical expenses to applicants for recognition of refugee status who are facing difficulties in making a living (Paragraph 32).

(2) Problems in Comments by the Government of Japan

[1] In 2018, 10,493 persons applied for recognition of refugee status, but only 42 persons (0.4%) were recognized as refugees in the same year and the total number of protected persons, including those to whom special permission to stay was granted (40 persons), was 82 persons (0.8%).[26] As stated above, the percentage of recognition of refugee status in Japan is extremely low, resulting from the fact that

[26] Ministry of Justice, Immigration Bureau, “Number, etc.. of Persons for whom Refugee Status was recognized in 2018”,
http://www.moj.go.jp/content/001290416.pdf

the Government of Japan interprets Article 1 of the Refugee Convention stricter than the international standards in the refugee recognition procedures.

[2] The system of permission of provisional stay is a system in which deportation procedures are suspended and applicants for recognition of refugee status can lawfully stay in Japan without being detained. Under the system of permission of provisional stay, however, an extensive range of exceptions are provided, including cases where a person applied for recognition of refugee status after a lapse of six months following disembarkation in Japan and where there are reasonable grounds to suspect that the applicant may flee.[27] In 2018, the Government of Japan granted permission for provisional stay to 38 persons, out of 977 persons who requested permission for provisional stay.[28] As stated above, the system of permission of provisional stay has not functioned sufficiently.

[3] Most of the applicants for recognition of refugee status without status of residence experienced detention in immigration facilities and no upper limit of the detention period is provided. While there is a system of provisional release to suspend such detention, provisional release has become rarely permitted due to the Ordinance No. 43 of the Ministry of Justice dated February 28, 2018 and long-term detainees detained for more than half a year have increased dramatically. Hunger strikes to protest long-term detentions have been carried out in immigration facilities all over Japan and some detainees have died from hunger. However, the Government of Japan has not changed its policy and permits provisional releases for only two weeks when detainees become ill, and they are made to return to the detention facilities again. In addition, since 2013, at least five detainees died from illness. Under such circumstances, it is unreasonable not to fix the upper limit of the detention period and to permit physical constraints exceeding six months, in light of many other foreign immigration laws which fix the detention period.

Since September 2015, the Government of Japan has classified cases of application for recognition of refugee status into four categories and started operation to apply different procedures to respective categories.[29] Since January 2018, application on restrictions on work and residence has been expanded to cases

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[27] Immigration Control Act, Article 61-2-4, paragraph 1

[28] *See supra* note 26.

[29] Ministry of Justice, Immigration Bureau, "Refugee Recognition Operations" (December 2017), http://www.moj.go.jp/content/001245719.pdf

where the Government of Japan has determined that probability of recognition of refugee status is low or that there is abuse of the refugee recognition system.[30] Applicants for recognition of refugee status without work qualifications cannot receive public assistance.[31] Applicants for recognition of refugee status without regular status of residence cannot join the National Health Insurance program.[32] On the other hand, support of living expenses, housing expenses and medical expenses for applicants for refugee status recognition is still inadequate.[33]

[30] Ministry of Justice, Immigration Bureau, "Further Review of Operation of Refugee Recognition System for Proper Implementation", http://www.moj.go.jp/content/001244610.pdf

[31] Ministry of Health, Labour and Welfare, Social Security Council, Welfare Section, Expert Committee on the Appropriate Public Assistance System, "Explanation Materials" (June 8, 2004), https://www.mhlw.go.jp/shingi/2004/06/s0608-6a.html

[32] National Health Insurance Act, Article 5 and Article 6, Item 11 and National Health Insurance Act, Enforcement Regulations, Article 1

[33] Social Welfare Corporation, International Social Service JAPAN, "Refugees and Social Resources", https://www.issj.org/refugees/social_resources

Daily living expenses are ¥1,600 per adult and ¥800 per child. Monthly housing expenses are ¥40,000 per single household. Medical expenses are paid at actual expenses, but the upper limit is established and a person must pay in advance.