

Response to the questionnaire on the Human Rights of the Migrants “Migration and the Human Rights of the Child”

<Answer>

Firstly, there is no status of residence in Japan labeled “migrants” nor is there an internationally recognized definition of the word. Therefore, the Government of Japan submits the following information on the rights of the foreign residents as its response to the questions on the human rights of the migrants.

1. Challenges in the implementation of the international framework for the protection of the rights of the child in the context of migration, including in relation to:

(a) The situation of separated and unaccompanied migrant children;

<Answer>

Even in cases where the deportation procedures stipulated in the Immigration Control and Refugee Recognition Act are implemented on the ground that the person does not have the status of residence, children are not detained immediately. The Government of Japan avoids detention of the children as much as possible, and instead, we search for those who take care of the children, send such children to their relatives or to the child guidance center and ask them to protect the children provisionally.

In cases where the children need emergency protection, according to the Child Welfare Law, we take temporary custody at a child guidance center, and when they have to rebuild their lives, we take measures including their admission into the child welfare facility.

Even when they are detained out of necessity, from the perspective of the humanitarian consideration, they are dealt with flexibility including such measures as the granting of provisional release on the day of detention. Even in cases where we can not take these measures, we try to make the detention period shorter by processing deportation procedures or refugee recognition procedures prior to others. Also, because we give consideration to the best benefit of the children, they are detained separately from adult detainees except for their relatives, in principle. In detention facilities, the detainees are given maximum liberty subject to security requirements. They are allowed to use sports equipments, entertaining equipments and read books, and they are also given the chance to exercise in appropriate open air places subject to security and sanitary reasons.

【Reference: Child Welfare Law】

Article 27

(1) A prefectural government shall take a measure set forth in any of the following items with regard to a child for whom a report pursuant to paragraph (1) item (i) of the preceding Article or a referral pursuant to

Article 18 paragraph (2) of the Juvenile Act is made:

- (i) Provide an admonition to the child or his/her guardian, or cause him/her to submit a written pledge;
 - (ii) Cause the child or his/her guardian to be guided by a Child Welfare Officer, a welfare officer for mentally retarded persons, a social welfare secretary, a commissioned child welfare volunteer, or the child and family support center established by said prefectural government, or an official pertaining to the Consultation Support Services performed by said prefectural government, or entrust such guidance to a child and family support center established by a person other than said prefectural government, or to a person other than said prefectural government engaged in Consultation Support Services;
 - (iii) Entrust the child to a foster parent, or admit the child into an infant home, a foster home, an institution for mentally retarded children, a daycare institution for mentally retarded children, an institution for blind or deaf children, an institution for orthopedically impaired children, an institution for severely-retarded children, a short-term therapeutic institution for emotionally disturbed children, or a children's self-reliance support facility; or
 - (iv) Refer the child to the family court if it is found appropriate to submit him/her to the family court's inquiry.
- (2) With regard to a child prescribed in Article 43-3 or 43-4, the prefectural government may, in lieu of the measure set forth in item (iii) of the preceding paragraph, entrust a Designated Medical Institution to hospitalize the child and provide him/her with therapy, etc. equivalent to those that would be provided in an institution orthopedically impaired children or an institution for severely-retarded children.
- (3) When a prefectural governor intends to take a measure set forth in paragraph (1) for a child referred pursuant to the provision of Article 18 paragraph (2) of the Juvenile Act, the prefectural governor shall follow an instruction based on a decision by the family court.
- (4) When the referenced child has a person who has parental authority (excluding the head of a child welfare institution who exercises the parental authority pursuant to the provision of Article 47 paragraph (1); the same shall apply hereinafter) or a guardian of a minor, the measure set forth in paragraph (1) item (iii) or paragraph (2) may not be taken against the intent of said person who has parental authority or said guardian of a minor, except in the case referred to in the preceding paragraph.
- (5) In the case where a measure set forth in paragraph (1) item (ii) or (iii) or paragraph (2) is cancelled, suspended, or changed to any other measure, the prefectural governor shall hear opinions from the child guidance center's director.
- (6) In the case where any of the measures set forth in paragraph (1) items (i) to (iii) inclusive (excluding those taken pursuant to the provision of paragraph (3) and those taken pursuant to the provision of item (i) or the proviso of item (ii) of Article 28 paragraph (1)) or those set forth in paragraph (2) is taken, or in the case where a measure set forth in paragraph (1) item (ii) or (iii) or in paragraph (2) is cancelled, suspended, or changed to any other measure, pursuant to the provisions of a Cabinet Order, the prefectural governor shall hear opinions from the Prefectural Child Welfare Council.
- (7) With regard to a child having terminated his/her compulsory education for whom a measure prescribed

in paragraph (1) item (iii) as specified by a Cabinet Order is cancelled or who is as otherwise specified by a Cabinet Order, the prefectural government may provide consultation and other daily life assistance and lifestyle guidance and support his/her finding employment at the residence where the child is supposed to live communally, or may take a measure to entrust a person resident in any other prefecture to provide said daily life assistance and daily life guidance and employment support at said person's residence, for the purpose of pursuing said child's independence, in accordance with the standards specified by a Cabinet Order.

Article 27-2

(1) With regard to a child who has received a decision on protective custody set forth in Article 24 paragraph (1) item (ii) of the Juvenile Act pursuant to the provision of Article 24 paragraph (1) or Article 26-4 paragraph (1) the same act, the prefectural government shall take a measure to admit him/her into a children's self-reliance support facility in accordance with said decision (excluding a measure to cause him/her to commute there from the residence where his/her guardian lives) or a measure to admit him/her into a foster home.

(2) With regard to the application of this Act, a measure prescribed in the preceding paragraph shall be deemed to be a measure to admit the referenced child into a children's self-reliance support facility or a foster home as set forth in paragraph (1) item (iii) of the preceding Article; provided, however, that this shall not apply when the provisions of paragraphs (4) and (6) of the preceding Article (excluding the portions pertaining to the cases where a measure is cancelled, suspended, or changed to any other measure) apply, and when the provision of Article 28 applies.

Article 33

(1) A child guidance center's director may, when he/she finds necessary, take temporary custody of a child or entrust an appropriate person to do so until a measure set forth in Article 26 paragraph (1) is taken.

(2) A prefectural governor may, when he/she finds necessary, cause the child guidance center's director to take temporary custody of a child or cause said director to entrust an appropriate person to take such temporary custody until a measure set forth in Article 27 paragraph (1) or (2).

(3) The period for temporary custody pursuant to the preceding two paragraphs shall not exceed 2 months from the date of commencement of said temporary custody.

(4) Notwithstanding the provision of the preceding paragraph, a child guidance center's director or a prefectural governor may, when he/she finds necessary, continue the temporary custody pursuant to the provision of paragraph (1) or (2).

(b) Access to social services (ensuring, inter alia, protection of the rights to health, housing, education, water and access to sanitation), including for migrant children in an irregular situation;

1 protection of the rights to health

<Answer>

(1) Health insurance

Health insurance is applied to the regular workers employed by covered places of work regardless of whether they are Japanese nationals or foreigners. Health insurance is not applied to those staying illegally because their employment relationships based on the illegal labor are extremely unstable and they are not regarded as permanent employments. As for the foreign children, generally they are dependents of the insured persons, so that whether Health insurance is applied to them or not depends on whether it is applied to their parents or not.

National Health Insurance conducted by municipalities is applied to the residents of the municipality regardless of whether they are Japanese nationals or foreigners. It is difficult to figure out foreigner's residence if they are not registered on the Alien Registration, and the transients and those staying illegally are not regarded as locating in Japan, therefore those who meet the following conditions fall into the subject of the Health insurance among the foreigners.

1. People who are registered on the Alien Registration
2. People who have the status of the residence stipulated in the Immigration Control and Refugee Recognition Act and are allowed to stay more than 1 year.

(2) Medical services

Medical services are given to the foreign children as the same as Japanese nationals.

2 protection of the rights to housing

<Answer>

In order to relieve concern of the landlords, the Rent Debt Guarantee System which stipulates that housing support center for the elderly guarantees the debt of the unpaid rent of the rented accommodation which accepts the elders and persons with disabilities etc. including the families with children and foreigners has implemented since 2001. The center had implemented 10 cases of the acceptance of rent debt of foreign families by the end of 2009.

3 protection of the rights to education

<Answer>

In case foreign children in Japan wish to enroll in public schools for their compulsory schooling, they are accepted free-of-charge just as they do for Japanese

school children, in accordance with relevant international human rights treaties such as ICESCR. Furthermore, to facilitate the smooth integration of such children into the Japanese educational system, the board of education employs counselors and language support staff who are proficient in the children's mother tongue, to provide the necessary enrollment guidance/advice and instruct them in the Japanese language, respectively.

Also, the Government of Japan supports efforts by municipalities, NPOs and various volunteer groups in establishing and managing Japanese language classes. In addition, to avoid difficulties in accessing educational opportunities from a lack of understanding of the educational system and enrollment procedures, the Government of Japan creates and distributes guidebooks for school enrollment in seven languages (including English and Portuguese).

For guardians facing financial difficulties, municipalities provide Enrollment Assistance for covering various expenses such as stationary and school lunches. The Ministry of Education, Culture, Sports, Science and Technology (MEXT) has been working to ensure awareness in the equal treatment of foreign children, in line with the treatment of Japanese children. In addition, MEXT has implemented Japanese-language instruction and general study skills program, respectively, to facilitate the smooth transfer into public schools of Brazilian children, etc., who have ceased attending school because of recent economic difficulties. The program will be implemented over 3 years (2009 to 2012), as an emergency measure to counter effects of the economic slowdown.

4 protection of the rights to water

<Answer>

The rights of foreign children to water are protected as same as Japanese nationals. For details, please refer to the website hereunder.

http://www.mhlw.go.jp/english/policy/health/water_supply/menu.html

5 access to sanitation

<Answer>

The rights of foreign children to sanitation are protected as the same as Japanese nationals.

(c) Legislative framework and practice in the context of detention and repatriation, including mechanisms to ensure protection from refoulement and to ensure family unity;

<Answer>

(legislative framework)

The Immigration Control and Refugee Recognition Act aims to provide for equitable control over the entry into or departure from Japan of all persons. When the foreigners including those who have entered illegally are to be deported, the Act protects the due process of law of such foreigners as well as it has some stipulations to consider humanitarian factors.

For example, in order to implement deportation procedures appropriately, the Act classifies the grounds for the deportation from Japan, and stipulates the three-staged procedures on the determination whether they fall into the deportation or not: 1)examination by the immigration inspectors, 2)hearing by the special inquiry officers and 3)determination by the Minister of Justice. Furthermore, although the deportation procedures are implemented with the detention of such foreigners, they can be granted of provisional release when they need humanitarian considerations according to their age or health conditions as mentioned above in 1 (a).

When the deportations are implemented, the Government of Japan tries to deport all the family members at the same time unless there are special issues, and deportations to the countries in which they face threats to their lives are prohibited in accordance with the Convention Relating to the Status of Refugees and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(practice)

In addition to the information provided in the above paragraphs as answer to this question and answer to the question 1(a), in the immigration administration, the Government of Japan takes measures appropriately considering not only various conventions on human rights such as Convention on the Rights of the Child but also the various factors such as situation of the family, needs of the humanitarian consideration comprehensively according to each case. As for the deportation procedures and the bond of the families, the Government of Japan will continue to implement the immigration administration in more appropriate manners with full attention to these factors.

(d) Criminalization of irregular migration;

<Answer>

The Immigration Control and Refugee Recognition Act stipulates that the person who entered Japan illegally etc. shall be punished with imprisonment with or without work for not more than 3 years or a fine not exceeding 3 million yen.

In addition, depending on cases, the Article 155 paragraph (1), Article 157 paragraph (2) and Article 103 of Penal Code can be applied, for example.

【Reference: The Penal Code】

Article 155 paragraph (1)

A person who, for the purpose of uttering, counterfeits with the seal or signature of a public office or a public officer, a document or drawing to be made by a public office or a public officer, or counterfeits, with a counterfeited seal or signature of such public office or public officer, a document or drawing to be made by a public office or a public officer, shall be punished by imprisonment with work for not less than 1 year but not more than 10 years.

Article 157 paragraph (2)

A person, who makes a false statement before a public officer and thereby causes the official to make a false entry in a license, permit or passport, shall be punished by imprisonment with work for not more than 1 year or a fine of not more than 200,000 yen.

Article 103

A person who harbors or enables the escape of another person who has either committed a crime punishable with a fine or greater punishment or has escaped from confinement shall be punished by imprisonment with work for not more than 2 years or a fine of not more than 200,000 yen.

【Reference: The Immigration Control and Refugee Recognition Act】

Article 70

(1) Any person falling under any of the following items shall be punished with imprisonment with or without work for not more than 3 years or a fine not exceeding 3 million yen, or shall be subject to the cumulative imposition of imprisonment with or without work and a fine.

(i) A person who has entered Japan in violation of the provisions of Article 3.

(ii) A person who has landed in Japan without obtaining permission for landing from an immigration inspector.

(iii) A person whose status of residence has been revoked pursuant to the provisions of Article 22-4, paragraph (1) (limited to those pertaining to item (i) or item (ii)) and has stayed in Japan.

(iii-2) A person who has received a designation of period pursuant to the provisions of Article 22-4, paragraph (6) (including cases where it is applied mutatis mutandis pursuant to Article 61-2-8, paragraph (2)) and has stayed in Japan beyond the period designated.

(iv) A person who is clearly found to be engaged solely in activities related to the management of business involving income or activities for which he/she has received reward in violation of the provisions of Article 19, paragraph (1).

(v) A person who has stayed in Japan beyond the period of authorized stay without obtaining an extension or change thereof.

(vi) A person who has been granted permission for provisional landing and has fled or failed to appear at a summons without justifiable reason in violation of the conditions imposed pursuant to the provisions of Article 13, paragraph (3).

(vii) A person who has been granted permission for landing at a port of call, permission for landing in transit, landing permission for crew members, permission for emergency landing, landing permission due to distress or landing permission for temporary refuge, and has stayed in Japan beyond the period entered in his/her passport or permit.

(vii-2) A person, who has been designated a period for departure pursuant to the provisions of Article 16, paragraph (9), and has not returned to his/her vessel or departed from Japan within that period.

(viii) A person prescribed in Article 22-2, paragraph (1), who has stayed in Japan beyond the period prescribed in Article 22-2, paragraph (1), without receiving permission pursuant to the provisions of Article 20, paragraphs (3) and (4) applied mutatis mutandis to Article 22-2, paragraph (3), or pursuant to the provisions of Article 22, paragraphs (2) and (3), applied mutatis mutandis to Article 22-2, paragraph (4) .

(viii-2) A person who has been given a departure order pursuant to the provisions of Article 55-3, paragraph (1), and has stayed in Japan beyond the time limit for departure pertaining to the departure order.

(viii-3) A person whose departure order has been revoked pursuant to the provisions of Article 55-6 and has stayed in Japan.

(viii-4) A person who has been granted the permission set forth in Article 61-2-4, paragraph (1), and has stayed in Japan beyond the period of provisional stay.

(ix) A person who was recognized as a refugee by deceit or other wrongful means.

(2) Any person listed in the preceding items (i) or (ii) who has landed and stayed illegally in Japan, shall be punished in the same manner.

(e) Access to the right to identity, including birth registration;

According to the Alien Registration Act, all foreigners in Japan shall apply for registration with the mayor or head of the city, town or village in which his/her residence is located within 90 days of the day of landing in cases where the foreigner has entered Japan or within 60 days of the day of his/her becoming a foreigner or the day of his/her birth or the occurrence of other relevant causes in cases where he/she becomes a foreigner while in Japan or when he/she comes to stay in Japan without following the procedure for landing stipulated in the Immigration Control Act due to birth or other causes (Article 3). The foreigner may apply to the mayor of the city or the head of the town or village for a copy of the registration card or a certificate containing the facts of the registered matters on the registration card of the foreigner concerned (Article 4-3).

At the end of the year 2008, the number of the foreigners registered who are under 19 years of age is 291,528. The number of the children who are staying illegally is unknown (There is no statistic targeted under 18 years of age).

*General explanation (Birth registration in case foreigners give birth in Japan)

Because the Family Registration Act is applied both to nationals and residents (or inhabitants) of Japan, the Act is applied not only to Japanese nationals but also to foreigners as long as they stay in Japan.

Therefore, when foreigners give birth in Japan, regardless of whether the child acquires Japanese nationality or not, his or her parents have to register his/her birth as the same as Japanese nationals. (Article 25 paragraph(2), Article 49, Article 135 of the Family Registration Act, Answer of Director-General of the Civil Bureau on 1949/3/23, Notice of Director-General of the Civil Bureau on 1949/11/10)

When these birth registrations are accepted, the parent-child relationships written in the registration such as legitimacy of the child, the name of the parents etc. are checked if they accord with lawful ones (parent-child relationships). In cases where the children have Japanese nationalities, they are recorded in the family register, by which they are proven and authorized as Japanese nationals. In cases where the children do not have Japanese nationalities, their information is not recorded in the family register, so instead, we keep their registrations so that we are able to certificate their status by their browsing of the notification of the registrations and distributing the certification of the acceptance of the registration and registration matters. (Article 50, Article 66 and Article 66-2 of the Ordinance for the Family Registration Act, Article 48 of the Family Registration Act)

【Reference: Alien Registration Act】

Article 3 (Initial Registration)

(1) All aliens in Japan shall apply for registration with the mayor or head of the city, town or village (in the case of Tokyo, which is divided into special wards or in the case of the cities designated in Article 252-19, paragraph (1) of the Local Autonomy Act (Act No. 67 of 1947), ward; hereinafter the same) in which his/her residence is located, submitting the documents and photographs specified in the following items, within 90 days of the day of landing in cases where the alien has entered Japan (except for cases where an alien who departed from Japan with re-entry permission under Article 26 of the Immigration Control Act re-enters Japan and cases where an alien who departed from Japan with refugee travel documentation under Article 61-2-12 of the Immigration Control Act enters Japan possessing the subject refugee travel document) or within 60 days of the day of his/her becoming an alien or the day of his/her birth or the occurrence of other relevant causes in cases where he/she becomes an alien while in Japan or when he/she comes to stay in Japan without following the procedure for landing provided for in Chapter III of the Immigration Control Act due to birth or other causes:

- (i) One application for alien registration;
- (ii) Passport
- (iii) Two photographs of the applicant

(2) In the case of the application under the preceding paragraph, a person under the age of sixteen years shall not be required to submit photographs.

(3) If the mayor of the city or the head of the town or village finds unavoidable circumstances exist in the case of the application provided for in paragraph (1), he/she may extend the time period prescribed in the same paragraph for a period not exceeding 60 days.

(4) Where an alien has filed the application provided for in paragraph (1), he/she can not make the application provided for under the same paragraph again.

Article 4-3 (Disclosure, etc. of Registration Card)

(1) The mayor of the city or the head of the town or village shall not make the registration cards public, except in cases where an application has been made under the following paragraph (2) to 5 or any other laws.

(2) The alien may apply to the mayor of the city or the head of the town or village for a copy of the registration card or a certificate containing the facts of the registered matters on the registration card of the alien concerned, hereinafter referred to as "certificate of registered matters."

(3) A representative of the alien or a member of the family with the same residence (including such person living together as a spouse without actually being bound by a marriage certificate) may apply to the mayor of the city or the head of the town or village for a copy of the registration card or a certificate of registered matters.

(4) When necessary to utilize the facts recorded on a registration card for a procedure prescribed by law or in order to perform their duties, a national public organization or a local public organization can apply to the mayor of the city or the head of the town or village for a copy of the registration card or a certificate of registered matters.

(5) When necessary to utilize the facts recorded on a registration card for a procedure prescribed by law or in order to perform their duties, attorneys or other persons prescribed in a Cabinet Order may apply to the mayor of the city or the head of the town or village for the issuance of a certificate of registered matters; provided, however, that disclosure of registered matters other than those provided in Article 4, paragraph (1), items (iii) to (vii) and (xv) to (xvii) shall be limited to cases where there is a special need.

(6) The application provided in the preceding three paragraphs must contain the reason for the application and make other facts clear as provided for in the Ministry of Justice Ordinance.

(f) Protection of children left behind in countries of origin;

<Answer>

There is no systematic protection for children left behind in countries of origin. But from the humanitarian perspective, the Government of Japan received 2,669 Vietnamese who were staying in Vietnam and wished to enter Japan to reunite with their family members staying in Japan in the Orderly Departure Program (ODP) from 1981 to 2005.

2. Examples of best practice in the international framework for the protection of the rights if the child in the context of migration, with particular regard to:

(a) National legislation, policies and practice, including mechanisms to address challenges in the international framework for the protection of the rights if the child in the context of migration;

<Answer>

Please refer to the answers to question 2 (b) and (c).

(b) Joint efforts and strategies available at the bi-lateral, regional and international levels to assess and address challenges in the international framework for the protection of the rights if the child in the context of migration;

<Answer>

The Government of Japan implements assistance which aims at the protection and empowerment of migrant children from the perspective of human security in cooperation with various stakeholders including international organizations. For example, through the United Nations Trust Fund for Human Security established by the initiative of Japan, the Government of Japan has assisted the project entitled "Support child friendly environment through community participation in the Democratic Republic of Congo (DRC)" implemented by UNICEF and FAO. In Kinshasa and Bas-Congo provinces of the DRC, prolonged conflict and political instability increased the number of internally displaced persons and caused serious problems in education, health, water and sanitation. The project aims at building a child-friendly environment through the empowerment of people and communities in these areas.

And regarding the movement of persons, the Government of Japan recognizes that international societies as a whole have to make efforts together to tackle the problem of the trafficking in persons. The Government of Japan has consulted with other countries by dispatching an Inter-Ministerial Delegation for research and consultation there and has addressed this problem. In order to eradicate trafficking in persons, "Japan's Action Plan of Measures to Combat Trafficking in Persons" which stipulates efforts of the Government as a whole including prevention and crackdown of the trafficking and protection of the victims was revised in December 2009. The revised Action Plan stipulates crackdown of the child prostitution and child pornography even more strictly including application of the provisions of offenses committed outside of the territorial jurisdiction.

Furthermore, the Government of Japan promotes cooperation with international organizations and relevant municipalities. For example, the Ministry of Foreign Affairs co-

organized the International Workshop titled “International Workshop on Acceptance of Foreign Nationals and their Integration in Japan”, with International Organization for Migration (IOM) and a local Government. in February 2010, and promoted the integration of foreigners as an important element in the local community. In November 2009, H.E.Mr Shinichi KITAJIMA, Ambassador extraordinary and plenipotentiary in Permanent representative of Japan in Geneva was elected as a chairperson in the general assembly of IOM and has worked actively. Also Japan has participated in the discussion in the Global Forum on Migration and Development in a positive manner.

From the point of view of international contribution as well as humanitarian aid, the Government of Japan will start to admit refugees through a pilot resettlement project from the fiscal year 2010. The Government of Japan will admit about 90 Myanmarese refugees in total (about 30 people once a year for 3 consecutive years) from a refugee camp in Thailand.

In addition, the Government of Japan co-organized the symposium titled “Symposium on the Convention on the Rights of the Child ”Challenges for the Rights of Children” ” with UNICEF Tokyo Office and Japan Committee for UNICEF, inviting panelists in Japan and from abroad. More than 100 people participated in the symposium and discussed the issues related to the rights of the child including implementation of the stricter regulation of child trafficking, child pornography and the sexual exploitation of children and the assistance implemented by the Government of Japan in conflict-affected regions such as Afghanistan.

(c) The work of the National Human Rights Institutions and other relevant stakeholders.

<Answer>

In order to address human rights problems on foreigners including those settled in Japan, the Human Rights Organs of the Ministry of Justice put up the slogan “Respect the human rights of the foreigners” as a full-year key issue and the Organs conduct awareness-raising activities such as lecture presentations, public relations and various events for the promotion of the human rights in various parts of Japan throughout the year.

The Organs set the Human Rights Counseling Offices in the Legal Affairs Bureaus, District Legal Affairs Bureaus and their Branch Bureaus which are placed at 323 parts of Japan, and the Organs provide human rights counseling services anytime including the human rights counseling for foreigners. Furthermore, for foreigners who don’t understand Japanese, at the 6 Legal Affairs Bureaus and the 2 District Legal Affairs Bureaus in the cities including Tokyo, Osaka and Nagoya, “The Human Rights Counseling offices for

Foreign Nationals” which allocate interpreters of English and Chinese etc. are open on the designated days.

When the Organs notice a case suspected of discrimination against foreigners in schools or on jobs etc. just because they are foreigners, the Organs start procedures of the investigation and settlement of human right infringement cases, and after investigation, appropriate measures are implemented.

A bill aimed at establishing a national human rights institution independent of the government is now under consideration.