

## Follow-up Information from Civil Society – Japan

CERD/C/JPN/CO/10-11

Japan NGO Network for the Elimination of Racial Discrimination (ERD Net)

April 2020

### CERD COs Paragraph 10 – National Human Rights Institution

10. Noting the State party's acceptance to follow up on a recommendation from the universal periodic review in 2017 that it accelerate efforts towards the establishment of a national human rights institution, the Committee recommends that the State party establish a national human rights institution with a broad mandate to promote and protect human rights, in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

Government comment CERD/C/JPN/CO/10-11/Add.1

Gov. 4. The GoJ continues to review appropriately the framework for a human rights remedy system, bearing in mind also the discussions conducted thus far.

5. At the same time, the Human Rights Bureau has been established in the Ministry of Justice (MoJ) as an administrative body engaging in the protection of human rights. The Bureau's subordinate organs, the Human Rights Departments of the Legal Affairs Bureaus (8 locations nationwide), the Human Rights Divisions of the District Legal Affairs Bureaus (42 locations nationwide) and their branches (261 locations nationwide) have been established heretofore.

6. Moreover, the MoJ is engaged in human rights promotion and protection activities such as human rights awareness-raising activities, human rights counseling, investigation and resolution of human rights violation cases in cooperation with about 14,000 Human Rights Volunteers, who are private citizens appointed by the Minister of Justice.

7. The human rights bodies of the MoJ provide a wide range of human rights counseling at the 311 offices of the Legal Affairs Bureaus, District Legal Affairs Bureaus and their branches across the country covering human rights violations, and the number of counseling cases was 216,239 in 2018. These bodies also engage in investigation and resolution of human rights violation cases from a fair and neutral standpoint, and remedy procedures commenced with 19,063 cases in 2018.

### **CSO follow-up information**

No progress has been achieved. The Government of Japan has not changed its position towards the establishment of a national human rights institution claiming that the functions of the Human Rights Bureau of the Ministry of Justice are relevant to what a national human rights institution is supposed to do. The fundamental problem rests with the government's strong unacceptance of having an NHRI that functions according to the Paris Principles. And the dialogue between the Committee or other treaty bodies and the Government of Japan in this regard has differed from each other. This is clearly

demonstrated with the follow-up information sent by the government as indicated above. As a civil society organization, we have also had dialogues with the government in regard to the implementation of recommendations contained in the COs (CERD/C/JPN/CO/10-11), and we always receive the same reply as mentioned above.

prepared by the International Movement Against All Forms of Discrimination and Racism (IMADR)

### **CERD COs Paragraph 32 - Technical Intern training program for foreigners**

The Committee recommends that the State party ensure that the technical intern training programme is properly regulated to ensure compliance with the Act on Proper Technical Intern Training and Protection of Technical Intern Trainees, and that it is monitored by the Government. The Committee requests information on the implementation and impact of the Act in the State party's next periodic report.

Gov. 8. Based on the Act on Proper Technical Intern Training and Protection of Technical Intern Trainees, which came into effect in November 2017, the Organization for Technical Intern Training (OTIT) is conducting on-site inspections of supervising organizations and implementing organizations in an effort to ensure an appropriate system to protect technical intern trainees.

### **CSO follow-up information**

1) Under the present structure of the Technical Intern Training Program, the supervising organizations do the service of job placement between overseas sending organizations and domestic implementing organizations, and supervise implementing organizations with the provision of guidance or advice while attending to the protection of the technical intern trainees. They are positioned in the center of the management of the system, but in reality, they actually contribute to the deterioration of the system.

Supervising organizations are legally not “profit oriented corporate bodies,” but in practice, they monthly collect supervising fees in the amount of 30 to 50 thousand yen (\$270 to 450) per technical intern trainee from implementing organizations. The government accepts this practice. It is also not uncommon that an implementing organization monthly pays 10 to 20 thousand yen as supervising fees to the sending organization via the supervising organization. Furthermore, in some case, a supervising organization receives about 100 thousand yen per technical intern trainee as a reward from the sending organization. While the payment of reward is illegal, this is done behind the scene, and no busts have been reported. It has also been revealed that supervising organizations are excessively entertained by sending organizations when they go to their countries. These fees are – in the end – born by the technical intern trainees, and foster their low-wage pay scales while adding to the exorbitant loans they need to get in order to procure the funds necessary to come to Japan. This facilitates technical intern trainees’ fall into bonded-labor-type situations.

As of the end of 2015, supervising organizations amounted to 1,889, and after the adoption of the license system under the Act on Proper Technical Intern Training and the Protection of Technical Intern Trainees, the number has sharply increased. As of October 8, 2019, it amounted to 2,698. It is apparent that the licensing system is not strictly checked as demonstrated by the fact that to date only one license has been revoked.

2) It has been a general understanding that the Technical Intern Training Program has responded to labor shortages among medium- to small-sized businesses. However, in 2018, HITACHI, one of the leading companies, and its affiliates allocated to their technical intern trainees jobs other than those specified under the Act, and on September 6, 2019, HITACHI was given an improvement order under the Act. Additionally, illegal job placement was found in Mitsubishi Motors and Nissan Motor Corporation, and for Mitsubishi Motors, the accreditation for its training plan was cancelled and the improvement order was issued in accordance to the Act. The widespread existence of inappropriate and illegal practices even among leading companies speaks to the fact that calls to improve the system are simply empty slogans.

3) Since December 2018, cases involving the pregnancy and childbirth among technical intern trainees have emerged. It was widely covered in the newspaper that a technical intern trainee was found to be pregnant (the technical intern trainee became pregnant during the first one or two months of the program), and was urged to choose between getting an abortion and returning home. In the contract between the sending organization and the technical intern trainee, it was specified that “chronic disease, HIV carrier or pregnancy” are reasons for “deportation.” Such treatment is clearly a human rights violation, but the government has failed to detect the incident. The pregnant technical intern trainee chose not to abort nor return, and she has been supported by NGOs and labor unions. There have been multiple other cases such as ones involving a technical intern trainee who had an abortion by herself by taking medicine, or cases in which stillborn babies or infants have been abandoned. This indicates the reality that technical intern trainees are not humanely treated.

Gov. 9. By the end of December 2018, OTIT conducted on-site inspections of approximately 2,000 supervising organizations, and over 5,000 implementing organizations (over 7,000 organizations in total). Of the over 3,700 organizations (over 1,100 supervising organizations and over 2,600 implementing organizations) at which on-site inspections were completed by the end of September 2018, violations were identified at, and recommendations for improvement were given to, approximately 1,400 (over 500 supervising organizations and approximately 900 implementing organizations) (all figures are preliminary). One supervising organization's license and eight implementing organizations' technical intern training plan accreditations were revoked in 2018. One implementing organization also received an order for improvement.

### **CSO follow-up information**

1) The above description indicates that the OTIT's on-site inspection into the implementing organizations numbered 5,000 cases or more in about nine months, suggesting that about seven or eight years are required to inspect all implementing organizations that amount to 50,000. Meanwhile, the number of inspectors was 151 as of 2018, and it was increased to 233 in 2019 by adding another 82. While it is a positive change, it is still questionable that the increased capacity could help realize the inspections that are necessary to fully ascertain the realities of the system.

2) The government has never released the findings of the on-site inspections. The above information provided by the government in its comments to the CERD revealed an approximate number of recommendations made through the inspections. This revelation was the first, however, details of recommendations made were not published. As it is an administrative recommendation and outside the legal scope, it is unfortunately not mandatory to disclose details such as the names of supervising organizations, the names of implementing organizations, and what the improvement recommendation is about. These circumstances, make it very difficult to identify and share information on the problems with the Technical Intern Training Program, and deter the realization of optimal improvements to the system. It is urged that the Government of Japan seeks to make the system transparent by, for instance, publishing a regular report such as a "Technical Intern Training White Paper," and clarify the issues at hand in working to improve the system.

Gov. 10. The MoJ and the Ministry of Health, Labour and Welfare (MHLW) have prepared bilateral agreements with countries that intend to send technical intern trainees (13 countries as of the end of April 2019) and are working to ensure appropriate operations of sending organizations.

### **CSO follow-up information**

1) As of June 2019, Japan has concluded bilateral agreements (memorandums of cooperation) with 14 countries – except for China, which is a major sending country. The main purpose of a bilateral agreement is the optimization of sending organizations. However, under the Act, regulations on sending organizations are limited to only indirect ones such as bans on deposits/penalty fees. All other matters are at the discretion of the sending countries.

The Act includes provisions that regulate implementing organizations according to the Labor Standards Act. In addition, it has provisions that punish human rights abuses by the supervising organizations. But, the Act does not have any regulations that allow punishments for sending organizations and its related parties for their inappropriate acts. Thus, the regulation of sending organizations is only possible through the accreditations given by the sending country, which are based on the bilateral agreement. It is hardly viable.

2) On the other hand, sending organizations usually have their liaison offices and officers in Japan to directly control technical intern trainees who they have sent and to deeply involve themselves in the forced return of technical intern trainees against their will when problems occur. Thus, the government is hardly aware of what these liaison offices and officers do in Japan, despite the fact that it can intervene in the activities of sending organizations in Japan through the existing laws. Indeed, the government shows no intention to intervene. Because of this, the extant structure in which technical intern trainees come to Japan with heavy debts from commissions, service fees, and other expenses to be paid to sending organizations, nothing has changed. This constitutes a form of bonded labor and contributes to the decay of the Technical Intern Training Program itself.

Gov. 11 A project team was set up within the MoJ in November 2018 to study ways of further improving the technical intern training program. The team conducted surveys on cases of disappearance and death of technical intern trainees and reviewed the operation status of the current system. A report on the results of the surveys and review was released in March 2019. The report recommended implementing more robust responses in cases of disappearance and death, enhancing the system to prevent disappearance of technical intern trainees, and reinforcing the Immigration Services Agency and OTIT's structures. Efforts are now being made to enhance the technical intern training system based on the recommendations mentioned in the report.

### **CSO follow-up information**

1) The above project team was set up by the Ministry of Justice after the issue concerning the disappearances of technical intern trainees was taken up by the Diet during its examination of the bill of the revised immigration control act in November 2018.

To be specific, it appeared that the MoJ tried to cover up the reasons of disappearances among technical intern trainees. Through questionnaires with technical intern trainees under the program, it was found that many technical intern trainees were not satisfied with their wages which were lower than the contracted wage or the minimum wage. But in the report presented to the Diet, the MoJ replaced the word "lower wage" as the reason for disappearances with the words "seeking higher wage." We are led to believe that the MoJ tried to cover up the problems of long work hours, unpaid wages, overtime wages far below that of the minimum, etc. that the technical intern trainees endured. According to the findings of the opposition party's investigation, about 70% of technical intern trainees received less than the minimum wage. This indicates that poor working conditions was the major reason for the "disappearances" of the technical intern trainees.

2) Under these circumstances, a project team was set up during the period from November 19, 2018 to March 28, 2019, to conduct a survey and analysis on the issue of "disappearances" and "deaths" among technical intern trainees.

The four-month survey on “disappearances” was conducted on 5,218 technical intern trainees and 4,280 implementing organizations during the period from January 2017 to September 2018. Of all 4,280 implementing organizations, only 1,555 interviews were made face to face (36.3%), while 2,177 were made through telephone or written inquiries (50.9%). The rest were not interviewed because of refusals or bankruptcies. Among “disappearance” cases, 58 cases were because of breaches in the minimum wage, and 195 cases were because of failures to pay the increased wages during overtime work. These findings do not give enough information to assess the realities to their full extent.

Meanwhile, the 171 “death cases” that occurred from 2012 to 2017 were the subject of the survey. However, no field investigations were conducted, and only submitted reports, death certificates, supplementary materials, and record documents were analyzed. Among these “death cases,” some indicated the possibility of Karoshi (death by overwork) or Karo-jisatsu (suicide driven by overwork), but no case was recognized as a labor accident. For reference, since 2010, among cases in which technical intern trainees died by overwork, there have been only two cases that were recognized as a labor accident.

As shown above, the Immigration Bureau and the Organization for Technical Intern Training appear not to be willing to identify problems pertaining to the Technical Intern Training Program. Such initiatives have only been carried out by NGOs and labor unions who regularly see and talk to them for care and support. Therefore, despite the government’s claims that it will make efforts to improve the system and fix its problems, it is hard to expect substantial change.

prepared by Solidarity Network with Migrants Japan (SMJ)



*The following two pieces of information are not related to the follow-up information. In reference to the Government of Japan's Comments (CERD/C/JPN/CO/10-11/Add.1), CSOs would like to provide the Committee with the following counterstatements.*

## **I. COs Para 26 Intersecting forms of discrimination and violence against women**

by Solidarity Network with Migrants Japan (SMJ)

To the recommendation under para. 26 that reads, "The State party should also amend its legislation to ensure that it does not have the effect of forcing foreign women to remain in abusive relationships for fear that they will lose their residency status or be deported," the Government of Japan (the Government) responded to the Committee in September 2019 stating that it would not revoke a status of residence of a foreigner who needs to seek temporary shelter or protection from spousal violence for justifiable reasons, and that information about concrete cases that fall under justifiable reasons is published on its website for wider dissemination.

Basically, para. 26 has followed para. 17 of the concluding observations of the Committee to the Government in August 2014 which recommended the state party to 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. Also, in the same COs of 2014, the Government was recommended to submit follow-up information on para. 17 within a year.

While other treaty bodies have also recommended the Government to address the unstable residential status of migrant women in relation to spousal violence against them, the Committee, for the first time, recommended that the Government amend its domestic law by specifying the name of the law and the reference of the article/clause.

The follow-up information (of the 2014 review) submitted to the Committee by the Government in August 2016 revealed the fact that the Government had not even started to consider whether such an amendment is necessary.

There were 32 cases in 2016 and 23 cases in 2017 involving the revocation of residence status under the stipulations provided in Article 22-3, paragraph (3), item (vii) of the Immigration Control and Refugee Recognition Act.. The recommendation of the Committee reflects its concern about the revocation system as it may pose a threat to many migrant women and prevent them from escaping violence. Apparently, the Government seems not to understand the reason why the Committee has raised its concern over the situation of migrant women. During the session of negotiations that SMJ held with the Government in November 2018, it replied "0" to our question on how many cases involving migrant women subject to

spousal violence were exempted from the revocation of residence status.

In its December 2016 letter to the Government in regard to its follow-up information on migrant women, the Committee conveyed its deep concern about the issue and urged the Government to include information on actions it had taken as well as its plan to review the legislation concerning residence status.

Nevertheless, the Government did not give any information regarding the issue of violence against migrant women in its 10<sup>th</sup> and 11<sup>th</sup> periodic report. Since 2014, the Government has not responded honestly to the Committee and its recommendations.

## **II. COs Para 35 Refugees and Asylum Seekers**

by Solidarity Network with Migrants Japan (SMJ)

### **1. Asylum application acceptance rate**

(refer to paras. 21 through 23 of the government comments)

The government figures show that even in 2018, when the alleged abuse and misuse of applications for refugee status are said to have decreased, the recognition rate fell below 1% (which included those who were granted permission to stay on humanitarian grounds). While the number of applicants for refugee status was 10,493, the number of people recognized as refugees was 42 and that of those who were granted residence on humanitarian grounds was 40, bringing the total of those who were granted asylum to only 82.

The problem lies in the procedures for refugee recognition. In particular, the application for refugee status is not examined by an independent organ, but is done by the Immigration Services Agency, which is in charge of immigration and residence control of foreign nationals, and therefore prioritizes control over protection. Also, a heavy burden of proof is placed on the applicants. Not enough consideration is given to the difficulties the refugees have in bringing evidence with them when they enter Japan. They are not allowed to have their representatives present during the interviews nor to have interviews with audio/visual recording.

The abuse and misuse of the application procedures does not nullify these facts. “Various efforts to ensure swift protection for persons in genuine need” should start with a review of the refugee recognition procedures.

### **2. Work permission for applicants awaiting recognition of refugee status**

(refer to paras. 24 through 27 of the government comments)



As a result of the “Revisions for the Optimization of the Operation of the Refugee Recognition System,” a pre-screening period of two-months was introduced. Employment is not allowed during this period, and 77% of the applicants are categorized as those requiring further examination. As such, they would be ineligible for work permits for 8 months in total. This is longer than the previous length of 6 months during which applicants were not allowed to work.

The 0.3% of applicants who were determined to be “cases with a high probability of being Convention refugees, or likely to require humanitarian consideration due to a conflict situation in their home countries,” are given work permits promptly after being categorized as such.

Refusal to provide work permits to applicants who apply for refugee status after ceasing to engage in the designated activities stipulated in their residence status (such as foreign students who dropped out of school), not only makes it more difficult for those applicants to make a living live, but also discourages future possible applications.

The problem is that applicants categorized as “cases in which applicants claim reasons that clearly do not fall within the grounds for persecution under the Refugee Convention,” would be detained after the pre-screening as cases warranting restrictions on stay. Those who are categorized as such are then urged to leave the country by the expiration of their residence status. When they do not comply, they would be detained after their residence status expires. Many withdraw their application out of fear of detention, and return home. The number of people withdrawing their applications jumped from 1,612 in 2017 to 2,923 in 2018.

While speaking of a system “to ensure swift protection for persons in genuine need,” the government’s policy results in preventing people who need asylum from applying. The concerns raised by the report submitted on July 28, 2017 by the “Expert Meeting for the Investigation of the Efficacy of Efforts to Optimize the Operation of the Refugee Recognition System” have become a reality. The expert meeting report voices concern over the fact that the evaluation records were not clear, and there were cases in which it was not clear whether country-of-origin information was sufficient for determining refugee status.

“Don’t throw the baby out with the bath water.” The rights of refugee status applicants should not be violated with the curbing of applications for refugee status on the pretext of preventing the abuse and misuse of those applications.

### **3. Detention of refugee status applicants**

(refer to paras. 28 through 31 of the government comments)

Only 3.9% of detainees (who applied for refugee status recognition without a valid residence status) are released with a grant for provisional stay. Even when an applicant has a valid residence status, if the application is considered to be one of the “cases in which applicants claim reasons that clearly do not fall within the grounds for persecution under the Refugee Convention,” the applicant may be detained.

Applicants for refugee status who were detained under the above procedures, and those who have applied multiple times, but whose application is deemed to be not much different from previously submitted applications, become subject to arbitrary and indefinite detention. The policy is to “continue detention, unless there are serious circumstances, such as grave illness” (operational guidelines for provisional release).

The proportion of successful applicants for refugee status and those given permission to stay on humanitarian grounds is below 1%. There are many who have a “fear of being persecuted” if returned home after being refused recognition, and therefore apply for refugee status multiple times. But most of them apply repeatedly without being able to gather enough evidence to satisfy the Japanese immigration authorities. These people will then be detained in immigration detention facilities. The immigration authorities insist that deporting these people will not violate the principle of *non-refoulement*. But it is highly questionable whether the principle is satisfied with an asylum protection rate of less than 1%.

On June 24, 2019, a man of Nigerian nationality in his forties died in the Omura Immigration Center. He had a Japanese wife and child, but had been serving time on criminal charges. After his sentence, a deportation order was issued and he was detained. He and his wife were divorced, but he had refused deportation because he did not want to be separated from his child. He had been detained for 3 years and 7 months, and had gone on a hunger strike to protest his long-term detention. Ultimately, he was abandoned and “starved.” He “starved to death,” the Immigration Services Agency had stated, because he refused to be fed or treated. The Agency published the findings of the investigation stating that its actions were not inappropriate. Detention authorities are responsible for the health of the detainees, and such incidents should not be allowed to happen.

The authorities insist that they will continue arbitrary and indefinite detentions, even for stateless people or people from countries which do not accept deportees who have received a deportation order. People who have violated criminal laws and are considered to cause uneasiness within society, people whose claims are considered not to fulfill the grounds for persecution stipulated in the Refugee Convention, and people who have applied multiple times under the same claim also face arbitrary and indefinite detention.

The number of detainees is 1,253 as of the end of June 2019. 54% of them have been detained for more than 6 months, and 42% of them for more than 1 year. Further, there are detainees who have been there

more than 6 years.

Even now, more than 100 detainees are going on hunger strike, protesting the long-term detention and calling for provisional release.

#### 4. Regarding protection measures for refugee applicants

Refugee applicants are provided with a protection fee, but the amount is insufficient to cover their livelihood expenses, as recipients cannot even afford to pay for heat during the winter. It does not amount to the livelihood protection subsidies which are granted at minimum as social security in Japan.