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### Consejo de Derechos Humanos

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**Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo**

### **Informe del Relator Especial sobre los derechos humanos de los migrantes, Jorge Bustamante**

**Adición**

#### **Misión al Japón\***

#### *Resumen*

El Relator Especial sobre los derechos humanos de los migrantes, Jorge Bustamante, realizó una visita oficial al Japón del 23 al 31 marzo de 2010, durante la cual visitó Tokio, Nagoya, Toyota y Hamamatsu.

Aun reconociendo que el Japón ha adoptado algunas medidas para la protección de los migrantes, en particular, para aliviar las repercusiones de la reciente crisis económica en este colectivo, el Relator Especial observó que aún persisten desafíos muy diversos por resolver. Además, la integración social de los inmigrantes no forma parte de las políticas del Gobierno central, que se ciñe esencialmente al control en las fronteras.

En este contexto, el Relator Especial formula al Gobierno una serie de recomendaciones, entre ellas, la necesidad de hacer frente a la persistencia de la discriminación racial y la xenofobia y la falta de una legislación que claramente prohíba esas conductas, la explotación laboral de los migrantes, la inacción del poder judicial y la policía para proteger los derechos de los migrantes, la estricta política de internamiento y expulsión de migrantes irregulares, las dificultades de los niños migrantes para acceder a la educación, ya sea en escuelas japonesas o extranjeras, y la ausencia total de una política integral de inmigración que respete los derechos humanos de los migrantes y permita su integración en la sociedad japonesa.

\* El resumen de este informe se distribuye en todos los idiomas oficiales. El informe, anexo al resumen, se distribuye únicamente en el idioma en que se presentó.

## Anexo

### Report of the Special Rapporteur on the human rights of migrants, on his mission to Japan (23–31 March 2010)

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## I. Introduction

1. The Special Rapporteur on the human rights of migrants, Jorge Bustamante, conducted an official visit to Japan from 23 to 31 March 2010 at the invitation of the Government. In Tokyo, Nagoya, Toyota and Hamamatsu, the Special Rapporteur met with ministers, officials of central and local governments, international organizations, lawyers, schoolteachers, academics, members of civil society organizations and migrant women and men, and their children. He also visited the Higashi-Nihon Immigration Centre in Ushiku and foreign schools and met with migrants' associations.

2. The Special Rapporteur expresses his gratitude to the Government for its cooperation and to the various organizations that provided support for his mission, in particular the International Organization for Migration and civil society organizations.

## II. General background: the migration phenomenon in Japan

3. At the end of 2009, the number of registered foreign residents in Japan was 2,186,121, which amounts to 1.71 per cent of the country's total population of 127.5 million. While the number of registered foreign residents decreased by 0.03 per cent from the end of 2008, it has been on the rise since 1999. Chinese nationals are the largest foreign community (680,518) residing in Japan, followed by South and North Koreans (578,495), Brazilians (267,456), Filipinos (211,716) and Peruvians (57,464).<sup>1</sup> The number of migrants in Japan is extremely low compared to other industrialized countries: 13.5 per cent in the United States of America, 13.1 per cent in Germany, 10.7 per cent in France and 7.4 per cent in Italy.<sup>2</sup>

4. In Japan, migrants are referred to as either "old comers" or "newcomers". "Old comers" are mainly Chinese and Koreans, and their descendants, who came (or were forced to come) to Japan before or during the Second World War and remained after the end of the war. "Newcomers" refers to those who migrated to Japan more recently, mainly since the 1980s.

5. In the late 1970s, Indo-Chinese from Vietnam, Laos and Cambodia sought asylum in neighbouring countries, including Japan. In the 1980s and 1990s, owing to the economic boom in Japan and the difficulty for domestic companies to secure workers, the number of migrant workers increased significantly, mainly originating from South-East Asia and Latin America. The major amendment to the Immigration Control and Refugee Recognition Act in 1990 allowed the Japanese descendents (up to the third generation) to acquire the long-term residential status without restrictions on employment in Japan. Owing to a strict migration policy which did not provide for a wide range of avenues for labour migration, however, many migrant workers entered with a short-term visa or under the residential status of entertainers or trainees, and became "overstayers". As of January 2010, the estimated total number of irregular migrants in Japan is 110,000, owing to the vigorous nationwide track-down measures implemented over the past five years.

6. The considerable increase of migrants in Japan in the 1980s and 1990s generated challenges with regard to their access to social services, health, housing, children's education, fair conditions of employment and their participation and integration into local communities. Many of these issues have only received insufficient attention to date. In

<sup>1</sup> Japan. "Immigration Control 2010", Ministry of Justice.

<sup>2</sup> Department of Economic and Social Affairs, Population Division, *Trends in International Migrant Stock: The 2008 Revision*, POP/DB/MIG/Stock/Rev.2008 (2009).

addition, these problems have been exacerbated by the economic downturn in 2008 that has severely and often inequitably impacted migrants.

7. With regard to refugees, since the ratification of the 1951 Convention relating to the Status of Refugees in 1981, the legislation provides for the recognition of refugees and granting of refugees status. However, in practice the Government is very reluctant to recognize refugees: in 2009, only 30 asylum-seekers were granted refugee status, while 501 were given a permission to stay for humanitarian reasons.

### **III. Normative and institutional framework for the protection of the human rights of migrants**

#### **A. The international legal framework**

8. Japan is party to a number of core international human rights treaties, in particular 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, the Convention on the Rights of the Child and the International Convention on the Elimination of All Forms of Racial Discrimination. It also ratified the Convention relating to the Status of Refugees and its Protocol.

9. Japan is yet to ratify: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter “Migrant Workers Convention”); or the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air (both of which supplement the United Nations Convention against Transnational Organized Crime, also not ratified), the Convention on the Rights of Persons with Disabilities, and the ILO Conventions No. 97 concerning Migration for Employment and No. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers. The 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 are also yet to be ratified by Japan.

#### **B. The national legal and institutional framework**

##### **1. Policy and legislation**

10. As outlined in the report it submitted in 2008 to the Committee on the Elimination of Racial Discrimination, Japanese policy regarding foreign workers provides that “the acceptance of foreign workers in professional and technical fields should be more actively promoted. On the other hand, with respect to the matter of accepting workers for so-called unskilled labour, there is a concern that the Japanese economy and society as well as people’s livelihood may be adversely affected by such an [acceptance of unskilled labour].”<sup>3</sup> The Government concludes that “based on the aforementioned policy, in principle, no foreigner is permitted to enter the country to engage in unskilled labour”. However, there has been a need for unskilled labour in recent years, which has not been

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<sup>3</sup> “Ninth Basic Plan of Employment Measures”, adopted by the Cabinet in August 1999

sufficiently met by the immigration of persons of Japanese descent and the employment of foreign trainees and technical interns. Therefore, a considerable number of migrants have entered Japan with a short-term visa and have overstayed it, working in Japan as irregular migrants.

11. The Immigration Control and Refugee Recognition Act (1951) (hereinafter the “Immigration Control Act”) is the main legislation regulating migration in Japan. It regulates the entry, stay and deportation of migrants in accordance with the policy outlined above. In 1989, under an increasing pressure to fill in labour shortages, the Government revised the Immigration Control Act to allow descendants (up to the third generation) of Japanese emigrants to apply for a long-residence permit in Japan. These non-nationals of Japanese descent are commonly called “Nikkeijin”. The vast majority of “Nikkeijin” are from Brazil and Peru, where their ancestors had emigrated at the beginning of the twentieth century. This slight opening up of the migration policy has been criticized as being racially discriminatory, since it substantially limited the acceptance of foreigners to those of Japanese descent.

12. In 1990, the Government established another mechanism, the Industrial Training and Technical Internship Programme, under which trainees and interns from developing countries come to Japan with a view to learning skills and working under a training framework. As discussed later, there are many reports of serious abuses linked to this programme.

13. As a result of these policies, from 1990 to 2008, the number of migrants from Brazil and Peru, including “Nikkeijin”, increased from 71,000 to 370,000. Based on statistics provided by the Ministry of Labour, the number of foreign workers totaled 562,818 in October 2009. The number of trainees and technical interns working in Japan reached around 200,000 in 2008. Out of these, trainees, of whom there were 86,826 in 2008, are not included in the legal definition of “worker” and thus not counted for as “workers” since they are under a training regime.

14. While this opening up of the migration policy and the related increase of migrants generated considerable needs in terms of social welfare, medical care, education, housing and community life, the revision of the law did not include the establishment of a comprehensive policy aimed at recognizing and implementing the rights and welfare of migrants in these fields. In this regard, the Special Rapporteur also notes media reports that Japan has not pursued policy measures to attract migrant workers to address its labour shortage and to ensure their welfare and integration in the Japanese society.<sup>4</sup> The current Government, before gaining power in 2009, had campaigned for the strengthening of these rights and the adoption of a comprehensive immigration policy. However, the Special Rapporteur notes that, since then, no action has been taken.

15. Finally, there is no legislation in Japan that manifestly prohibits and punishes racial discrimination. Various United Nations bodies, in particular the Committee on the Elimination of Racial Discrimination<sup>5</sup> and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance,<sup>6</sup> have urged Japan to adopt such legislation. As noted by these experts, the absence of domestic legislation often precludes victims of racial discrimination from seeking judicial remedies, particularly against the State.

<sup>4</sup> See e.g. *The New York Times*, “Despite Shortage, Japan Keeps a High Wall for Foreign Labor”, 3 January 2011. Available from [http://www.nytimes.com/2011/01/03/world/asia/03japan.html?\\_r=1&pagewanted=2](http://www.nytimes.com/2011/01/03/world/asia/03japan.html?_r=1&pagewanted=2).

<sup>5</sup> See concluding observations, CERD/C/304/Add.114, paras. 10 to 12 and CERD/C/JPN/CO/3-6, para 9.

<sup>6</sup> See E/CN.4/2006/16/Add.2, para. 76.

## 2. Institutional structure

16. Various ministries have responsibilities with regard to migration: the Ministry of Justice (immigration control), the Ministry of Health, Labour and Welfare (social welfare and employment), the Ministry of Education, Culture, Sports, Science and Technology (education), the Ministry of Foreign Affairs (consular issues) and the Ministry of Economy, Trade and Industry (skilled migrant workers). The Cabinet Secretariat and the Cabinet Office are in charge of coordination among these ministries. However, the Special Rapporteur notes some stakeholders' views that such coordination lacks effectiveness since the Cabinet Office enjoys neither sufficient power nor budget over the ministries involved and is therefore not in a position to effectively coordinate their work.

17. Furthermore, the Special Rapporteur is concerned that the dissemination of United Nations bodies' decisions is not effective within the governmental structure. He observed that various ministries had no knowledge of the recommendations made to Japan by various United Nations human rights bodies.

## 3. Local level

18. In the absence of an integration policy at the national level, it is mostly at the municipal level that action has been taken for the promotion of migrants' rights. In 2001, at the initiative of the city of Hamamatsu, the Council of Municipalities with a High Concentration of Foreign Residents was established to identify solutions to common concerns which arose out of the increase of migrants in the 1990s. The Council adopted the Hamamatsu Declaration in October 2001, which calls for "the establishment of a truly symbiotic society based on respect of right and fulfilment of duties ... and respect for each other's cultures and values between Japanese and foreign residents".<sup>7</sup> It refers to the intention of these municipalities to promote a multicultural integration policy. Initially formed by 13 cities, it is now a forum where 27 municipalities gather to discuss how to better address the needs of migrants. Municipalities part of this initiative include Nagoya, Toyota, Hamamatsu, Tokyo, Osaka and Yokohama.

19. In addition to being a forum where municipal policies are discussed and evaluated, the Council makes efforts to influence the national Government, conscious that the problems faced by municipalities can only be resolved with drastic reforms and policymaking in terms of education and social security at the national level. In October 2008, the Council issued a declaration calling on the Government to form a new agency to comprehensively deal with immigration policies and increase efforts to strengthen Japanese language education.

20. In 2006, the Ministry of Internal Affairs and Communications published the Plan for the Promotion of Multicultural Coexistence, to encourage local governments to establish their own rule for multicultural coexistence.<sup>8</sup>

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<sup>7</sup> Preamble, Hamamatsu Declaration (19 October 2001).

<sup>8</sup> Ministry of Internal Affairs and Communications, Plan for the Promotion of Multicultural Coexistence (27 March 2006). Available from [http://www.soumu.go.jp/kokusai/pdf/sonota\\_b6.pdf](http://www.soumu.go.jp/kokusai/pdf/sonota_b6.pdf).

## IV. Good practices

### A. Support measures for education of migrant children

21. Because of the Japanese language barrier, many migrant children have entered private foreign or “ethnic” schools, while others, who can neither access Japanese schools nor foreign private schools because of the costs, are out of school.

22. Recognizing that migrant children’s education was in a worrying state, the Government recently started to provide some assistance to migrant children with difficulties in adapting to the Japanese language and culture. The Government adopted the immediate short-term support measures for foreign residents in Japan in January 2009.<sup>9</sup> It launched a set of educational measures, such as: provision of bilingual support staff for teaching Japanese to children and liaising with parents; preparatory classes for children before they enrol in schools; designation of schools for the enrolment of foreign students; appointment of staff from NGOs as “school promoters” who approach migrant families with children not attending school; increased number of Japanese language teachers for migrant children. School enrolment guidebooks have also been prepared by the Ministry of Education in seven languages containing information on the Japanese education system and procedures for enrolling. They are distributed at schools, boards of education, consulates and embassies.

23. The Government also launched an emergency short-term programme to teach Japanese, and basic subjects required in the Japanese educational system, to those migrant children who have had to leave foreign private schools as a result of the economic crisis. This project costing 4 billion yen and lasting 3 years managed by the International Organization for Migration has financed the “Rainbow Bridge Classrooms” for migrant children to study Japanese and other subjects so that they can then transfer more smoothly to Japanese free public schools. This programme also promotes integration by organizing cultural activities with local communities.<sup>10</sup>

24. Since policies at the national level are mainly ad hoc and short-term, some municipalities have taken the initiative to offer support to migrant children’s education. The city of Hamamatsu, with more than 32,000 migrants, has a population of nearly 20,000 Brazilians, which is the largest among the Japanese municipalities. The municipality offers what it calls a “Diversified Educational Environment for Foreign Children”. It offers Japanese language support as well as support and tutoring in various languages to allow children enrolled in Japanese schools to become accustomed and integrated into Japanese school life. It also gives support to foreign schools, which are seen as playing an important role in the education of migrant children. Finally, it promotes education that fosters an intercultural understanding in primary and junior high school.

25. Concerning adult education, several municipalities have taken initiatives to provide Japanese-language learning opportunities. In Toyota, the municipality established a fund to which companies hiring many migrant workers contribute as part of their corporate responsibility. This fund, in which the Toyota Group participates, finances Japanese classes for adults. However, following the financial crisis, contributions have decreased considerably. At the prefectural level, a similar fund has also been created, where companies contribute to hiring Japanese teachers for children of their migrant workers, with

<sup>9</sup> Cabinet Office, “Immediate short-term support measures for foreign residents in Japan”, 30 January 2009. Available from <http://www8.cao.go.jp/teiju-portal/eng/taisaku/#1>.

<sup>10</sup> See Cabinet Office, “Promotion of Support Measures for Foreign Residents in Japan”, 16 April 2009. Available from <http://www8.cao.go.jp/teiju-portal/eng/taisaku/index.html>.

the contribution by the workers and the prefecture. However, these initiatives are limited to the Aichi Prefecture, while, according to municipalities, there is a need for these initiatives to be institutionalized across the country.

## **B. Assistance in seeking employment**

26. Labour policies are the prerogative of the Ministry of Health, Welfare and Labour. Before the economic crisis, the Ministry had some measures in place in order to support migrant workers through the public employment offices (called “Hello Work”). In addition to the services provided to all workers such as the payment of unemployment benefits, the 545 “Hello Work” offices nationwide provide a number of interpreters to assist migrants seeking a job, and training sessions to private companies on migrants’ rights with regard to pension benefits and labour and social insurance. Owing to the severe impact of the economic crisis at the end of 2008 which particularly affected migrant workers, the Ministry adopted new measures to deal with the large number of migrant workers who approached the “Hello Work” offices. It placed more interpreters and counsellors in these offices, and established counselling and assistance centres especially dedicated to them in regions with a very high number of migrants. For example, in Hamamatsu, as the number of migrant workers who came to the offices rose from 200 to 1,614 in February 2009, three more offices were established, in addition to the three existing ones: two of them are dedicated exclusively to migrants. While the rate of employment found through the “Hello Work” office in Hamamatsu was 6.9 per cent in February 2009, it rose to 27.8 per cent in January 2010, compared to the general rate of employment in Hamamatsu of 21.4 per cent for the same month.<sup>11</sup>

27. Nationwide, the number of “Hello Work” offices with interpreters rose from 73 in 2008 to 126 in 2009, and the hours of interpretation rose from 712 to 4,698 per week.

28. The Government also funds free training programmes which last around three months, targeting around 5,000 migrant workers of Japanese descent and aimed at strengthening their communication skills, including Japanese, providing basic knowledge of labour legislation and practice in Japan, and guidance on the preparation of resumes and interviews. While this is a good initiative, it is of concern that this programme is limited to migrants of Japanese descent and is not available to all migrants in need.

29. Finally, for those migrant workers who, affected by the recent economic crisis and unable to find employment, wish to return to their country, the Government offers the provision of financial and other assistance for their return, although this measure has been controversial.

## **C. Promotion of cultural exchange**

30. With the aim of promoting cultural exchanges and better mutual understanding, a number of local municipalities and NGOs organize or support cultural events on a regular basis. For instance, Hamamatsu provides assistance to both foreign and Japanese cultural groups for the organization of cultural events, such as the Hamamatsu Samba festival.

31. Toyota also holds two festivals annually: the Brazilian Festival and the Sticky Rice Festival, where the national and migrant communities celebrate together. It also created a Global Square in 2007, a space of 900m<sup>2</sup> where foreign residents hold a “National Day” every Sunday afternoon to introduce their home country and culture.

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<sup>11</sup> Statistics provided by the “Hello Work” office in Hamamatsu.



## D. Proposed new migration policy

32. In June 2008, the political party in power at the time submitted the Draft Migration Policy Framework to the Prime Minister's Office, aiming at presenting a draft migration bill in the 2009 Diet session, which bill was not adopted due to the change of Government that took place in 2009. The major points of the proposed policy were:

- (a) Promotion of multicultural coexistence and the integration of migrants through comprehensive measures of social integration;
- (b) Creation of an agency for migration, responsible for managing migration control, nationality and social integration measures;
- (c) Abolishment of the Trainees and Technical Interns Programme, replacing it with an Employment Programme;
- (d) Partial introduction of nationality based upon *jus soli*;
- (e) Promotion of family-based migration;
- (f) Acceptance of migrants through economic partnership agreements; and
- (g) Promotion of "humanitarian migration", including third-country resettlement of refugees and protection of refugees from the Democratic People's Republic of Korea.

33. The new Government has not taken these proposals forward. If adopted, these would have represented a notable step forward in ensuring respect for migrants' rights and their integration in the host society.

## V. Major challenges in the protection of the human rights of migrants

34. Despite some positive measures adopted at the national and local level in recent years, the Special Rapporteur found that many challenges remained to be addressed by the Government in order to effectively protect the human rights of migrants and their children.

### A. Lack of comprehensive immigration policy

35. While Japan started receiving migrant workers 20 years ago, it has yet to adopt a comprehensive immigration policy that goes beyond managing the entry and stay of migrants. It currently lacks a policy that demonstrates a real commitment to eradicate discrimination against migrants and provides for long-term programmes designed to create necessary conditions for the effective integration of migrants into the Japanese society. Presently, only ad hoc provisional measures are implemented to assist certain categories of migrants as needs arise. However, migration has become a permanent reality in Japan, as it is in all other industrialized countries. As such, there is a critical need for a long-term vision and policy that creates conditions which enable migrants to meaningfully exercise their rights and potential as productive members of the Japanese society.

### B. Racism and discrimination

36. The Special Rapporteur observed that racism and discrimination based on nationality are still common in Japan, including in the workplace, schools, housing, the justice system and private establishments. Racist and xenophobic discourse, in particular against Korean and Chinese communities, is still widespread. Racist groups regularly

organize demonstrations expressing strong discriminatory ideas against Koreans or Chinese, and have perpetrated aggressive acts against them and their properties. Foreigners in general have been also openly discriminated against by signs such as “Japanese only” that prevent foreigners entering establishments open to the general public. Despite several judicial complaints, the courts have not recognized the obligation of the Government at all levels to prohibit racial discrimination by all appropriate means, including legislation.

37. In this regard, the Special Rapporteur expresses concern that Japan still has not adopted national legislation that manifestly prohibits racial discrimination and xenophobia, while, since 2001, United Nations bodies urged Japan to do so in order to comply with its obligations under the Convention on the Elimination of All Forms of Racial Discrimination. Moreover, some of the Government measures seem to have contributed to fuelling discriminatory approaches toward migrants. The Action Plan to Create a Crime-Resistant Society issued by the National Police Agency states that illegal residents are likely to commit crimes and therefore a large reduction in their number is necessary to provide public safety.<sup>12</sup> The Police also reported to the media that the number of crimes committed by foreigners had increased, while the statistics included in their White Paper confirm that the number of crimes committed by foreigners and brought to the attention of the authorities had actually decreased.

### C. The Industrial Trainees and Technical Interns Programme

38. Under this programme, a person from a developing country can enter Japan as a trainee for a year, and then stay as a technical intern for a maximum period of two years. While the aim of this programme is to transfer Japanese technology, skills and knowledge to workers of developing countries, it is sometimes used by companies to secure cheap, exploitative labour. There are around 200,000 trainees and interns in Japan, and the majority of them come from China (67.6 per cent in 2008).

39. The Special Rapporteur heard a considerable number of complaints in relation to abuses that take place in the framework of this programme. These abuses relate to the payment of very low wages or the confiscation of wages which are paid into an account controlled by the employer, the obligation to perform excessive and underpaid or unpaid overtime, restrictions on freedom of movement and private life, such as limitations in the use of phones or mail or in the possibility to leave the place of work and residence. Many trainees also pay considerable amounts of money as a “guarantee” prior to leaving their country and this money is only paid back if they complete the period of training and internship. Some receiving organizations confiscate trainees and interns’ passports in order to deter them from complaining or escaping. Alternatively, they are forcibly returned when they complain about the way they are treated, and they are not given back the deposit they had paid upon return. Finally, violence and sexual abuses, including rapes, have been reported. Some of these situations amount to slavery or trafficking.

40. At the time of the Special Rapporteur’s visit, since no effective system was in place to monitor the situation of trainees and technical interns and offer them protection and referral mechanisms, they remained particularly vulnerable and became victims of serious abuses.

41. The Special Rapporteur notes that the revised Immigration Control Act of July 2009, which came into force in July 2010, introduces a number of measures to increase protection of trainees. It introduces a new status of “Technical Intern Training” and extends the

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<sup>12</sup> Ministerial Meeting against Crimes, “Action Plan to Create a Crime Resistant Society”, December 2003, p. 5. Available from [http://www.npa.go.jp/english/seisaku8/action\\_plan.pdf](http://www.npa.go.jp/english/seisaku8/action_plan.pdf).

applicability of labour laws to trainees. It also obliges receiving companies to provide specific on-the-job training to the trainees and prohibits collection of guarantee money by dispatching organizations and receiving companies. Furthermore, according to the Government, the Labour Standards Inspection Bodies provide more rigorous inspection and administrative guidance to receiving companies to ensure their compliance with labour laws and regulations. They may refer serious labour law violations for prosecution; 30 such cases were reported in 2009. However, the structure of the programme effectively remains the same, and does not introduce a mechanism through which trainees can directly have access to an effective protection system.

#### **D. Lack of interventions by the judiciary and police**

42. The Special Rapporteur heard recurring complaints about the fact that the judiciary does not recognize migrants' rights under national legislation applicable to the given circumstance, but instead favours Japanese nationals. This is the case when Japanese companies adopt discriminatory behaviour against migrant workers or when Japanese men are violent with their foreign spouse or children.

43. The Special Rapporteur was also informed by some migrants that the police in many instances refuse to address complaints submitted by migrants or which relate to conflicts between migrants, including complaints by foreign women on domestic violence.

#### **E. Limited access to housing**

44. Discriminatory policies and behaviour by both private individuals and public authorities with regard to migrants' access to housing have been reported to the Special Rapporteur. For example, it was reported that the Aichi Prefecture has a policy of limiting the access of migrants and their families to a large public housing complex (about 3,000 inhabitants) called Homigaoka in the periphery of Toyota. The Special Rapporteur regrets that the Prefecture decided to limit the number of applications for apartments in this housing complex, despite the fact that there are vacancies. This created an unfortunate situation where Brazilian families having lost their employment with the economic crisis had to leave the companies' dormitory but had no access to the public housing complex which is significantly cheaper than private accommodation in Japan.

#### **F. Lack of avenues for regularization of irregular migrants**

45. According to statistics provided by the Government, around 90,000 migrants who have overstayed their residence permit live in Japan. In addition, another around 20,000 are said to have illegally entered in the country.

46. Japan has established 27 categories of residence permits, which reflect its policy of accepting only migrant workers in professional or technical fields and those with family- or blood-based linkage with Japanese nationals, with a few exceptions of specific categories such as students, trainees and interns. Out of the categories based on the performance of work, none covers so-called "blue collars", such as factory or construction workers. There is no general resident permit that allows the permit-holder to work in any field. As a consequence, migrants have practically no possibility of working legally as "blue collars", except if they obtain residence permits by virtue of their status as migrants of Japanese descent, spouses of Japanese citizens, trainees or technical interns. Therefore, many migrants working in factories or the construction sector are irregular.

47. Japan does not regularize irregular migrants after a certain period of residence in the country: many have lived in Japan for several years, sometimes for more than 15 or 20 years, and have founded a family with children born and educated in Japan. They live in permanent fear of deportation, which affects their entire family. Following a report on crime published by the Government in 2003 that pointed to irregular migration as one of the causes of the increase in crimes,<sup>13</sup> and with the economic stagnation, the Government has tightened the control over irregular migrants in the last few years. As a consequence, they are increasingly stopped, arrested and deported.

48. The only possibility for migrants to acquire a regular status is the “special permission to stay”. According to the statistics provided by the Ministry of Justice, while 39,382 persons were subject to deportation procedures in 2008, 8,522 were granted special permission to stay. The majority of the latter were irregular migrants married to a Japanese citizen. This permission is granted by the Ministry of Justice based on discretionary criteria that are not set out in the law. A request for special permission to stay can only be filed during the deportation procedure: when a deportation decision has been taken, the person can object to it and on that basis the Ministry of Justice may grant special permission to stay. It is of concern to the Special Rapporteur that this process seems to lack transparency and there are no legal avenues for irregular migrant workers to regularize their status on the basis of their employment.

### **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.

51. Many of the detainees that the Special Rapporteur met suffered from various diseases, in some cases very serious, and the majority complained about not receiving adequate health care. They had not been allowed to continue the medication they had been taking before they were detained, and were given light medication instead, which was seriously compromising their health and possibility of recovering. For example, a detainee suffering from diabetes reported he was only given painkillers and his condition had worsened tremendously.

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<sup>13</sup> Ibid.

52. In terms of use of violence in detention centres, while detainees reported that they were treated fairly and were not subjected to violence, the Special Rapporteur heard cases of use of violence during deportation procedures. For instance, on 22 March 2010, the day before the start of the official visit, Abubakar Awudu Suraj, an irregular migrant from Ghana who was being deported to his country, died in Narita airport in Tokyo. He had been married to a Japanese woman since 2006 and had been held in detention for two years for no other reason than staying in the country without a legal permit. While the case is currently under criminal investigation, the Special Rapporteur is concerned that it may reflect the pattern of violence during deportation procedures, which has been reported to the Special Rapporteur.

53. With regard to complaints on mistreatments or lack of access to appropriate services in detention or during the deportation process, the Special Rapporteur was informed that detainees could submit complaints to the Deputy-Director of the detention centre, through an opinion box, with a further review of the complaints by the Ministry of Justice. No independent mechanism to monitor human rights violations occurring in detention centres and examine complaints was available at the time of the visit. In this regard, the Special Rapporteur positively notes the establishment of the Immigration Detention Facilities Visiting Committee in July 2010. The mandate of the Committee is to “ensure openness of treatment, and improvement of the operation of the facilities”<sup>14</sup> and it is composed of independent experts from a variety of backgrounds, including academia, the legal and medical fields and international and non-governmental organizations.

## H. 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.

56. The Special Rapporteur met with Noriko and other children who were under the threat of deportation for themselves or their parents: they all explained that being deported would ruin their life and their education, as they were born in Japan, their native language was Japanese and they did not speak the language of their parents' country of origin

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<sup>14</sup> Immigration Bureau of Japan, “Establishment of the Immigration Detention Facilities Visiting Committee”. Available from [www.immi-moj.go.jp/english/newimmiact/q\\_a\\_details5\\_english.html](http://www.immi-moj.go.jp/english/newimmiact/q_a_details5_english.html).

(Spanish or Filipino in many cases). They would not be in a position to continue their education in another language, or would lose too many years of education.

## **I. Access to public services by irregular migrants**

57. The Special Rapporteur is concerned that the recent reform of the registration system for foreign nationals may negatively affect the level of access to public services by irregular migrants. The foreigners' registration system has recently been modified by the Revised Basic Resident Registration Act, approved on 15 July 2009. Under the current system still in place, there are two registration systems. On the one hand, municipalities issue registration certificates to all migrants who stay in Japan for not less than 90 days, including irregular migrants. Registration certificates are issued by municipalities of their residence and the municipalities provide public services in the field of health, education and housing to registered migrants. On the other hand, the Ministry of Justice's Immigration Bureau issues residence permits only to regular migrants.

58. Under the proposed new law, there will only be one registration system. The municipal registration certificate will be abolished and replaced by a Resident Card (Zairyu Card) that will be issued by the Immigration Bureau to foreigners who have a permission to stay in Japan for more than three months. Foreigners with a Resident Card will be registered in municipalities of their residence. This is a positive step for regular migrants who will be registered in the same registration system as Japanese citizens and will have a smoother access to public services. However, it leaves the situation of irregular migrants uncovered, since municipalities will not be in a position to register them anymore. Since they will become invisible for municipalities, it is doubtful whether access to essential health services will still be provided to them, or whether they will continue to receive invitations to send their children to public schools. Despite assurances by the Ministry that these services will continue to be provided, it is unclear how this will be ensured in practice.

## **J. Violence and discrimination against migrant women**

59. According to Government statistics, 6.1 per cent of approximately 730,000 marriages registered in 2006 were marriages between Japanese and foreigners. In 81 per cent of these cases, it consists of a Japanese man and a foreign wife, mainly from China and the Philippines. Some 36,000 children of those born in 2006 (3.2 per cent) had one or two foreign parents.

60. Migrant women face twofold discrimination, as foreigners and as women. Often their children also endure consequences of this discrimination. The prevalence of domestic violence is high in Japan<sup>15</sup> and one may assume that it is even higher in the case of migrant women owing to their special vulnerability, as they depend on their husband's approval to acquire or renew their spouse visa. Therefore, foreign spouses are in an extremely vulnerable and unequal situation: they cannot leave the household for the fear of losing the visa and being deported. Some husbands have taken advantage of their dominant position, in some cases using violence.

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<sup>15</sup> The Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children reported that "according to the statistics provided by the Cabinet Office, 13.3 per cent of women living in Japan feared for their life in 2008 because of domestic violence. Also in 2008, 68,196 cases of domestic violence were reported to relevant government bodies" (A/HRC/14/32/Add.4, para. 38).

61. The Special Rapporteur heard various testimonies from Filipino women and their children who are abused by their Japanese husbands or de facto partners. In these cases, he is concerned about reports that the courts do not take into account factors such as domestic violence and abuse against the children in determining their custody.

## **K. Limited access to education by migrant children**

62. According to the School Education Act, elementary and middle education is compulsory for Japanese children, but not for foreign children, since the law obliges only Japanese nationals to send their children to an elementary school and junior high school. According to the Ministry of Education, Culture, Sports, Science and Technology, Japanese elementary and secondary schools may accept foreign children of school age “if they wish to enter” schools.<sup>16</sup> Schools and municipalities have no legal obligation to accept migrant children and education is not secured for those children as a legal right. Moreover, there is no obligation for municipalities to offer specific services or language teaching to migrant children. Each municipality determines its own policy at its discretion.

63. While migrant children are generally accepted by Japanese schools, there are a number of obstacles for migrant children to completing their education in Japanese schools. Despite measures that have recently been put in place by the Government, the majority of migrant children do not receive necessary assistance to develop appropriate language skills and tend to find themselves lost in Japanese schools. In addition, discrimination against them is still common, despite the fact that human rights education has been incorporated into the school curricula. The Special Rapporteur heard many cases of migrant children who feel discriminated by both students and teachers. Compounded by their language difficulties, many migrant children end up leaving Japanese schools.

64. Given these difficulties, the majority of migrant children attend foreign schools, while a considerable number do not attend school at all.<sup>17</sup> Most foreign schools are not accredited as “schools” as defined in article 1 of the School Education Act, as they do not fulfil the accreditation criteria determined by the Ministry of Education, such as the minimum qualifications of teachers and the implementation of school curricula using Japanese textbooks approved by the Ministry. Many Korean schools and some Brazilian schools have been only accredited as “miscellaneous schools”, while others do not receive any accreditation.

65. The lack of accreditation as “schools” under the School Education Act has a number of adverse implications on these foreign schools. First, the Government does not provide any financial support or other services such as free health care and lunches to non-accredited schools. Thus, foreign schools must rely exclusively on financial contributions by parents, which amount to approximately 45,000 yen per month. While miscellaneous schools receive some financial support through local governments, it appears that such support is limited compared to the support Japanese schools and Western schools receive, notably in terms of tax exemptions and subsidies. Second, qualifications acquired at foreign schools are not recognized as equivalent to those acquired at accredited schools, which creates disadvantages for migrant children when they seek to transfer or take national examinations to enter Japanese schools. While a 2003 reform granted access to university

<sup>16</sup> Ministry of Education, Culture, Sports, Science and Technology, *Guide for foreign students to start school procedures to enter Japanese schools*, p. 1. Available from [http://www.mext.go.jp/a\\_menu/shotou/clarinet/003/001/009.pdf](http://www.mext.go.jp/a_menu/shotou/clarinet/003/001/009.pdf).

<sup>17</sup> According to governmental statistics, as of May 2008, the number of migrant children enrolled in public elementary, middle and high schools was around 75,000. About 29,000 required Japanese-language teaching.

entrance examinations to graduates of foreign schools, graduates from schools for those from the Democratic People's Republic of Korea have been excluded, because of political reasons linked to the lack of diplomatic recognition of that country. As a consequence, these students are severely discriminated against: their access to university is not guaranteed and depends on discretion by each university.

66. Furthermore, the Government does not ensure that Japanese classes are provided to children in foreign schools, which has serious consequences for their integration. For example, graduates from Brazilian schools have difficulties in entering Japanese high schools, as they must succeed in a written entrance examination in Japanese or English.

67. Access to high school is also limited for migrant children who have just arrived in Japan. If they are older than the compulsory education age of 15 years and have completed nine years of compulsory education, they are not allowed to enter junior high school. In order to enter high school, they need to pass the entrance examination. However, no training opportunity is provided by the Government to these children in order to prepare for the examination: in Tokyo, for example, only a NGO, the Multicultural Centre Tokyo, provides this specific training in preparing for the entrance examination.

68. As a result, many migrant children cannot attend high school and find themselves without any educational opportunity. A good initiative in this regard is the establishment of "special screening" exams for foreign students in the Prefectural Kadoma Namihaya High School in Osaka: the exam subjects are lighter and other special conditions can apply, such as the use of dictionaries. Thanks to this, the city of Osaka has the highest success rate of foreign students entering high schools in Japan.

69. The Special Rapporteur was also informed that migrant children with disabilities or in need of psychological assistance do not receive adequate support. Migrant parents have difficulties in obtaining the financial support to which they are entitled for their disabled children, and children who require urgent psychological attention must wait eight months to one year in order to receive it.

## **L. Discrimination in employment**

70. The Special Rapporteur received repeated complaints in relation to open discrimination against migrant workers by their private employers with regard to remuneration, excessive overtime, opportunities for promotion, access to health care for accidents in the workplace and unfair dismissals. In many cases, migrant workers, both regular and irregular, informed that they are employed under precarious and discriminatory conditions, with temporary contracts that do not entitle them to access social security services.

71. In particular, the Special Rapporteur heard complaints in relation to a company in Nagoya that requested migrant workers to perform excessive hours practically every day without any compensation. Such demand caused a Chinese female worker to faint after having worked for 190 hours of overtime in a month. Furthermore, Brazilian workers from this company indicated that discrimination against migrant workers was blatant: meals in the cafeteria of the company were more expensive for foreigners; the same was true for the price of uniforms and security accessories. This company eventually dismissed 170 migrant workers on 25 December 2008, and ended up dismissing all its migrant workers in April 2009. In addition, the company distributed to other companies a list of those dismissed migrant workers who were members of trade unions.



72. Brazilian workers recalled that, although Japanese labour regulation explicitly prohibits and punishes discriminatory treatment with respect to working conditions by reason of the worker's nationality, this prohibition is not implemented in practice and discrimination is recurrent.

73. Against this backdrop, it is of serious concern to the Special Rapporteur that the judiciary tends to discriminate against migrants, thereby leaving them with no effective remedies. As an illustration, the Special Rapporteur was informed of complaints concerning discrimination against and unfair dismissals of migrant workers, which were filed by lawyers of the migrant workers' trade union in the Nagoya District Court. In this case, the Court refused to admit all the evidence and dismissed the complaints. The Special Rapporteur regrets that such failure of the judiciary to recognize and sanction discriminatory treatments against migrant workers leaves victims unprotected and may condone discrimination against migrant workers in a similar manner by other employers.

#### **M. Limited access to health and welfare insurance**

74. The Ministry of Health, Labour and Welfare reported that, in theory, labour standards apply to all, irrespective of nationality. In practice, however, certain categories of migrant workers may be left without either employer-based or national health and welfare insurance. Migrant workers, particularly those in the manufacturing industry, are employed by temporary employment agencies which sometimes neglect to contribute premiums for health and welfare insurance, despite their legal obligation to do so. While national health insurance provides a safety net for those without employer-based health insurance, many migrant workers cannot afford to pay the premiums themselves. Furthermore, in principle, the national health insurance is available to foreign nationals who have a residence visa for 12 months or longer. This effectively creates a lacuna of protection for irregular migrants and migrants staying in Japan for a short time. At the municipal level, authorities have indicated that the issue of appropriate access to social security and health insurance coverage for migrant workers is a major problem.

#### **N. Political participation**

75. According to the national law regulating elections, migrants cannot vote or run in national or local elections, even if they are permanent residents and/or born and raised in Japan throughout their lives. However, the Hamamatsu municipality has taken some interesting initiatives in this area, considering that migrants should be allowed to take part in local decision-making processes in order to be fully integrated into the society. For that purpose, the Foreign Residents Assembly has been established in the City Hall to reflect the opinion of the migrants' community in the city.

### **VI. Conclusions and recommendations**

**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.

79. In order to prevent labour exploitation of migrants, special attention should be given to monitoring the conditions under which private companies employ migrant workers. Labour inspectors should be adequately trained on how to effectively monitor abuses against migrants, and their procedures should include interviewing migrant workers on their conditions of work, with the assistance of interpreters when needed. Labour standards inspection offices should be more strict and effective in monitoring companies that employ migrant workers through dispatching agencies, resulting in violating regulations on wages, contractual stability and safety rules.

80. Further, the Industrial Trainees and Technical Interns Programme should be discontinued and replaced by an employment programme aimed at ensuring the original purpose of such programme to transfer skills and technologies to developing countries. In the light of the serious human rights violations reported, specific legislation should be adopted to regulate the new programme. It should include more

effective and accessible monitoring and complaint mechanisms for the protection of the human rights of participants, to be managed by a body totally independent from participating companies, and guarantee access to avenues for redress.

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.<sup>18</sup> 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

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<sup>18</sup> With regard to migrant children, the Special Rapporteur refers the Government to the concluding observations addressed by the Committee on the Rights of the Child to Japan in 2010 (CRC/C/JPN/CO/3, paras. 33, 34, 37 and 38).

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;<sup>19</sup>

(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;

<sup>19</sup> With regard to detention irregular migrants and asylum-seekers pending deportation, the Special Rapporteur refers the Government to the concluding observations addressed by the Human Rights Committee to Japan in 2008 (CCPR/C/JPN/CO/5, para. 20) and the Committee on Torture in 2007 (CAT/C/JPN/CO/1, para. 14).

**(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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