



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

**Excerpts of Concluding Observations and Recommendations from
UN Treaty Monitoring Bodies and from reports by UN Special Procedures
Mandate holders**

Universal Periodic Review:

JAPAN

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations and the Human Rights Council's Special Procedure Reports, relating to issues of interest and persons of concern to UNHCR with regards to Japan.

1. Treaty Body Reports

CRC/C/JPN/CO/3

COMMITTEE ON THE RIGHTS OF THE CHILD, 54th Session

20 June 2010

Non-discrimination

33. The Committee is concerned that, in spite of several legislative measures, children born out of wedlock still do not enjoy the same rights as children born in marriage under the laws governing intestate succession. It is also concerned that societal discrimination persists against children belonging to ethnic minorities, children of non-Japanese nationality, children of migrant workers, refugee children and children with disabilities. [...]

34. The Committee recommends that the State party:

(a) Enact a comprehensive anti-discrimination law and repeal all legislation which discriminates against children on any basis;

(b) Take the necessary measures, including awareness-raising campaigns and human-rights education, to reduce and prevent discrimination in practice, particularly against girls, children belonging to ethnic minorities, children of non-Japanese origin and children with disabilities.

Best interests of the child

37. While acknowledging the State party's information that the best interests of the child are taken into consideration under the Child Welfare Law, the Committee notes with concern that this law, adopted in 1974, does not adequately reflect the primacy of the best interests. The Committee is, in particular, concerned that this right is not formally and systematically integrated into all legislation through a mandatory

process of integrating the best interests of all children, including refugee and undocumented migrant children.

38. The Committee recommends that the State party continue and strengthen its efforts to ensure that the principle of the best interests of the child is given effect and observed in all legal provisions, as well as in judicial and administrative decisions and projects, programmes and services that have an impact on children.

Birth registration

45. The Committee reiterates its concern, noted in its previous concluding observations (CRC/C/15/Add.231), that a number of the State party's regulations have the effect of limiting the possibility to register the births of children born to parents in certain situations, among them undocumented migrants, who are unable to register the birth of their children. These regulations result in a number of unregistered children and create a situation of de jure statelessness for them.

46. The Committee recommends that the State party:

(a) Amend its nationality and citizenship laws and regulations in accordance with the provisions of article 7 of the Convention so as to ensure the registration of all children and protect children from de jure statelessness ; and (b) Consider ratifying the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Unaccompanied refugee children

77. The Committee expresses its concern at the widespread practice of detaining children seeking asylum, even in the absence of allegations of criminal activity, and at the lack of an established mechanism for the care of unaccompanied asylum-seeking children.

78. The Committee recommends that the State party:

(a) Take immediate measures, including through the establishment of a formal mechanism, to prevent the detention of asylum-seeking children, ensure the immediate release of all such children from immigration detention facilities and provide them with shelter, appropriate care and access to education;

(b) Expedite the processing of the asylum claims of unaccompanied children under fair and child-sensitive refugee status determination procedures, ensuring that the best interests of the child are a primary consideration, appoint a guardian and legal representative and trace parents or other close relatives;

(c) Respect international standards in the area of refugee protection, taking into account the United Nations High Commissioner for Refugees (UNHCR) Guidelines on Formal Determination of the Best Interests of the Child and the UNHCR's Guidelines on Protection and Care of Refugee Children.

Trafficking

79. The Committee welcomes the amendment, effective July 2005, of the Penal Code, which established trafficking as a criminal offence, as well as the 2009 Action Plan on Measures to Combat Trafficking in Persons. It notes, however, the lack of information on the resources provided for this action plan, about the coordinating and monitoring body and on the impact of measures to address trafficking, especially in children.

80. The Committee recommends that the State party:

- (a) Ensure effective monitoring of measures to address trafficking, especially in children;
- (b) Ensure that victims of trafficking are provided with assistance for their physical and psychological recovery;
- (c) Provide information on the implementation of the action plan;
- d) Ratify the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

CRC/C/OPAC/JPN/CO/1
OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF
THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED
CONFLICT, 54th Session
22 June 2010

Data

8. The Committee regrets that the State party does not collect data on the number of refugee children, accompanied or unaccompanied, nor on the number of these children present in the jurisdiction of the State party who have been recruited or used in hostilities. It also notes the absence of information on the socio-economic background of the Youth Cadet recruits.

9. The Committee urges the State party to establish a central data system in order to identify and register all children present within its jurisdiction who have been recruited or used in hostilities, in order to identify root causes and put in place preventive measures. It also recommends that the State party ensure that data, disaggregated by age, gender and country of origin, is available regarding refugee and asylum-seeking children who have been victims of such practices. It invites the State party to provide information on the socio-economic background of persons recruited into the Youth Cadets in its next periodic report under the Convention.

Assistance for physical and psychological recovery

16. The Committee regrets the insufficient measures taken to identify children, including refugee and asylum-seeking children, who may have been recruited or used in hostilities abroad, as well as inadequate measures taken for their physical and psychological recovery and social reintegration.

17. The Committee recommends that the State party provide protection for asylum-seeking and refugee children arriving in Japan who may have been recruited or used in hostilities abroad by taking, inter alia, the following measures:

- (a) Identifying, at the earliest possible opportunity, refugee and asylum-seeking children who may have been recruited or used in hostilities;
- (b) Carefully assessing the situation of these children and providing them with child-sensitive, multidisciplinary assistance for their physical and psychological recovery and their social reintegration in accordance with article 6, paragraph 3, of the Optional Protocol;
- (c) Ensuring the availability of specially trained staff within the migration authorities and ensure that the best interests of the child and the principle of

non-refoulement are primary considerations in the decision-making process regarding the repatriation of a child. In this regard, the Committee recommends that the State party take note of the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, in particular paragraphs 54-60.

CRC/C/OPSC/JPN/CO/1

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY, 54th Session
22 June 2010

Positive aspects

4. The Committee notes with appreciation:
- (a) The enactment of the Online Dating Site Regulation Law in June 2003 to combat child sexual exploitation through internet dating sites;
 - (b) The **amendment of the Immigration Control and Refugee Recognition Act** in June 2005 to ensure that victims of trafficking are not subject to deportation;
 - (c) The 2009 Action Plan for Measures to Combat Trafficking in Persons;
 - (d) The 2005 Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism, promoted by the United Nations Children's Fund and signed by representatives of the travel and tourism industry.

National Plan of Action

10. While noting the adoption of the National Action Plan Against Commercial Sexual Exploitation of Children in 2001 and the existence of the National Action Plan for Measures to Combat Trafficking in Persons (2009), the Committee notes the lack of information on the relationship between the two Action Plans, their impact and whether they cover all areas of the Optional Protocol.

- (a) The Committee recommends that the State party:**
- (i) Review and, if necessary, update, the Action Plans with a view to harmonizing their implementation and ensuring the comprehensive protection of all children, taking into account all the provisions of the Optional Protocol;**
 - (ii) Implement the Action Plans in consultation with relevant stakeholders, including children and civil society;**
 - (iii) Ensure that the Action Plans receive adequate human and financial resources and that they include specific, time-bound and measurable goals; and widely disseminate and regularly monitor their implementation.**

CERD/C/JPN/CO/3-6

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION,
76th Session
6 April 2010

Positive aspects

3. The Committee notes with interest the State party's pilot resettlement programme for Myanmar refugees (2010).

[...]

17. While noting the revised Act for the Prevention of Spousal Violence and Protection of Victims (2007) to extend protection to victims regardless of nationality and strengthen the role of local governments, the Committee notes with concern the obstacles to access complaints mechanisms and protection services faced by women victims of domestic and sexual violence. It notes with particular concern that changes to the Immigration Control Act (2009) pose difficulties for foreign women suffering domestic violence. It also regrets the lack of information and data provided about the incidence of violence against women (art. 5).

In the light of its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party adopt all necessary measures to address phenomena of double discrimination, in particular regarding women and children from vulnerable groups. It also reiterates its previous recommendation (para. 22) that the State party collect data and conduct research on the measures to prevent gender-related racial discrimination, including exposure to violence.

23. The Committee notes with appreciation progress on the process of refugee status determination, but reiterates its concern that, according to some reports, different, preferential standards apply to asylum-seekers from certain countries and that asylum-seekers with different origins and in need of international protection have been forcibly returned to situations of risk. The Committee also expresses its concern over the problems recognized by refugees themselves including lack of proper access to asylum information, understanding about procedures, language/communication questions, and cultural disjunctions, including a lack of understanding by the public of refugee issues (arts. 2 and 5).

The Committee reiterates its recommendation that the State party take the necessary measures to ensure standardized asylum procedures and equal entitlement to public services by all refugees. In this context, it also recommends that the State party ensure that all asylum-seekers have the right, inter alia, to an adequate standard of living and medical care. The Committee also urges the State party to ensure, in accordance with article 5 (b), that no person will be forcibly returned to a country where there are substantial grounds for believing that his/her life or health may be put at risk. The Committee recommends that the State party seek cooperation with the Office of the United Nations High Commissioner for Refugees in this regard.

CEDAW/C/JPN/CO/6

COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, 44th Session

7 August 2009

Violence against women

31. The Committee welcomes the various efforts undertaken by the State party to combat violence against women and sexual violence since the submission of its previous periodic report, including the revision of the Act on the Prevention of Spousal Violence and the Protection of Victims (domestic law legislation) which enhances the system for issuing protection orders and requires municipalities to

establish counselling and support centres. It remains concerned that the domestic legislation does not cover all forms of violence within intimate relationships and that the time between a request for a protection order and its issuance may further endanger the victim's life. The Committee is further concerned at the obstacles women victims of domestic and sexual violence face when bringing complaints and seeking protection. It is particularly concerned at the precarious situation of immigrant women, minority women and women of vulnerable groups in this context which may prevent them from reporting cases of domestic and sexual violence. The Committee also expresses concern about the lack of information and data provided about the prevalence of all forms of violence against women.

32. The Committee calls upon the State party to address violence against women as a violation of women's human rights and to make full use of the Committee's general recommendation No. 19 in its efforts to address all forms of violence against women. It urges the State party to intensify its awarenessraising efforts with regard to the unacceptability of all such violence, including domestic violence. It recommends that the State party strengthen its work on violence against women and speed up the issuance of protection orders and open a 24-hour free hotline for counselling women victims of violence against women. It also recommends that the State party ensure that high-quality support services are provided to women, including immigrant women and women of vulnerable groups, in order for them to bring complaints, seek protection and redress, thus ensuring that they do not have to stay in violent or abusive relationships. In this respect, the State party should take the necessary measures to facilitate the reporting of domestic and sexual violence. The Committee recommends that the State party implement comprehensive awareness-raising programmes throughout the country directed at these groups of vulnerable women. It calls upon the State party to ensure that public officials, especially law enforcement personnel, the judiciary, health-care providers and social workers, are fully familiar with relevant legal provisions and are sensitized to all forms of violence against women, and that they are capable of providing adequate support to victims. It urges the State party to collect data and to conduct research on the prevalence, causes and consequences of all forms of violence against women, including domestic violence, and to use such data as the basis for further comprehensive measures and targeted intervention. It invites the State party to include statistical data and the results of measures taken in its next periodic report.

Trafficking and exploitation of prostitution

39. While welcoming the efforts undertaken by the State party to combat human trafficking, such as its establishment of the Anonymous Reporting Model Project, the Committee remains concerned about the persistence of trafficking in women and girls, the exploitation of prostitution, and the lack of measures aimed at rehabilitating women victims of trafficking. While noting with satisfaction the sharp decrease in the granting of entertainment visas, the Committee is concerned at information suggesting that internship and trainee programmes could be used for the purposes of forced labour and sexual exploitation. The Committee is further concerned that prostitutes are subject to prosecution under the Anti-Prostitution Law, while their clients do not face punishment.

40. The Committee requests the State party to take further measures to protect and support victims of trafficking and address the root cause of trafficking by

increasing its efforts to improve the economic situation of women, thereby eliminating their vulnerability to exploitation and traffickers, as well as to take measures for the rehabilitation and social integration of women and girls who are victims of exploitation of prostitution and trafficking. The Committee calls on the State party to take appropriate measures to suppress the exploitation of prostitution of women, including by discouraging the demand for prostitution. It also urges the State party to take measures to facilitate the reintegration of prostitutes into society and provide rehabilitation and economic empowerment programmes for women and girls exploited in prostitution. The Committee requests the State party to continue to monitor the issuance of visas for internship and trainee programmes closely. The Committee calls upon the State party to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

Equal participation in political and public life

41. The Committee is concerned at the low percentage of women in high-ranking positions in the Government, the Diet, the local assemblies, the judiciary, academia and the diplomatic service. It notes the lack of statistics on the participation of minority women in political and public life.

42. The Committee urges the State party to strengthen its efforts to increase the representation of women in political and public life, through, inter alia, the implementation of special measures in accordance with article 4, paragraph 1, of the Convention, and with the Committee's general recommendation No. 25, in order to accelerate the realization of women's de facto equality with men. It encourages the State party to ensure that the representation of women in political and public bodies reflects the full diversity of the population. The Committee requests the State party to provide data and information on the representation of women, including migrant and minority women, in political and public life, in academia and in the diplomatic service, in its next periodic report. It calls upon the State party to consider using a range of possible measures, such as quotas, benchmarks, targets and incentives, in particular with regard to the accelerated implementation of articles 7, 8, 10, 11, 12 and 14 of the Convention.

Vulnerable groups of women

53. The Committee notes the lack of information and statistics about vulnerable groups of women, particularly rural women, single mothers, women with disabilities, refugees and migrant women who often suffer from multiple forms of discrimination, especially in regard to access to employment, health care, education and social benefits.

54. The Committee requests the State party to provide, in its next report, a comprehensive picture of the de facto situation of vulnerable groups of women in all areas covered by the Convention, and information on specific programmes and achievements. The Committee calls upon the State party to adopt gender-specific policies and programmes that would cater to the specific needs of vulnerable groups of women.

CCPR/C/JPN/CO/5
HUMAN RIGHTS COMMITTEE, 94th Session
30 October 2008

23. The Committee is concerned about the lack of statistical data on the (estimated) number of persons trafficked to and in transit through the State party, the low number of prison sentences imposed on perpetrators of trafficking-related crimes, the decreasing number of trafficking victims protected in public and private shelters, the lack of comprehensive support for victims, including interpretation services, medical care, counselling, legal support for claiming unpaid wages or compensation and long-term support for rehabilitation, as well as the fact that special permission to stay is only granted for the period necessary to convict perpetrators and that it is not granted to all victims of trafficking. (art. 8)

The State party should intensify its efforts to identify victims of trafficking and ensure the systematic collection of data on trafficking flows to and in transit through its territory, review its sentencing policy for perpetrators of trafficking-related crimes, support private shelters offering protection to victims, strengthen victim assistance by ensuring interpretation, medical care, counselling, legal support for claiming unpaid wages and compensation, long-term support for rehabilitation as well as stability of legal status to all victims of trafficking.

25. The Committee notes with concern that the 2006 Immigration Control and Refugee Recognition Act does not expressly prohibit the return of asylum seekers to a country where there is a risk of torture, that the recognition rates for asylum seekers remain low in relation to the number of applications filed, and that there are often substantial delays in the refugee recognition process during which applicants are not allowed to work and receive only limited social assistance. It is also concerned that the possibility of filing an objection with the Minister of Justice against a negative asylum decision does not constitute an independent review because the refugee examination counselors advising the Minister upon review are not independently appointed and have no power to issue binding decisions. Lastly, it is concerned about reported cases where rejected asylum seekers have been deported before they could submit an objection against the negative decision on their application staying the execution of the deportation order. (arts. 7 and 13)

The State party should consider amending the Immigration Control and Refugee Recognition Act, with a view to explicitly prohibiting the return of asylum seekers to countries where there is a risk of torture or other ill-treatment, and ensure that all asylum seekers have access to counsel, legal aid and an interpreter, as well as to adequate state-funded social assistance or employment during the entire length of proceedings. It should also establish an entirely independent appeal mechanism, including for applicants who are deemed to be “possible terrorists” by the Minister of Justice, and ensure that rejected applicants are not deported immediately after the conclusion of the administrative proceedings before they can submit an appeal against the negative asylum decision.

CAT/C/JPN/CO/1
COMMITTEE AGAINST TORTURE, 38th Session
3 August 2007

Positive aspects

[...]

5. The Committee also welcomes the adoption of:

(a) The Law for Partial Amendment of Immigration Control and Refugee Recognition (Law No. 73 of 2004)

[...]

8. The Committee also welcomes actions taken by the State party to combat trafficking, and in particular the adoption of the National Plan of Action to combat trafficking in persons of December 2004, and the revisions of the relevant laws and regulations in the Penal Code and the Immigration Control and Refugee Recognition Act.

[...]

Non-refoulement

14. The Committee is concerned that certain provisions in domestic law and practices of the State party do not conform to article 3 of the Convention, and in particular:

(a) The 2006 Immigration Control and Refugee Recognition Act which does not expressly prohibit deportation to countries where there is a risk of torture; in addition, reviewing authorities do not systematically investigate the applicability of article 3;

(b) The lack of an independent body to review refugee recognition applications;

(c) The conditions of detention in landing prevention facilities and immigration detention centres, with numerous allegations of violence, unlawful use of restraining devices during deportation, abuse, sexual harassment, lack of access to proper health care. In particular, the Committee is concerned that, so far, only one case in such a detention centre has been recognized as ill-treatment.

(d) The lack of an independent monitoring mechanism for immigration detention centres and landing prevention facilities, and in particular the lack of an independent agency to which detainees can complain about alleged violations by Immigration Bureau staff members.

The Committee is also concerned that the criteria for the appointment of third-party refugee adjudication counsellors are not made public;

(e) The lack of an independent body to review decisions by immigration officials, in light of the fact that the Ministry of Justice does not allow refugee recognition applicants to select legal representatives at the first stage of application, and governmental legal assistance is de facto restricted for non-residents;

(f) Insufficient guarantees of access to judicial review for all asylum-seekers, and allegations of deportations carried out immediately after the administrative procedure has ended;

(g) The undue length of time asylum-seekers spend in custody between rejection of an asylum application and deportation, and in particular reports of cases of indefinite and longterm detention;

(h) The strict character and limited effect of the provisional stay system adopted in the revised 2006 Immigration Law.

The State party should ensure that all measures and practices relating to the detention and deportation of immigrants are in full conformity with article 3 of the Convention. In particular, the State party should expressly prohibit deportation to countries where there are substantial grounds for believing that the individuals to be deported would be in danger of being subjected to torture,

and should establish an independent body to review asylum applications. The State party should ensure due process in asylum applications and deportation proceedings and should establish without delay an independent authority to review complaints about treatment in immigration detention facilities. The State party should establish limits to the length of the detention period for persons awaiting deportation, in particular for vulnerable groups, and make public information concerning the requirement for detention after the issuance of a written deportation order.

Human rights education and training

22. The Committee notes the allegations of the existence of a training manual for investigators, with interrogation procedures which are contrary to the Convention. In addition, the Committee is concerned that human rights education, and in particular education on the rights of women and children, is only offered systematically to penal institution officials, and has not been fully included in the curricula for police detention officers, investigators, judges or immigration security personnel.

The State party should ensure that all materials related to the education curriculum of law enforcement personnel, and in particular investigators, are made public. In addition, all categories of law enforcement personnel, as well as judges and immigration officials, should be regularly trained in the human rights implications of their work, with a particular focus on torture and the rights of children and women.

Compensation and rehabilitation

23. The Committee is concerned over reports of difficulties faced by victims of abuse in obtaining redress and adequate compensation. The Committee is also concerned over restrictions on the right to compensation, such as statutory limitations and reciprocity rules for immigrants.

The Committee regrets the lack of information on compensation requested and awarded to victims of torture or ill-treatment.

The State party should take all necessary measure to ensure that all victims of acts of torture or ill-treatment can exercise fully their right to redress, including compensation and rehabilitation. The State party should take measures to establish rehabilitation services in the country. The State party should furnish the Committee with information on any compensation or rehabilitation provided to the victims.

Gender-based violence and trafficking

25. The Committee is concerned at continued allegations of gender-based violence and abuse against women and children in custody, including acts of sexual violence by law enforcement personnel. The Committee is also concerned at the restrictive scope of the State party's legislation covering rape, referring only to sexual intercourse involving male and female genital organs, excluding other forms of sexual abuse and rape of male victims. In addition, the Committee is concerned that cross-border trafficking in persons continues to be a serious problem in the State party, facilitated by the extensive use of entertainment visas issued by the Government, and that support measures for identified victims remain inadequate, leading to victims of trafficking being treated as illegal immigrants and deported without redress or remedy. The Committee is also concerned over the lack of effective measures to

prevent and prosecute violence perpetrated against women and girls by military personnel, including foreign military personnel stationed on military bases.

The State party should adopt preventive measures to combat sexual violence and violence against women, including domestic violence and gender-based violence, and promptly and impartially investigate all allegations of torture or ill-treatment with a view to prosecuting those responsible. The Committee calls on the State party to strengthen its measures to combat trafficking in persons, including restricting the use of entertainment visas to ensure they are not used to facilitate trafficking, allocate sufficient resources for this purpose, and vigorously pursue enforcement of criminal laws in this regard. The State party is also encouraged to undertake training programmes for law enforcement officials and the judiciary to ensure that they are sensitized to the rights and needs of victims, to establish dedicated police units, and to provide better protection and appropriate care for such victims, including, inter alia, access to safe houses, shelters and psychosocial assistance. The State party should ensure all victims can claim redress before courts of law, including victims of foreign military personnel stationed on military bases.

2. Reports of Special Procedures mandate holders

A/HRC/17/33/Add.3

HUMAN RIGHTS COUNCIL, 17th Session

Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante

21 March 2011

Conclusions and recommendations

G. Detention of irregular migrant workers and asylum-seekers

49. According to the Immigration Control Act, detention in Immigration Bureau's detention facilities is the rule for irregular migrants and asylum-seekers without valid documents or legal status, although, owing to limitation of space, a number of irregular migrants are provisionally released. **However, a considerable number of irregular migrants and asylum-seekers are detained for very long periods with limited access to judicial processes.** While a legal counsel is allowed to intervene in the procedures of requesting a special permission to stay, such interventions are restricted. Once the permission is denied, the person is detained awaiting deportation.

50. Another concern relates to the fact that there is no time limit for detention, and if the Government cannot deport the person for any reason, it can keep the person detained indefinitely. The Special Rapporteur met irregular migrants and asylum-seekers who had been detained in the East Japan Immigration Centre for around two years. They were in deplorable psychological conditions, detained for a prolonged period of time without having been tried for or convicted of any crime and without knowing whether or when they would be released. As stated by the Committee against Torture in its concluding observations to Japan in 2007 (CAT/C/JPN/CO/1), indefinite detention of migrants or asylum-seekers is contrary to article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

and Japan should establish limits to the length of the detention period for persons awaiting deportation.

Deportation of irregular migrants and asylum-seekers

54. The Special Rapporteur found that the detention and deportation of irregular migrants and asylum-seekers had a severe impact on children. For example, in 2010, he was informed of a case of a Peruvian woman who had lived for 16 years in Japan and was arrested and detained with her 10-year-old child. They were deported the next morning without having the opportunity to meet their lawyer. The child had been born in Japan, attended Japanese school and had very limited knowledge of Spanish. In another case of a family who had been living in Japan for more than 20 years, with a 14-year-old child who was born in Japan and speaks only Japanese, a court ruled that since they did not have a residence permit, the father would be deported to Pakistan and the mother and the child to the Philippines.

55. The Special Rapporteur was also informed of cases of children who were separated from their parents as a consequence of their deportation. In the case of Noriko Calderon, the Immigration Bureau ordered the deportation of the entire family. Thereafter, it conceded special permission to stay to the child only, allowing her to continue her studies under the care of an appropriate custodian. Noriko, a 13-year-old girl who was born in Japan and went to Japanese school with very good results, was forced to choose between her right to education and her parents. She decided that she wanted to continue her education in Japan, and her parents were eventually deported. This case generated fierce debate in the Japanese society.

I. Access

76. Despite some recent efforts to provide protection and assistance to migrants, particularly those who found themselves in difficult situations as a consequence of the economic crisis, Japan still faces serious challenges in ensuring that the human rights of migrants are respected and protected. These challenges include racism and discrimination against migrants, exploitation of migrant workers, a lack of effective interventions by the judiciary and police to protect migrants' rights and the overall lack of a comprehensive immigration policy that aims to integrate them as part of the society and guarantee the protection of their human rights. In order to abide by its international human rights obligations, Japan needs to thoroughly address these challenges.

77. In this context, the Special Rapporteur makes the following recommendations to the Government.

78. In terms of the legislative, institutional and policy framework:

(a) Japan should ratify:

(i) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

(ii) United Nations Convention against Transnational Organized Crime and its two Protocols: the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;

- (iii) Convention on the Rights of Persons with Disabilities;**
- (iv) Optional Protocols to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of Persons with Disabilities;**
- (b) Japan should adopt a comprehensive immigration policy at the national level, guided by international human rights law and standards. Such a policy would need to:**
 - (i) Spell out a commitment to recognizing migrants as a part of the Japanese society, and provide a vision on how to integrate migrants into the society and how to guarantee the effective protection of their rights;**
 - (ii) Establish long-term measures designed to create necessary conditions for this integration to become a reality;**
 - (iii) Promote public mass-media campaigns and educational programmes which focus on positive values that migrants bring to the host society in economic, social and cultural terms. In this context, the Government should give a voice to migrants to express their views and their experience;**
 - (iv) Revise the existing categories of residence permits, based on a realistic assessment of demand for semi- or unskilled labour. Japan should provide for more flexible categories of residence permits in order to accommodate the needs for such labour and to allow migrant workers who currently fulfil these needs to regularize their status.**
- (c) A strong central governmental agency should be established to coordinate, monitor and evaluate the migration policy and its implementation by different ministries. It should be given sufficient powers and resources over the ministries involved so as to effectively guide and coordinate their work and to ensure the wide dissemination and implementation of the recommendations made by the United Nations bodies to the Government;**
- (d) Japan should adopt, as a matter of urgency, national legislation specifically on the prevention and elimination of racism, discrimination and xenophobia, since the general provision included in the Constitution is not effective in protecting migrants from discrimination based on race and nationality. Migrant communities should be consulted and encouraged to participate in the process of elaboration of this law. The law should, in particular:**
 - (i) Penalize racial discrimination in all its forms, and specifically discrimination in the field of employment, housing, health, education, social and cultural life;**
 - (ii) Guarantee access to effective protection and remedies, including compensation, to victims;**
 - (iii) Declare an offence all propaganda which advocates racial superiority or hatred and promotes or incites racial discrimination, as provided in article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, and prohibit all organizations which promote these views. In this regard, the Special Rapporteur shares the view of the Committee on the Elimination of Racial Discrimination that the reservation made by Japan to article 4 (a) and (b) of the Convention is in conflict with the country's obligations under article 4, which is of a mandatory nature, and that the prohibition of the dissemination of all ideas based upon racial superiority and hatred is compatible with the rights to freedom of opinion and expression;**

- (iv) Provide for mandatory training on the content and implementation of such a law to judges, prosecutors and police officers, as well as immigration officers and guards and other public officials who deal with migrants on a regular basis;
- (v) Further promote educational activities and campaigns that sensitize both the general public and more focused audiences such as employers from sectors where the majority of migrant workers are employed to issues of racism, discrimination and xenophobia;
- (e) The Special Rapporteur is deeply concerned about the judiciary's failure to recognize and sanction discriminatory treatments of migrants. This failure to protect migrants from discrimination may constitute a dangerous encouragement for individuals and companies to perpetuate discriminatory behaviour. In addition to the adoption of legislation against racial discrimination and xenophobia, urgent measures should be taken within the judiciary and law enforcement agencies to guarantee the effective implementation of migrants' rights without discrimination. These measures should include specific trainings to judges and law enforcement officers on migrants' rights under the current legislation and their duty to protect those rights.

81. With respect to the human rights of migrant children:

- (a) Japan should ensure that the principle of the best interests of the child guides any judicial and administrative decision which has an impact on children. In this regard, Japan should reconsider its reservation to article 37, paragraph (c) of the Convention on the Rights of the Child, so that the best interest of the child is taken into consideration in determining whether or not the child deprived of liberty should be separated from adults. In particular, it should ensure that a child is not separated from his or her parents against his or her will, except when it is in the best interests of the child;
- (b) The right to the State's protection of the family as a fundamental group unit of society should receive full protection and be systematically taken into consideration by Japan in judicial and administrative decisions and policies. In this connection, Japan should reconsider its declaration on article 9, paragraph 1, of the Convention on the Rights of the Child in order to ensure that children are not separated from their parents against their will and best interests as a result of deportation. Therefore, Japan should review decision-making processes relating to deportation of migrants and ensure that the best interest of the child is systematically taken into account as primary consideration in deportation procedures. In a similar vein, the Special Rapporteur recommends that Japan revisit its declaration on article 10, paragraph 1, of the Convention on the Rights of the Child, so that the authorities give due weight to the importance of a family unit in determining applications for family reunification;
- (c) The right to education for migrant children should be recognized and guaranteed by law. The Government should increase efforts to facilitate migrant children's study either in Japanese or foreign schools, and to provide assistance in learning Japanese to migrant children who wish to study at Japanese schools. The Government should develop educational programmes to address structural obstacles such as the low Japanese-language proficiency level and different cultural backgrounds that cause school non-attendance and marginalization of migrant children. The Government should also establish a national policy that guarantees to any migrant children access to Japanese-language teaching: this access should not depend on the policies that may have been adopted at the

municipal level, and should be financially supported by the Government at the national level. In this context, the Government should establish special preparation programmes and separate examinations for the access of migrant children to high school, in accordance with the experience of some schools that have already adopted this system with positive results.

(d) Migrant children with disabilities or in need of psychological assistance should receive adequate and timely support, in order not to compromise their development, education and health. Their parents should also receive adequate support, as provided by the law, including financial support at least at the same level as provided for Japanese children;

(e) Central and prefectural governments should also increase their financial support to foreign schools. Moreover, in order not to discriminate among foreign schools, the Government should increase its subsidies to Korean, Brazilian, Peruvian, Filipino and other foreign schools and apply tax benefits, in order for them to receive the same support as other private international and Japanese schools. Finally, graduates of Democratic People's Republic of Korea schools should be granted access to university access examination, as all other graduates from foreign schools;

(f) Japan should increase its efforts to offer opportunities for migrants to learn Japanese. In addition to its own programmes, the Government should consider entering into a partnership with private companies employing migrant workers and encourage them to offer Japanese classes to their foreign employees or to contribute to a governmental fund that would finance such classes.

82. With regard to the detention of irregular migrants and asylum-seekers:

(a) Clear criteria should be established to limit detention to cases where it is strictly necessary. Legislation should provide for alternatives to detention of migrants. The Immigration Control Act should be amended to introduce a maximum period of detention pending deportation. Under no circumstances, detention should be indefinite. The detention of sick persons, minors or parents of minors should be avoided;

(b) Urgent measures should be adopted to improve the level of health care provided to migrants in detention centres;

(c) Training and other awareness-raising activities for officers in charge of deportation procedures should be carried out in order to prevent violence during such procedures;

(d) The Immigration Detention Facilities Visiting Committee should be given appropriate resources and authority to effectively monitor conditions of detention and respond to complaints in a timely manner;

(e) To address discrimination against migrant women, a dedicated governmental department should be established and effective measures should be adopted. In particular, in case of separation of a Japanese-foreign couple, foreign spouses should not lose their residence permits exclusively on the basis of objections by their Japanese spouses. The judiciary should recognize and effectively guarantee the equal rights of foreign and Japanese spouses with regard to children's custody and, in cases of domestic violence, where the victim is a foreign spouse, the rights of foreign victims should be better upheld. Statistics with regard to judicial decisions in this area should be compiled and appropriate studies undertaken in order to assess the situation of separated migrant spouses and their children and to adopt appropriate corrective measures.

83. With respect to social rights of migrants:

(a) The Government should ensure that employers of migrants, including temporary employment agencies, abide by their obligation to contribute premiums for health and welfare insurance. Further, the Government should provide for options for all migrants to access health insurance. A clear policy on this issue should be adopted at the national level, as well as appropriate legislation to guarantee these rights;

(b) The Government should prevent and punish discrimination against migrants in access to housing. Any public practice that limits the access of migrants and their families to public housing facilities, based on their nationality, should be eradicated.

84. Efforts should be made to grant migrants who have resided in a municipality for a certain number of years the right to vote in local elections.

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