

# **Observations of Japan on the CMW-CRC Joint General Comment on the Human Rights of Children in the Context of International Migration**

Japan appreciates the opportunity to respond to this joint general comment. Japan is a State Party to the Convention on the Rights of the Child (CRC) and we are firmly committed to carrying out our obligation under the CRC.

## **1. General Observations**

As this general comment is not legally binding, we consider it inappropriate to include words that may suggest such a nature. We therefore would like to request that words such as “shall” and “must” be avoided as far as possible.

## **2. III A 5 Non-refoulement**

### **(1) Paragraph 42**

We understand that the reference on Line 5 to “articles 6 and 37 of the Convention” is referring to the Refugee Convention or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that were mentioned in the preceding paragraph. However, as it seems that the contents of this paragraph and the contents of these conventions (articles 6 and 37) do not correspond, we would like to request clarification on the concrete meaning of this section.

In addition, even if we take it that the “Convention” mentioned in this section is referring to the CRC, as the connection with the principle of non-refoulement is not evident, we would still like to request clarification.

## **3. III B 2 Right to liberty and non-detention**

### **(1) Section as a whole**

This section is based on the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) (as yet unratified by Japan) and the general comment of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW Committee), which take the view that irregular entry or overstaying do not constitute crimes and that migrant children should not be detained. Taking the same view as the CMW Committee as the basis for interpretation of the CRC appears to be a jump in logic, and in addition there is no particular agreement on this matter among the States parties to the CRC.

The right to interpretation of a convention rests with each State party, and there is no reason for the States parties to the CRC that have not yet ratified the CMW to be bound to an interpretation of the CRC that is based on the one sided view of the CMW Committee.

In addition, it is hard for us to say that the views of the CMW Committee, which form the basis for these comments, are appropriate, since they do not seem to have given sufficient consideration to the importance of legal systems for immigration control. Therefore, we consider it inappropriate to make comments related to interpretation of the CRC based on the CMW or on the general comment of the CMW Committee.

(2) Paragraphs 48 and 49

Referring to all of Para 48 and lines 4 to 9 of Para 49, these sections state that irregular entry or overstaying do not constitute crimes and that migrant children should never be detained solely for immigration purposes. However, this view is inappropriate as it has not given sufficient consideration to the importance of immigration control. Protection of the rights of those who have irregularly entered or overstayed in a certain State should be carried out as part of the necessary procedures for each individual case. Therefore, the opinion that in all cases irregular entry or overstaying do not constitute crimes and that those who commit such offenses should never be detained is not appropriate and should be deleted.

The first sentence of Paragraph 49 states that Article 37(b) of the CRC only addresses situations where children are in the context of juvenile justice due to criminal offenses. However, as States parties to this convention have not reached an agreement on such an interpretation, this point should be deleted.

(3) Paragraph 50

The third sentence of paragraph 50 (“In this light, . . .”) mentions that States should expeditiously and completely cease the detention of children on the basis of their immigration status. However, this part should be deleted as it is not appropriate to say that detention measures should be abolished unconditionally. On the contrary, appropriate measures should be taken on a case by case basis for children who have irregularly entered or overstayed in a State. The stipulation in Article 37(b) of the CRC that detention of children should be the last resort and should only be used for the shortest appropriate period of time is made with the premise that even children can be the object of detention. In spite of that, this comment is saying that for reasons of being a migrant, child detention is not permitted and therefore represents a different interpretation of the CRC. In this connection, we have concluded that this is not an appropriate point of view and should be deleted.

(4) Paragraphs 53 and 54

The point that detention should be an exceptional measure in order not to separate children from their parents shows that the Committee places overly great importance on the protection of migrants, and that legal systems for immigration control and maintenance of public order in the relevant State are not given sufficient consideration. In regard to Article 9 of the CRC on the right of children to not be separated from their parents, it is clear that in the case where either the parent or the child commits a crime this right is not ensured. We believe that this lack of balance renders this section inappropriate. As such we believe that it is not appropriate and should be deleted.

(5) Paragraph 55

We also consider that this paragraph should be deleted for being inappropriate. The reason for this is because this paragraph seeks to impose the duty on States of adopting legal systems and practices for the prohibition of child and family detention and it appears to be based on the premise of completely prohibiting the detention of migrant children.

(6) Paragraph 56

The opening sentence of this paragraph up to “liberty” at the beginning of line 2 gives the impression that detention related to migrants violates the rights of all children and is therefore inappropriate and should be deleted.