

**Submission by the United Nations High Commissioner for Refugees**

**For the Office of the High Commissioner for Human Rights' Compilation Report**

**Universal Periodic Review: 3rd Cycle, 28th Session**

**JAPAN**

**I. BACKGROUND INFORMATION**

Japan acceded to the *1951 Convention relating to the Status of Refugees* in 1981 and its *1967 Protocol* in 1982 (hereinafter jointly referred to as the *1951 Convention*). Japan has not yet acceded to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) nor to the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*).

Current legislative mechanisms governing the national refugee status determination (RSD) process are provided for in the *Immigration Control and Refugee Recognition Act (ICRRA)*. In accordance with the provisions of the *ICRRA*, immigration officials at the Immigration Bureau (IB), a lower branch of the Ministry of Justice (MoJ), are engaged in the RSD process.

Japan currently hosts over 24,000 persons of concerns to UNHCR: refugees, asylum-seekers and stateless persons. The Government of Japan has provided protection for 3,106 individuals (1982 to the end of 2015), either by recognition of their refugee status (660 individuals) or through the provision of humanitarian status (2,446 individuals), which is a form of complementary protection. 11,319 Indochinese refugees and their family members were allowed to settle in Japan from 1978 to 2005, and 9,841 of them remained in Japan as of the end of March in 2016. Since 2010, 123 refugees from Myanmar have been admitted in Japan through a resettlement program.

The number of asylum applications has continued to rise since 2010.<sup>1</sup> Applications of 10,901 individuals were received in 2016, exceeding the applications made throughout 2015 (of 7,586 individuals). As of the end of 2015, 13,831 asylum-seekers were awaiting a RSD decision. As many as 640 individuals are registered by MoJ as stateless as of June 2016.<sup>2</sup>

**II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS**

**Positive developments linked to 2<sup>nd</sup> cycle UPR recommendations**

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<sup>1</sup> Number of asylum applications (individuals) received: 1,202 (2010), 1,867 (2011), 2,545 (2012), 3,260 (2013), 5,000 (2014).

<sup>2</sup> *Statistics Bureau, Ministry of Internal Affairs and Communications of Japan*, Statistics on foreign residents, available at: <http://www.e-stat.go.jp/SG1/estat/Xlsdl.do?sinfid=000031474348>.

**Linked to 2nd cycle UPR recommendation no. 147.166: “Continue its efforts to protect the human rights of foreigners –including refugees– and prevent discrimination against them in both law and practice (Sudan).”<sup>3</sup>**

It is noteworthy that in May 2016 the Prime Minister of Japan made an announcement that the country would admit 150 Syrians for the next 5 years through scholarship programmes.<sup>4</sup> UNHCR commends the Government of Japan’s expression of international solidarity by initiating humanitarian admission programmes for Syrian refugees.

### **III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS**

#### **Challenges linked to outstanding 2nd cycle UPR recommendations**

##### **Issue 1: Detention of asylum-seekers and the use of alternatives to detention**

**Linked to 2nd cycle UPR recommendation no. 147.46: “Consider amending the Immigration Control Act to introduce a maximum period of detention pending deportation (South Africa).”**

Despite recent improvement in avoiding detention of asylum-seekers under the age of 18, UNHCR continues to express its concerns with regard to Japan’s detention policies. As of the end of March 2015, 376 asylum-seekers were in detention in the country.<sup>5</sup> Restrictive measures<sup>6</sup> were introduced by the MoJ in September 2015 to circumvent repeated applications: individuals who re-apply for asylum for three times or more, without presenting any new facts, are subject to withdrawal of their residence permits, thus potentially ending up in detention. The maximum period of detention is not stipulated in the *ICRRA* and an independent and mandatory mechanism to review the necessity to detain has not been introduced.

The *ICRRA* stipulates two types of alternatives to detention (ATD): Permission for Provisional Stay (PPS) and Provisional Release (PR).<sup>7</sup> However, the approval rate for PPS is low,<sup>8</sup> and the application of the criteria for PPS and PR is left to the discretion of the MoJ. In addition, no mechanism exists to screen and identify vulnerable individuals who may require special care, and the Government of Japan does not provide for any financial support to NGOs offering accommodation to asylum-seekers who have been provisionally released.

Under the tripartite agreement<sup>9</sup> between the MoJ, the Forum for Refugees Japan (FRJ) and the Japan Federation of Bar Association (JFBA), an ATD pilot project was initiated in 2012. As

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<sup>3</sup> All recommendations made to Japan during its 2<sup>nd</sup> cycle UPR can be found in: “Report of the Working Group on the Universal Periodic Review: Japan” (14 December 2012), A/HRC/22/14, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/JPSession14.aspx>.

<sup>4</sup> E.g. Japan International Cooperation Agency, “*Japanese Initiative for the future of Syrian Refugees*”, available at: <https://www.jica.go.jp/syria/english/office/others/jisr.html>. See also: <http://www.mofa.go.jp/files/000158507.pdf>.

<sup>5</sup> *Response No. 233 submitted to the House of Councillors by Mr. Shinzo Abe, Prime Minister of Japan*, available at: <http://www.sangiin.go.jp/japanese/joho1/kousei/syuisyo/189/toup/t189233.pdf>.

<sup>6</sup> Immigration Bureau, Ministry of Justice, *Outline of the Revisions for Operation of the Refugee Recognition System*, September 2015, available at: <http://www.moj.go.jp/content/001166543.pdf>.

<sup>7</sup> PPS may be granted to asylum applicants when certain conditions are met and PR may be granted to detained foreigners by IB, based on humanitarian considerations.

<sup>8</sup> According to MoJ, in 2015, 83 individuals out of 919 applications (9 %) were granted PPS.

<sup>9</sup> *Memorandum of Understanding*, signed on 10 February 2012.

many asylum-seekers are not eligible for PR or PPS, due to the requirements of having a guarantor or accommodation respectively, the project enabled FRJ to provide accommodation and lawyers for legal counselling. Some 20 individuals benefited from this project and were subsequently released in November 2015. Since then, the MoJ has made only one new referral (in February 2017), having a total of 21 individuals released since the start of the project.

### **Recommendations:**

UNHCR recommends that the Government of Japan:

- a) Establish legal and policy frameworks to avoid the detention of asylum-seekers, and continue efforts to end the detention of children;
- b) Use detention only as a last resort and consider ATD before a decision to detain is made;
- c) Introduce a maximum period of immigration detention;
- d) Utilize and expand the existing ATD, by establishing clear criteria in consideration of vulnerability of detainees and allocating sufficient government funding for necessary assistance, including accommodation needs; and
- e) Establish mandatory and independent review of detention, which include judicial safeguards.

### **Additional protection challenges**

#### **Issue 2: Appropriate reception conditions for asylum-seekers**

UNHCR is concerned with the existing reception conditions in the country, as eligibility screening for assistance (under the responsibility of the Ministry of Foreign Affairs) takes quite a long time. This leaves many asylum-seekers in a desperate situation, particularly those who arrive in Japan without receiving any information or assistance. The number of asylum-seekers covered by Government-funded assistance is low, mainly due to restrictive eligibility criteria, lack of funding and “red tape”. For example, in 2015, only 309 individuals received assistance, despite the increased number of asylum-seekers residing in the country.<sup>10</sup> In addition, a legal framework to provide adequate support for asylum-seekers with vulnerabilities is not in place, and the amount of assistance provided to asylum-seekers is smaller than the social welfare benefits for low-income Japanese nationals and long-term foreign residents.

Furthermore, as those without resident status are not issued any documents through which they can access services,<sup>11</sup> access is even made more difficult for asylum-seekers, especially at the municipality level. Moreover, with the new restrictions introduced in September 2015, those who submit asylum applications for a second time would be deprived of their work permit.

### **Recommendations:**

UNHCR recommends that the Government of Japan:

- a) Review the existing state assistance scheme for asylum-seekers to ensure that all asylum-seekers’ basic needs, including necessary financial means, food, clothing, accommodation, and medical care, are covered throughout the RSD process;
- b) Improve the current government-funded assistance to asylum-seekers by speeding up the screening process, expanding its eligibility criteria, and allocating sufficient government funding;

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<sup>10</sup> 2015 Annual Report of Foundation for Welfare and Education of the Asian People, available at: <http://www.fweap.or.jp/photo/zaimu/27jigyohokoku.pdf>.

<sup>11</sup> Such as mental health care, schooling and private services, including housing.

- c) Establish legal and policy frameworks to identify asylum-seekers with special needs and vulnerabilities and ensure adequate support for them; and
- d) Grant permission to work for applicants whose RSD procedure exceeds six months, if the delay is caused by reasons beyond their control.

### **Issue 3: Fair and efficient asylum procedures**

The *ICRRA* contains only a limited set of provisions relating to the RSD procedure and the relevant legal status of asylum-seekers and refugees. A comprehensive and dedicated asylum law, which stipulates the rights and obligations of refugees and asylum-seekers and which reflects the provisions of the *1951 Convention*, is yet to be introduced.

There have been some positive developments made with regard to several RSD-related protection issues in recent years, in particular in the area of capacity building for those involved in the RSD procedure. However, UNHCR is still concerned with the fact that the Minister of Justice has overturned positive recommendations made by Refugee Examination Counsellors (RECs) at second instance,<sup>12</sup> which calls into question the independent nature of the RECs system. This practice has been previously criticized by different UN Human Rights Mechanisms.<sup>13</sup> Furthermore, asylum-seekers' access to legal assistance is insufficient. The majority of asylum-seekers do not qualify for government-funded legal aid, and legal representatives are not allowed to attend RSD interviews at first instance.

In addition, a dedicated government agency responsible for all key refugee- and asylum-related matters does not exist. Asylum applications are processed by IB, while responsibilities over other issues related to refugees and asylum-seekers, such as livelihood and integration, are dispersed across different government agencies.

UNHCR is further concerned about the lack of systematic compilation and analysis of country of origin information (COI), and the absence of age, gender and diversity sensitive approaches in the RSD procedure. Additionally, the *ICRRA* does not stipulate a clear set of criteria and procedural safeguards for the treatment of repeated applications, nor does it provide for clear eligibility criteria for granting complementary forms of protection. Moreover, the financial and human resource allocation in RSD operational system is insufficient to process the increasing number of asylum applications.<sup>14</sup>

### **Recommendations:**

UNHCR recommends that the Government of Japan:

- a) Adopt a dedicated asylum law which *inter alia* includes legal provisions introducing a clear set of criteria and procedural safeguards for the treatment of repeated applications and the granting of complementary forms of protection;

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<sup>12</sup> *Response No. 233*, cited above.

<sup>13</sup> See, for example, the following documents: Human Rights Committee, *Concluding Observations*, CCPR/C/JPN/CO/5, 94th Session, 30 October 2008, para. 25; Committee against Torture, *Conclusions and recommendations*, CAT/C/JPN/CO/1, 38th Session, 3 August 2007, para. 14 (b); and A/HRC/8/44, Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Japan*, 30 May 2008, recommendation no 23.

<sup>14</sup> For example, the number of refugee inquirers (who deal exclusively with asylum cases) has increased from 50 in 2003 to 140 in 2015, while the number of asylum applications has increased more than twentyfold during the same period (336 cases in 2003 compared to 7,586 cases in 2015), and continues to rise (7,926 cases in the first 9 months of 2016).

- b) Establish a centralized government agency that consolidates refugee- and asylum-related tasks, which are currently distributed among different ministries;
- c) Allocate sufficient financial and human resources to deal with the increasing number of applications and to improve the quality of RSD process, including the establishment of a unit dedicated to the compilation and analysis of COI;
- e) Maximize the independence and integrity of decisions made by RECs by empowering them with additional RSD training, a Secretariat independent from IB, and the authority to manage their own caseload;
- f) Allow legal representatives to participate at all stages of the asylum procedure and to allocate sufficient Government funding for the provision of free legal support to asylum-seekers; and
- g) Introduce specific measures to cater for the needs of those with different age, gender and diversity backgrounds; such as ensuring access to age-appropriate information on asylum procedures, mechanism of interagency coordination for child asylum-seekers and gender-sensitive interview procedures.

#### **Issue 4: Statelessness**

There are no accurate or comprehensive statistics available on stateless persons residing in Japan. According to the alien registration database of the MoJ, as of June 2016, 640 persons were registered as being stateless. However, this number is recorded based on self-declarations of individuals, with no verification mechanisms in place.

Although the *Nationality Law* contains provisions for the prevention and the reduction of statelessness in Article 2 (iii) and Article 8 (iv), no other provisions, such as the definition of statelessness, are found in the existing national laws of Japan. Also, there is no mechanism in place through which statelessness can be determined.

Stateless persons and individuals with undetermined nationality and without legal residence status in Japan are not permitted to work or eligible to receive social welfare benefits like other foreigners. Moreover, statelessness is not an established criterion for either regularizing the legal stay or the granting of work permits to persons in an irregular situation.

#### **Recommendations:**

UNHCR recommends that the Government of Japan:

- a) Develop a statelessness status determination procedure to ensure the identification and protection of stateless persons; and
- b) Accede to the *1954 Convention* and the *1961 Convention*.

**Human Rights Liaison Unit  
Division of International Protection  
UNHCR  
March 2017**

# ANNEX

## Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedures mandate holders

### JAPAN

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations, UN Treaty Monitoring Bodies' Concluding Observations, and recommendations from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to Japan.

#### I. Universal Periodic Review (Second Cycle – 2012)

Recommendation <sup>15</sup>	Recommending State/s	Position <sup>16</sup>
<b>Refugees and asylum-seekers</b>		
147.92. Step up its efforts to combat discrimination and intolerance, particularly towards migrants, foreigners, asylum seekers and refugees;	Tunisia	Supported
147.166. Continue its efforts to protect the human rights of foreigners – including refugees– and prevent discrimination against them in both law and practice;	Sudan	Supported
<b>Non-discrimination</b>		
147.35. Implement the recommendation of the Committee on the Elimination of Racial Discrimination (CERD) to adopt specific legislation to outlaw direct and indirect racial discrimination, and guarantee access to effective protection and remedies through competent national courts;	South Africa	Partially supported <sup>17</sup>
147.36. Ensure that the domestic legislation concerning discrimination is consistent with that contained in the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) which deals	Switzerland	Supported <sup>18</sup>

<sup>15</sup> All recommendations made to Japan during its 2nd cycle UPR can be found in: “Report of the Working Group on the Universal Periodic Review of Japan” (14 December 2012), A/HRC/22/14, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/JPSession14.aspx>.

<sup>16</sup> Japan’s views and replies can be found in: *Addendum* (8 March 2013), A/HRC/22/14/Add.1, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/JPSession14.aspx>.

<sup>17</sup> *Addendum*: “(a) In the case of Japan, Article 14, Paragraph 1 of the Constitution stipulates that all people are equal under the law and there shall be no discrimination because of race.

(b) It is obvious from the provision "by all appropriate means" in Article 2.1 of the ICERD, legislative measures are required, where appropriate and necessary. We do not recognize that the present situation of Japan is one in which discriminative acts cannot be effectively restrained by the existing legal system and in which explicit racial discriminative acts, which cannot be restrained by measures other than legislation, are conducted. Therefore, penalization of these acts is not considered necessary.”

<sup>18</sup> *Addendum*: “Article 98, paragraph 2 of the Constitution of Japan provides that “[t]he treaties concluded by Japan and established laws of nations shall be faithfully observed.” As a matter of course, the Government of Japan enacts domestic laws and implements policies on the premise of compliance with its obligations under the treaties.”

furthermore with all forms of direct or indirect discrimination based on age, sex, religion and sexual orientation;		
<b>Gender equality and SGBV</b>		
147.71. Take urgent measures to promote gender equality and effectively protect women and children's rights;	China	Supported
147.73. Strengthen the promotion of gender and the fight against violence against women;	Senegal	Supported
147.76. Foster its holistic approach on gender equality, in particular empowering women's social and economic rights and fighting domestic violence;	Viet Nam	Supported
147.127. Further efficiently address violence against women, through facilitation of the reporting of domestic and sexual violence and providing support services to victims;	Republic of Moldova	Supported
<b>Access to nationality and birth registration</b>		
147.78. Ensure equality and non-discrimination of children born out of wedlock in issues related to the acquisition of nationality, inheritance rights and birth registration;	Slovenia	Supported
147.79. Adopt comprehensive measures against discrimination towards children and repeal all legislation that discriminates against children born out of wedlock. Promote awareness campaigns and education programs about the human rights of all boys, girls and adolescents, particularly in relation to the acquisition of nationality, inheritance rights and the right to identity;	Uruguay	Supported
147.80. In line with requests by CEDAW and the CRC, review the situation of children born out of wedlock who do not enjoy nationality, inheritance and birth registration rights;	Botswana	Supported
147.81. Take the necessary measures to ensure universal birth registration, including for children born out of wedlock and regardless of the parents' immigration status;	Mexico	Supported
<b>Trafficking in persons</b>		
147.131. Continue measures for improving access by women victims of trafficking and sexual violence to complaints mechanisms and protection services;	Azerbaijan	Supported
147.135. Most complexly address the root causes of trafficking and effectively protect and support victims;	Republic of Moldova	Supported
147.137. Further advance efforts to address the root cause of trafficking and to protect and support victims of trafficking;	Trinidad and Tobago	Supported
147.138. Ensure effective protection from violence and sexual exploitation for women, particularly women who are migrants or from minority groups;	Belarus	Supported

## II. Treaty Bodies

### Committee on the Elimination of Discrimination against Women

Concluding Observations, (7 March 2016), [CEDAW/C/JPN/CO/7-8](#)

#### **Violence against women**

22. The Committee notes that the Ministry of Justice established a committee to review the Penal Code in order to address various issues including (a) the narrow definition of the crime of rape, which only applies to vagina-penal penetration; (b) raising the low penalties for sex crimes; (c) the adoption of legal provisions explicitly criminalizing marital rape and (d) the introduction of *ex officio* prosecution of sex crimes. The Committee is, however, concerned that the Ministry of Justice's committee that reviewed the Penal Code did not consider it necessary to explicitly criminalize marital rape. It is also concerned that the age of sexual consent remains 13 years and that the minimum penalty for statutory rape is only 3 years' imprisonment. The Committee is further concerned at:

- (a) The lack of provisions in the Penal Code specifically criminalizing incest;
- (b) Reports of inordinate delays in the issuance of emergency protection orders by courts, which expose victims of violence, including domestic violence, to a risk of further violence;
- (c) Information that migrant women, ethnic and other minorities, and women with disabilities who are victims of violence, including domestic violence, are reluctant to report cases to the authorities, and that migrant women, in particular, fail to do so due to the risk of having their residence status revoked, as they are required to provide "justifiable reasons" for protection under the Immigration Control and Refugee Recognition Act ; and
- (d) The uncertainty regarding the application of the Spousal Violence Prevention Act to all women in all family settings and the reluctance of the judiciary to issue protective measures in such cases.

23. **Recalling its General Recommendation No. 19 (1992) on violence against women, and its previous recommendations (CEDAW/C/JPN/CO/6, para. 30), the Committee urges the State party to:**

- (a) **Make full use of the Convention and the Committee's General Recommendation No. 19 (1992), as well as its jurisprudence, when amending its Penal Code, to ensure that it comprehensively addresses violence against women, including domestic violence and incest as a specific crime;**
- (b) **Expedite the amendment of the Penal Code to expand the definition of rape and ensure *ex officio* prosecution of sex crimes;**
- (c) **Amend the Penal Code to explicitly criminalise marital rape and raise the minimum penalty for statutory rape;**
- (d) **Expedite the judicial process for issuing emergency protection orders;**
- (e) **Encourage reporting by victims of all forms of violence against women and girls, particularly migrant women, and ensure that shelters are available and adequately equipped for women victims of violence;**
- (f) **Ensure training of lead personnel and that all cases of violence against women and girls are thoroughly and effectively investigated and that perpetrators are prosecuted and, if convicted, adequately punished ; and**



- (g) **Ensure that the Spousal Violence Prevention Act also applies to all women in all family settings.**

### **Trafficking and exploitation of prostitution**

26. The Committee notes the adoption by the State party of an Action Plan to Combat Trafficking in Persons in December 2014 and the establishment of the Council for the Promotion of Measures to Combat Trafficking in Persons. The Committee welcomes efforts by the State party to reform the Industrial Training and Technical Internship Programme by introducing draft legislation, which is before Parliament (Diet). The Committee is, however, concerned that the State party remains a source, transit and destination country for trafficking in persons, in particular women and girls, for purposes of labour and sexual exploitation and that:

- (a) Women continue to be subjected to sexual exploitation in the entertainment industry, particularly for prostitution and pornographic film production; and
- (b) Women and girls coming to the State party under the Industrial Training and Technical Internship Programme continue to be subjected to forced labour and sexual exploitation.

27. **The Committee recommends that the State party:**

- (a) **Intensify regular labour inspections and other efforts to combat trafficking in persons, particularly women and girls recruited under the Industrial Training and Technical Internship Programme;**
- (b) **Intensify monitoring and inspection programmes targeting establishments that provide adult entertainment and produce pornographic film, in order to prevent sexual exploitation;**
- (c) **Continue efforts aimed at bilateral, regional and international cooperation to prevent trafficking, including by exchanging information with other countries in the region and harmonizing legal procedures to prosecute traffickers;**
- (d) **Provide information in the next periodic report on the implementation of reforms envisaged under the Industrial Training and Technical Internship Programme; and**
- (e) **Ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime.**

### **Committee on the Elimination of Racial Discrimination**

Concluding Observations, (26 September 2014), [CERD/C/JPN/CO/7-9](#)

### **Ethnic composition of the population**

6. The Committee, while taking note of data on the ethnic composition of its population provided by the State in its report as well as in its core document, regrets that such data are not comprehensive, in particular with regard to vulnerable groups, including non-citizens. The Committee is therefore unable to properly evaluate the situation of such groups in the State party (art. 1).

**In accordance with paragraphs 10 to 12 of its revised treaty-specific reporting guidelines (CERD/C/2007/1) and taking into account its general recommendation No. 24 (1999)**

**concerning article 1 of the Convention and general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party:**

- (a) Conduct research into the commonly spoken languages, mother tongues and other indicators of diversity and collect information from social surveys on vulnerable groups;**
- (b) Collect comprehensive, reliable and up-to-date statistical data on socioeconomic indicators, disaggregated by nationality and ethnic origin, including on immigrants and refugees, in order to define policies that take into account the specific needs of all segments of its society and to allow the Committee to better assess how the rights enshrined in the Convention are protected in Japan.**

### **Trafficking in persons**

16. While noting the information provided by the delegation of the State party on measures taken to prevent and combat trafficking in persons, the Committee is concerned about the persistence of trafficking in minority women in the State party, in particular for purposes of sexual exploitation. The Committee is also concerned about the lack of data that would enable the extent of the phenomenon of trafficking in the State party to be assessed. The Committee is further concerned about the absence of information on specific legislative provisions against trafficking, as well as on cases related to investigations, prosecutions and sanctions imposed on those responsible (art. 5).

**The Committee recommends that the State party:**

- (a) Adopt specific legislation against trafficking in persons;**
- (b) Intensify its efforts to combat trafficking in persons, including of migrant women, and take preventive measures to address its root causes in the context of Japan's Action Plan of Measures to Combat Trafficking in Persons;**
- (c) Provide assistance, protection, temporary residence status, rehabilitation and shelters, as well as psychological and medical services and other assistance, to victims;**
- (d) Promptly and thoroughly investigate, prosecute and punish those responsible;**
- (e) Provide specialized training to all law-enforcement officials, including police officers, border guards and immigration officers in the identification of, assistance to and protection of victims of trafficking;**
- (f) Inform the Committee of the situation on trafficking in the State party, especially of people from minority groups.**

### **Violence against foreign and minority women**

17. The Committee is concerned about information on persistent violence against foreign, minority and indigenous women. It is particularly concerned that, under the provisions of the revised Immigration Control and Refugee Recognition Act of 2012, the authorities may revoke the residence status of foreign women who have been married to a Japanese national or a foreigner with a permanent residency status if such foreign women "fail to continue to engage in activities as spouse while residing in Japan for more than six months", as provided under Section I, Article 22-4 of the Immigration Control Act. These provisions may prevent foreign women who are victims of domestic violence by their husbands from leaving abusive relationships and from seeking assistance. (art. 2, 5).

**In the light of its general recommendation No. 25 (2000) on the gender-related dimensions of racial discrimination and No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party take adequate measures to effectively address the issue of violence against migrant, minority and indigenous women by prosecuting and sanctioning all forms of violence against them, and to ensure that victims have access to immediate means of redress and protection. The State party should also review its legislation on residence status to ensure that foreign women married to Japanese citizens or to non-citizens with permanent residence status will not be expelled upon divorce or repudiation, and that the application of the law does not have the effect, in practice, of forcing women to remain in abusive relationships.**

### **Refugees and asylum seekers**

23. The Committee is concerned about reports of racial discrimination faced by some refugees and asylum seekers, in particular non-Asians and Africans, at work, at school and in their interaction with public institutions and local communities. The Committee is also concerned about the detention of asylum seekers for long periods and inadequate conditions in detention facilities. While noting that the Japanese Nationality Act has a provision for the prevention and the reduction of statelessness, the Committee is concerned that the State party has not yet developed a determination procedure for statelessness. It is also concerned that some stateless persons without residence permits have faced indefinite pre-deportation detention and some have been at risk of human rights abuses (art. 5).

**In the light of its general recommendation No. 22 (1996) on refugees and displaced persons and bearing in mind its general recommendation No. 34 (2011) on the discrimination against people of African descent, the Committee recommends that the State party take measures to:**

- (a) Promote non-discrimination and understanding among its local authorities and communities with regard to refugees and asylum seekers;**
- (b) Guarantee that detention of asylum seekers is used only as a measure of last resort and for the shortest possible period. The State party should give priority to alternative measures to detention, as provided for in its legislation;**
- (c) Develop a statelessness determination procedure to adequately ensure the identification and protection of stateless persons.**

**The State party should also consider acceding to the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness.**

### **Human Rights Committee**

Concluding Observations, (20 August 2014), [CCPR/C/JPN/CO/6](#)

### **Gender-based and domestic violence**

10. The Committee regrets that, despite its previous recommendations, the State party has not made any progress in broadening the scope of the definition of rape in the Criminal Code, setting the age of sexual consent above 13 years and prosecuting rape and other sexual offences ex officio. It notes with concern that domestic violence remains prevalent, that the process to issue protection orders is too lengthy and that the number of perpetrators who are punished for

that offence is very low. The Committee is concerned by reports of the insufficient protection provided to same-sex couples and immigrant women (arts. 3, 6, 7 and 26).

**In line with the Committee's previous recommendations (see CCPR/C/JPN/CO/5, paras. 14 and 15) the State party should take concrete action to prosecute rape and other crimes of sexual violence ex officio, raise without further delay the age of consent for sexual activities and review the elements of the crime of rape, as established in the Third Basic Plan for Gender Equality. The State party should intensify its efforts to ensure that all reports of domestic violence, including in same-sex couples, are thoroughly investigated; that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions; and that victims have access to adequate protection, including through the granting of emergency protective orders and preventing immigrant women who are victims of sexual violence from losing their visa status.**

#### **Discrimination based on sexual orientation and gender identity**

11. The Committee is concerned about reports of social harassment and stigmatization of lesbian, gay, bisexual and transgender persons and discriminatory provisions that exclude same-sex couples from the municipally operated housing system (arts. 2 and 26).

**The State party should adopt comprehensive anti-discrimination legislation that prohibits discrimination on all grounds, including sexual orientation and gender identity, and provides victims of discrimination with effective and appropriate remedies. The State party should intensify its awareness-raising activities to combat stereotypes and prejudice against lesbian, gay, bisexual and transgender persons, investigate allegations of harassment against lesbian, gay, bisexual and transgender persons and take appropriate measures to prevent such stereotypes, prejudice and harassment. It should also remove the remaining restrictions in terms of eligibility criteria applied to same-sex couples with respect to publicly operated housing services at the municipal level.**

#### **Hate speech and racial discrimination**

12. The Committee expresses concern at the widespread racist discourse against members of minority groups, such as Koreans, Chinese or Burakumin, inciting hatred and discrimination against them, and the insufficient protection granted against those acts in the Criminal and Civil Codes. The Committee also expresses concern at the high number of extremist demonstrations authorized, the harassment and violence perpetrated against minorities, including against foreign students, and the open display in private establishments of signs such as those reading "Japanese only" (arts. 2, 19, 20 and 27).

**The State should prohibit all propaganda advocating racial superiority or hatred that incites discrimination, hostility or violence, and should prohibit demonstrations that are intended to disseminate such propaganda. The State party should also allocate sufficient resources for awareness-raising campaigns against racism and increase its efforts to ensure that judges, prosecutors and police officials are trained to detect hate and racially motivated crimes. The State party should also take all necessary steps to prevent racist attacks and to ensure that the alleged perpetrators are thoroughly investigated, prosecuted and, if convicted, punished with appropriate sanctions.**

#### **Expulsion and detention of asylum seekers and undocumented immigrants**

19. The Committee expresses concern about reported cases of ill-treatment during deportations, which resulted in the death of a person in 2010. The Committee is also concerned that, despite the amendment to the Immigration Control and Refugee Recognition Act, the principle of non-refoulement is not implemented effectively in practice. The Committee is further concerned at the lack of an independent appeal mechanism with suspensive effect against negative decisions on asylum, as well as at the prolonged periods of administrative detention without adequate giving of reasons and without independent review of the detention decision (arts. 2, 7, 9 and 13).

**The State party should:**

- (a) **Take all appropriate measures to guarantee that immigrants are not subject to ill-treatment during their deportation;**
- (b) **Ensure that all persons applying for international protection are given access to fair procedures for determination and for protection against refoulement and have access to an independent appeal mechanism with suspensive effect against negative decisions;**
- (c) **Take measures to ensure that detention is resorted to for the shortest appropriate period and only if the existing alternatives to administrative detention have been duly considered and that immigrants are able to bring proceedings before a court that will decide on the lawfulness of their detention.**

**Trafficking in persons**

15. While appreciating the efforts made by the State party to address trafficking in persons, the Committee remains concerned about the persistence of the phenomenon, as well as about the low number of prison sentences imposed on perpetrators, the fact that no perpetrators of forced labour have been brought to justice, the decline in victim identification and the insufficient support granted to victims (art. 8).

**In line with the Committee's previous concluding observations (see CCPR/C/JPN/CO/5, para. 23), the State party should:**

- (a) **Enhance victim identification procedures, particularly with regard to victims of forced labour, and provide specialized training to all law enforcement officers, including labour inspectors;**
- (b) **Vigorously investigate and prosecute perpetrators and, when convicted, impose penalties that are commensurate with the seriousness of the acts committed;**
- (c) **Enhance the current victim protection measures, including interpretation services and legal support for claiming compensation.**

**Committee against Torture**

Concluding Observations, (28 June 2013), [CAT/CJPN/CO/2](#)

**Non-refoulement and detention pending deportation**

9. The Committee expresses its concern about:

- (a) The use of lengthy, and in some cases, indefinite detention for asylum seekers under a deportation order according to the Immigration Control and Refugee Recognition Act (ICRRA) as well as the lack of independent review of such detention decision;
- (b) The restrictive use of alternatives to detention for asylum seekers;

(c) The lack of resources and authority of the Immigration Detention Facilities Visiting Committee to effectively discharge its mandate, as well as the appointment of its members by the Ministry of Justice and the Immigration Bureau;

(d) Detention of unaccompanied children in Child Consultation Centres, which are often overcrowded and lack resources for hiring interpreters;

(e) The lack of effective implementation of article 53(3) of the ICRRRA, which prohibits the removal of a person to any country where he or she may be subject to torture, as proscribed in article 3 of the Convention (arts. 3, 11 and 16).

**In light of the previous recommendations made by the Committee (para. 14) as well as by the Special Rapporteur on the human rights of migrants, following his mission to Japan in 2011 (A/HRC/17/33/Add.3, para. 82), the State party should:**

**(a) Continue its efforts to bring all legislation and practices relating to the detention and deportation of immigrants or asylum seekers in line with the absolute principle of non-refoulement under article 3 of the Convention;**

**(b) Ensure that the detention of asylum seekers is only used as a last resort, and when necessary, for as short a period as possible, and introduce a maximum period of detention pending deportation;**

**(c) Further utilize alternatives to detention as provided for in the Immigration Control and Refugee Recognition Act;**

**(d) Strengthen the independence, authority and effectiveness of the Immigration Detention Facilities Visiting Committee, inter alia, by providing appropriate resources and authority to ensure effective monitoring detention centres and allowing them to receive and review complaints from immigrants or asylum seekers in detention;**

**(e) Consider acceding to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Stateless.**

#### **Victims of military sexual slavery**

19. Notwithstanding the information provided by the State party concerning some steps taken to acknowledge the abuses against victims of Japan's military sexual slavery practices during the Second World War, the so-called "comfort women", the Committee remains deeply concerned at the State party's failure to meet its obligations under the Convention while addressing this matter, in particular in relation to:

(a) Failure to provide adequate redress and rehabilitation to the victims. The Committee regrets that the compensation, financed by private donations rather than public funds, was insufficient and inadequate;

(b) Failure to prosecute perpetrators of such acts of torture and bring them to justice. The Committee recalls that on account of the continuous nature of the effects of torture, statutes of limitations should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them;

(c) Concealment or failure to disclose related facts and materials;

(d) Continuing official denial of the facts and retraumatization of the victims by high-level national and local officials and politicians, including several diet members;

(e) Failure to carry out effective educational measures to prevent gender-based breaches of the Convention, as illustrated, inter alia, by a decrease in references to this issue in school history textbooks;

(f) The State party's rejection of several recommendations relevant to this issue, made in the context of the universal periodic review (A/HRC/22/14/Add.1, paras.147.145 ff.),

which are akin to recommendations made by the Committee (para. 24) and many other United Nations human rights mechanisms, inter alia, the Human Rights Committee (CCPR/C/JPN/CO/5, para. 22), the Committee on the Elimination of Discrimination against Women (CEDAW/C/JPN/CO/6, para. 38), the Committee on Economic, Social and Cultural Rights (E/C.12/JPN/CO/3, para. 26) and several special procedures mandate holders of the Human Rights Council (arts. 1, 2, 4, 10, 14 and 16).

**Recalling its general comment No. 3 (2012), the Committee urges the State party to take immediate and effective legislative and administrative measures to find a victim-centred resolution for the issues of “comfort women”, in particular, by:**

- (a) Publicly acknowledging legal responsibility for the crimes of sexual slavery, and prosecuting and punishing perpetrators with appropriate penalties;**
- (b) Refuting attempts to deny the facts by government authorities and public figures and to re-traumatize the victims through such repeated denials;**
- (c) Disclosing related materials, and investigating the facts thoroughly;**
- (d) Recognizing the victim’s right to redress, and accordingly providing them full and effective redress and reparation, including compensation, satisfaction and the means for as full rehabilitation as possible;**
- (e) Educating the general public about the issue and include the events in all history textbooks, as a means of preventing further violations of the State party’s obligations under the Convention.**

#### **Violence against women and gender-based violence**

20. While taking note of the State party’s efforts to combat gender-based violence, the Committee is concerned at reports on the continuing incidents of gender-based violence, in particular domestic violence, incest and rape, including marital rape, the low number of complaints, investigations, prosecutions and convictions for such cases, and insufficient legal protections for victims. Furthermore, the Committee expresses its concern at the requirement of the victim’s complaint in the Penal Code in order to prosecute crimes of sexual violence. (arts. 2, 12, 13, 14 and 16)

**In light of previous recommendations made by the Committee (para. 25) and the Committee on the Elimination of Discrimination against Women (CEDAW/C/JPN/CO/6, paras. 31-34), the State party should strengthen its efforts to prevent and prosecute all forms of gender-based abuse, including domestic violence, incest and rape, including marital rape, in particular, by:**

- (a) Adopting and implementing a coherent and comprehensive national strategy for the elimination of violence against women that includes legal, educational, financial and social components;**
- (b) Guaranteeing victims of such violence access to a complaint mechanism, and facilitating victims’ physical and psychological rehabilitation. Such support should be extended to victims of all military personnel, including those in foreign forces in the State party;**
- (c) Promptly, effectively and impartially investigating all incidents of violence against women and prosecuting those responsible. The Committee urges the State party to revise its legislation to ensure that the crime of sexual violence is prosecuted without complaint by the victim;**
- (d) Broadening public awareness-raising campaigns on all forms of violence against women and gender-based violence.**

## **Trafficking**

21. While noting the State party's efforts to combat human trafficking, including the 2009 Action Plan on Measures to Combat Trafficking in Persons, the Committee is concerned at the lack of information on the resources provided for this action plan, and the wide discrepancy between the numbers of persons arrested for trafficking and of persons prosecuted and convicted. The Committee regrets the lack of information about the coordinating and monitoring body and the impact of measures to address trafficking, especially on children (arts. 2, 12, 13, 14 and 16).

**The Committee calls on the State party to fully implement the recommendations made by the Special Rapporteur on trafficking in persons (A/HRC/14/32/Add.4), following her visit to Japan in 2009. In particular, the State party should ensure that:**

**(a) Victims of trafficking are provided with adequate assistance for their physical and psychological recovery;**

**(b) Clear identification procedures are set out, so that victims of trafficking are not incorrectly identified and treated as undocumented migrants and deported without redress or remedy;**

**(c) Perpetrators are prosecuted and punished with appropriate penalties;**

**(d) Specialized training is provided to relevant public officials in this regard.**

**In addition, the State party should consider ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol).**

### **III. Special Procedures**

#### **Report of the Special Rapporteur on the sale of children, child prostitution and child pornography**

Mission to Japan (3 March 2016) [A/HRC/31/58/Add.1](#)

#### **Conclusions and recommendations:**

**74. In order for Japan to consolidate its achievements, overcome the remaining challenges and ensure the effective protection of children from the scourge of sexual exploitation, the Special Rapporteur recommends that the Government of Japan:**

**(a) Strengthen and develop a comprehensive strategy against the sexual exploitation of children, including the appointment of an entity in charge of its design, coordination and follow-up, and ensure complementarity with other existing plans and policies;**

**(b) Allocate the resources necessary for the effective implementation of the above-mentioned strategy, and ensure the participation of children and youth in its design, implementation and evaluation; as part of the strategy, it should:**

**(i) Establish a clear and comprehensive legal framework to prevent, prohibit and protect children from all forms of sale and sexual exploitation, and in particular increase the age of consent for marriage of girls to 18 years of age, and the age of sexual consent of children; and expand the definition of child sexual abuse;**

[...]



- (vi) **Ratify the United Nations Convention against Transnational Organized Crime and the Protocol thereto to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure;**  
[...]
- (e) **Increase efforts to investigate, prosecute and sanction offences related to the online and offline sexual exploitation of children, including prostitution and pornography, to ensure the accountability of perpetrators and redress for child victims, and in particular:**
  - (i) **Increase training and awareness-raising activities of law enforcement agencies on the identification of offences related to the sexual exploitation of children, and on the detection and treatment of child victims, incorporating a child-rights perspective;**  
[...]
  - (iii) **Ensure the effective application and implementation of sanctions established by the Criminal Code for offences relating to the sexual exploitation of children, namely, avoiding the suspension of sentences, as an essential means to combat impunity for the said crimes;**  
[...]
- (f) **Establish comprehensive, rights-based and child-centred care, recovery and reintegration programmes for child victims of sexual abuse and exploitation, and in particular:**  
[...]
- (v) **Adopt a child-rights perspective, ensuring the right of children to be heard, and a gender approach in the provision of care and recovery for girls, boys and children who identify as LGBT; provide support for children with disabilities and young mothers with children; and involve family members in the recovery process of children, whenever possible;**  
[...]
- (g) **Take comprehensive preventive measures in partnership with the business sector (including information and communications technology and media companies, advertising companies and the entertainment business) and non-governmental organizations, with the involvement of children and youth, and in particular:**  
[...]
- (iii) **Implement long-term education programmes on gender equality targeting boys and girls, men and women, as an effective means of combating gender discrimination;**  
[...]