

Human Rights Challenges for Migrant Women in Japan

Prepared for the
89th Session of the UN Committee on the Elimination of Discrimination against Women

Solidarity Network with Migrants Japan (SMJ)
September 2024

Table of Contents

FOREWORD	1
LOI Para 9: Gender-based Violence Against Women	2
LOI Para 12: Trafficking and Exploitation of Prostitution	4
LOI Para 18: Employment: Discrimination on the Grounds of Pregnancy and Motherhood	6
LOI Para 19: Employment: Domestic Workers Convention (No. 189).....	8
LOI Para 15: Nationality.....	10
LOI Para 23-1: Rural Women and Women of Disadvantaged Groups (Support for Women Facing Difficulties Act).....	12
LOI Para 23-2 LBT: Residence Status of Same Sex Partners and Immigration Detention.....	14
Refugee and Asylum-Seeking Women (Related article: Art. 2 of CEDAW).....	16
Revocation of Residence Status (Related article: Art. 2 of CEDAW).....	18
CREDITS.....	19

*Additional Reference Information: News Articles (separate supplementary document)

FOREWORD

This NGO report is a compilation of grassroots inputs of member organizations within the Solidarity Network with Migrants Japan (SMJ), and contains sections organized on the basis of the LOIs for the consideration of the Committee on the Elimination of Discrimination against Women in its consideration of the ninth periodic report submitted by the Japanese government in accordance with Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/JPN/9).

SMJ was established in April 1997 with the aim to promote communication and common action among organizations and individuals throughout Japan working to provide assistance and relief and striving to protect, promote, and realize the human rights of migrants, migrant workers, refugees, and their families in Japan. Since then, SMJ has grown into a nationwide network of 118 NGOs, civil society organizations, labor unions, religious organizations, professional associations, and women's rights organizations, with an individual member base of 621 as of September 2024.

Domestically, SMJ has organized annual conferences and symposia on migrant and migrant worker rights, published books and bi-monthly newsletters that have been widely used and consulted throughout domestic civil society circles, organized empowerment events and activities for migrants and non-Japanese national residents, engaged in annual negotiations with government ministries involved in drafting policies that affect migrants and their families, and networked with politicians and bureaucrats from various political parties and ministries. SMJ also recognizes that concerns surrounding migrant rights are also rooted within a broader international context, and has collaborated with regional and international migrant rights organizations and networks to bring awareness of migrant rights issues in Japan to the fore.

The report's contributors, while being active members of the migrant rights advocacy community in Japan, are also supporters, researchers, lawyers, and lobbyists who are authoritative experts in not only the various social, economic, political, cultural, and legal challenges that ethnic minorities and non-Japanese nationals, residents, and workers face in Japan, but also on the *intersections* of these complex issues and the *interactions* between the government, Japanese civil society, and migrants/ethnic minorities themselves. Each chapter addresses specific issues that non-Japanese nationals, ethnic minorities of foreign origins, migrants, and refugees face in Japan, and highlights the current state of affairs, the main challenges and problems, and various NGO policy recommendations.

Please direct any inquiries or requests for additional information to the following contacts.

1) Solidarity Network with Migrants Japan Secretariat (office):
Address: 3F 1-12-6 Ueno, Taito-ku, Tokyo, JAPAN 110-0005
Phone: (+81)(0)3-3837-2316; Fax: (+81)(0)3-3837-2317; E-mail: smj@migrants.jp

LOI Para 9: Gender-based Violence Against Women

Proposed Recommendations

1. Ensure that all migrant women who are victims of domestic violence (DV), regardless of their residence status and type of residency, are provided with prompt and adequate assistance, support services, and protections, including public shelter placement and livelihood security.
2. Amend legislation pertaining to residence status to eliminate situations in which migrant women are forced to remain in abusive relationships for fear of losing their residence status or being deported.
3. Disclose data that the immigration authorities have on the results of residency determination procedures of migrant women who have fled domestic violence.

Background and Current Situation

1. When a migrant woman who is a victim of domestic violence violates the Immigration Control and Refugee Recognition Act, there is a problem in that dealing with the violation takes priority over protecting the victim. On March 6, 2021, a Sri Lankan migrant woman sought protection from domestic violence from the police, but instead of receiving protection as a victim, she was detained by immigration authorities, and died without receiving proper medical care.

At the time, the Immigration Service Agency's internal rules already stipulated that, in principle, victims of domestic violence would not be detained in its detention facilities, and that, if necessary, the authorities would seek the cooperation of a women's consultation center. However, the Nagoya Immigration Bureau did not act in accordance with these rules, detaining the woman and refusing to approve her subsequent application for provisional release.

In many cases, migrant women who are victims of domestic violence are denied admission to public shelters if they have lost their residence status or possess an (unstable) residence status with restrictions on activities that do not allow them to apply for welfare programs related to self-support.

In its "Concluding Observations on the Seventh Periodic Report of Japan" (2022), the Human Rights Committee recommended that the Government of Japan should take necessary measures "to ensure that all victims, regardless of immigration status, are provided with prompt and adequate assistance, support services and protection" (Paragraph 19 (c)).

2. There is a problem in which migrant women whose residence status is granted on the basis of marriage, lose their residence status and become undocumented upon fleeing an abusive relationship or getting divorced from their abuser. Under Japan's legal system, undocumented migrants face the risk of being detained by immigration authorities, and even if they are not detained, they are subject to harsh conditions in which they are removed from the resident registration system ledger, excluded from most government services, made ineligible to sign up for health insurance, and are deprived of any guarantee of access to medical care. This problem has led to women

being forced to remain in abusive relationships, or to return to their abusive spouses after fleeing, for fear of losing their residence status or being deported.

This problem also occurs among migrant women who are married to Japanese men, but is more pronounced among migrant women who are married to foreign national men. In particular, in cases in which the husband is not a permanent resident, loss of residence status due to fleeing or divorce occurs even in cases in which the migrant woman has been in Japan for a considerable period of time and has lost her social and livelihood foundations in her country of nationality. Therefore, the hurdle for the protection of the wives of husbands who are not permanent residents is extremely high. It is necessary to guarantee a stable residence status to migrant women who are victims of domestic violence.

There has been concern that, due to the tightening of permanent residence permits in Japan, women who would have been protected as spouses of permanent residents in the past are no longer protected.

In its “Concluding Observations on the Combined Tenth and Eleventh Periodic Reports of Japan” (2018), the Committee on the Elimination of Racial Discrimination (CERD) recommended that the Government of Japan should “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.” (Paragraph 26(c)).

3. The Immigration Service Agency’s “Guidelines for Measures Concerning Domestic Violence Cases” stipulates that when victims reporting domestic violence apply for renewal of their period of stay, change of residence status, or special permission to stay, the head of department, etc., must report such instances to the Main office of the Immigration Service Agency. The results of the above applications are important data for monitoring whether appropriate measures are being taken for victims of domestic violence. However, despite requests from civil society groups to disclose such application result data, the government has not done so.

<Reference Information> (see separate supplementary document)

<https://www.bbc.com/news/world-asia-59202306>

Family of women who died in detention files complaint against Japan officials

BBC, November 10, 2021

LOI Para 12: Trafficking and Exploitation of Prostitution

Proposed Recommendations

1. The Government of Japan should make further improvements in order to fully guarantee workers' freedom to transfer jobs. While the Skill Developing Worker Program Law (tentative English translation) enacted in June 2024 as an amendment of the Act on Proper Technical Intern Training and Protection of Technical Intern Trainees (Technical Intern Training Act) will ease some of the restrictions on Technical Intern Training Program (TITP) trainees' freedoms to change jobs, these freedoms are not adequate.
2. While through the revised Skill Developing Worker Program Law, the Government has taken an initial step toward a solution by regulating – to a certain extent as acceptance conditions – the large amount of debt borne by technical intern trainees as “commission fees” paid to sending institutions for dispatch to Japan (specific criteria are not yet determined), the Government of Japan should make further improvements in order to realize the intent of ILO Convention No. 181 (Private Employment Agencies Convention).
3. In addition to implementing policies by fully utilizing current laws, the Government of Japan should consider proper measures including further amendments to the Skill Developing Worker Program Law, when necessary, since the new law barely touches on the various human rights violations that have been pointed out to have occurred under the TITP.

Background and Current Situation

1. Restriction on Job Transfer

While the period of job non-transferability under the TITP was three years, under the Skill Developing Worker Program Law enacted in June 2024, the period of non-transferability still remains long at two years.

However, the latter law also requires that those who wish to transfer jobs must demonstrate that they possess certain skills and Japanese language proficiency; with this, the worse the working environment, the more difficult it may be for workers to change jobs.

The Labor Standards Law states that even in the case of fixed-term labor contracts, workers are free to change jobs after one year. Therefore, to avoid discrimination against foreign workers, they should be treated in the same manner.¹

The fulfillment of conditions such as the possession of certain skills and Japanese language proficiency, should not be requisites for one to exercise their fundamental worker's right to freedom to change jobs. If conditions must be imposed, the Government should be responsible for publicly guaranteeing the time and opportunities to acquire such skills and Japanese language proficiency.

¹ Japan's Labor Standards Law applies to all workers, regardless of nationality, so these standards should also be applied in the same way to foreign workers under the Skill Developing Worker Program.

2. Large Amount of Debt Burdens

Under the Skill Developing Worker Program Law (which will be introduced to replace the TITP), fees and other costs to be borne by foreign workers are to be regulated under certain standards as conditions of acceptance into the Program. However, the effectiveness of such standards will vary depending on their content. Careful consideration of this content is paramount for these standards to prove effective.

Even if the standards become effective, it will be difficult to ascertain how to prevent workers' informal cost burdens that do not appear on the surface. It is necessary to keep abreast of the actual situation through ongoing surveys and hearings from stakeholders.

Japan has ratified ILO Convention No. 181 in 1999, and has already harmonized domestic laws. In the immediate future, in cooperation with the ILO, it is necessary to promote sending countries' ratification of this Convention so as to effectively eliminate all burdens placed on migrant workers to Japan.

3. Other Human Rights Violations

As of the end of 2023, nearly 170,000, or 41% of the more than 400,000 technical intern trainees, are women. Although female technical intern trainees are thought to be concentrated in particularly low-wage sectors such as the sewing industry, most statistics on technical intern training do not disaggregate statistics by gender, so the actual situation is unclear.

Other serious human rights violations faced by technical intern trainees, including women, include frequent acts of violence by employers, forced repatriation of technical intern trainees, and the inability to assert one's rights in fear of being forced to return home. Additionally, there are various restrictions placed on pregnancy and childbirth, and as a result, there have been incidents of abandonment of a new-born baby's corpse. Furthermore, there is a low wage structure in place for technical intern trainees that results in wages that are far from "equal to or higher than" that of their Japanese counterparts.

In the discussion process for the enactment of the Skill Developing Worker Program Law to replace the Technical Intern Training Act, the relevant Cabinet Meeting decision stipulated that the government will "take prompt actions that are possible under the current system to address acts of human rights violations," but this cannot be expected to be effective.

As for the human trafficking of technical intern trainees, the Government Council for the Promotion of Measures to Combat Trafficking in Persons certified the first four cases of labor trafficking in 2021, and only two more cases in 2023.

<Reference Information> (see separate supplementary document)

<https://www.asahi.com/ajw/articles/15305864>

Migrant labor law revised to allow longer, flexible stays

Asahi Shimbun, June 14, 2024

LOI Para 18: Employment: Discrimination on the Grounds of Pregnancy and Motherhood

Proposed Recommendations

1. Implement effective measures, including imposing sanctions, to address disadvantageous treatment such as dismissal due to pregnancy or childbirth among Technical Intern Training Program (TITP) workers (i.e., technical intern trainees) and Specified Skilled Workers (SSWs) (Category 1).
2. Abolish the prohibition of family accompaniment for migrants holding TITP and SSW (Category 1) residence statuses. This prohibition is a fundamental cause behind the various disadvantageous treatments these individuals receive, including contract terminations due to pregnancy/child birth. Additionally, grant stable residence statuses to children born to these women.
3. Ensure that actions taken by mothers immediately following isolated childbirth are not punishable under Article 190 of the Penal Code. Establish a system that allows TITP workers to effectively access necessary health services, preventing them from being driven to isolated childbirth.

Background and Current Situation

Despite the Equal Employment Opportunity Act prohibiting disadvantageous treatment due to pregnancy or childbirth for Technical Intern Training Program (TITP) workers, they frequently face unfair treatment from supervising organizations, employers, and sending organizations, including prohibitions on romantic relationships and pregnancies, and forced repatriation if they become pregnant. Moreover, pregnant workers often cannot independently access necessary health services and support due to fear of being discovered by supervising organizations, language barriers, and financial burdens. Incidents persist where TITP workers are consequently compelled to give birth in isolation. These women are frequently arrested on charges of abandonment of corpses under Article 190 of the Penal Code or abandonment by a person responsible for protection under Article 219. For instance, in November 2020, a TITP worker who had a stillbirth at home kept her twin babies' bodies at home for 33 hours and was charged with corpse abandonment. Although she was acquitted by the Supreme Court in March 2023, similar cases persist in which TITP workers are charged with corpse abandonment following isolated stillbirths.

Japan's flaws in its social systems, including the TITP, drive women to isolated childbirth. Despite this, women who experience isolated stillbirths or miscarriages are often prosecuted under Penal Code Article 190 (A person who damages, abandons, or unlawfully possesses a corpse, the ashes or hair of a dead person, or an object placed in a coffin is punished by imprisonment for not more than three years)¹⁾, placing the entire responsibility on these women, which constitutes clear gender discrimination. Furthermore, in the case of TITP workers, the application of corpse abandonment charges does not take into account the circumstances that drive them to give birth in isolation, nor does it consider the cultural and national differences in funeral practices, thus constituting

discrimination against migrants.

Between November 1, 2017, and March 31, 2023, 2,062 TITP workers reported difficulties continuing their program due to pregnancy or childbirth. Of these, 244 wished to continue their program, but only 71 were able to resume (Cabinet's Response No. 213-136, June 21, 2024). The Government repeatedly instructs supervising organizations and employers that disadvantageous treatment of pregnant or birthing workers will result in administrative penalties. However, no organization or employer has been penalized for such disadvantageous treatment, thus the issue remains unaddressed.

One contributing factor to the difficulty of continuing one's TITP tenure after childbirth is the prohibition on family accompaniment. This policy results in children born in Japan to TITP workers receiving only a 6-month "Designated Activities" residence status, which is not renewable in principle. This prohibition also applies to SSWs (Category 1) and those under the training employment system which has just been established under the amended law. According to 2023 Ministry of Health, Labor, and Welfare statistics, TITP workers make up 412,501 (20.1%) of the 2,048,675 foreign workers in Japan, and this percentage increases when one includes SSWs (Category 1), who are also denied family reunification rights. Consequently, TITP workers and SSWs who wish to continue working must live apart from their children, who are left in their home countries.

¹⁾ The application of the charge of corpse abandonment to women who experience isolated stillbirths or miscarriages stems from the ambiguous interpretation of the term "abandonment" under the relevant law, leading to uncertainty about what actions are punishable.

<Reference Information> (see separate supplementary document)

<https://apjif.org/2022/3/brasor-tusubuku>

**Japanese Court "Forgives" Vietnamese Trainee Convicted of Abandoning a Baby...
Up to a Point**

Asia Pacific Journal, February 1, 2022

<https://asia.nikkei.com/Spotlight/Japan-immigration/Vietnamese-trainee-acquitted-in-Japan-of-abandoning-stillborn-twins>

Vietnamese trainee acquitted in Japan of abandoning stillborn twins

Supreme Court case exposed foreign technical interns' fears of deportation

Nikkei, March 24, 2023

<https://japannews.yomiuri.co.jp/editorial/yomiuri-editorial/20230325-99626/>

Review Technical Intern Program to Protect Trainees from Isolation

The Japan Times, March 25, 2023

LOI Para 19: Employment: Domestic Workers Convention (No. 189)

Proposed Recommendations

1. To protect the rights of all domestic workers, the Government of Japan should ratify the Convention Concerning Decent Work for Domestic Workers (i.e., the Domestic Workers Convention No.189).
Furthermore, the Government should amend the Labor Standards Law so that “domestic servants” are defined as bona fide workers, and eliminate discrimination in which domestic workers, despite engaging in bona fide work, receive more limited rights as workers depending on who the employer is and the employment contract one has.
2. Disclose information on the acceptance situation and working conditions of the “Foreigners Conducting Housekeeping Services” – a project of the Government’s National Strategic Special Zones initiative, which began accepting female domestic workers from the Philippines in April 2017. Additionally, establish an independent monitoring body to oversee the prevention of human trafficking and the protection of worker rights.

Background and Current Situation

1. Since 2017, under the Government’s National Strategic Special Zones initiative’s “Foreigners Conducting Housekeeping Services” project, there are women from the Philippines working as domestic workers in Tokyo, Kanagawa, Chiba, Osaka, Hyogo, and Aichi prefectures/areas. They are hired by housekeeping services companies, and engage in contracted domestic work at regular households, and at these companies, they may also occasionally engage in the same work as the temporary work that irregular Japanese workers also engage in.

If we limit the scope to migrant woman, there are “Designated Activities” residence status holders who are diplomats or foreign nationals with incomes of over 10 million yen, who hire “domestic servants.” Furthermore, although the exact numbers are unknown, there are migrant woman who reside in Japan with residence statuses based on “personal status” (i.e., residence statuses without restrictions on activities) who work as domestic workers in various capacities. Some are hired by individuals to work as “domestic servants” or so-called “housekeepers,” others may be hired by companies as temporary workers, and yet even others may engage in domestic work as gig workers. The reality is that despite the fact that these individuals provide the same work, because this work is carried out under diverse employment relationships, (with the exception of dispatched workers and Foreigners Conducting Housekeeping Services working in the National Strategic Special Zones mentioned below) there are cases in which Japan’s Labor Standards Law fails to adequately cover and protect their worker rights. In this way, in Japan, domestic workers are given different labels depending on their employment relationship(s), and as a result, there are discrepancies in the protections they receive as workers.

In 2015, there was an incident in which a housekeeper hired by a Japanese person, died of overwork after working long hours. A trial was held for the bereaved family’s claims to bereaved family compensation and funeral fees, but in 2019, a court ruling rejected these claims, ruling against the payout of such compensation fees, citing

inapplicability under Article 116 of the Labor Standards Law as well as the Industrial Accident Compensation Insurance Act. Following this incident, the Ministry of Health, Labour and Welfare has entered into the process of revising the Labor Standards Law to ensure that “domestic servants” who are directly employed by households as housekeepers are protected by the Law as workers.

2. Although the Labor Standards Law applies to foreign national domestic workers under the Government’s National Strategic Special Zones initiative’s “Foreigners Conducting Housekeeping Services” project, the protection of their rights as domestic workers is inadequate. In 2022, a medical services company called Nichii Gakkan carried out a mass layoff of foreign national domestic workers who were part of the Government’s National Strategic Special Zones initiative, and the Cabinet Office, upon conducting an investigation, issued an administrative guidance directive. In another company, there was a case in which domestic worker employees were made to undergo training that was irrelevant to the designated job content, and furthermore, in another company, domestic workers undergoing training experienced harassment. All of these incidents and violations were uncovered through NPOs and the Embassy of the Philippines, and not through claims made by migrant woman to the third-party council instituted within the framework of the National Strategic Special Zones initiative. The proper implementation of this initiative as well as the worker protections to be carried out via a third-party council remain under the auspices of the ministerial and local officials who designed this initiative, creating a framework and an organizational composition that make it difficult for domestic workers to voice claims and concerns. Furthermore, the authorities have not disclosed information on the acceptance situation and working conditions of domestic workers.

LOI Para 15: Nationality

Proposed Recommendations

1. Article 786 of the Civil Code stipulates that after a certain period of time after a child is recognized by either of his/her/their Japanese national parents, an appeal to invalidate this recognition on the grounds that there is no biological blood relationship between the father and the child cannot be filed. Contrary to the recent revision to the Nationality Law, a child whose Japanese nationality was lawfully determined through this recognition should not be deprived of his/her/their Japanese nationality.
2. The limitations on acquiring Japanese nationality by birth should be expanded for stateless children born in Japan.
3. A system for recognizing statelessness and procedures for acquiring nationality for stateless children born in Japan should be improved.
4. Japan should accede to the 1961 Convention on the Reduction of Statelessness and the 1954 Convention Relating to the Status of Stateless Persons in order to prevent and reduce statelessness and protect stateless persons, and to implement the measures mentioned in 1. to 3. above.

Background and Current Situation

1. Article 786 of the Civil Code provides that, in order to stabilize the status of children born out of wedlock, after a certain period of time has elapsed from the time they are recognized, an appeal against invalidation of recognition cannot be filed on the grounds that there is no biological blood relationship between the father and the child.

On the other hand, Article 3, Paragraph 3 of the Nationality Law, which came into effect in April 2024, provides that a child shall not acquire Japanese nationality if recognition is contrary to fact. This means that even if decades have passed since the child was recognized, the child will lose Japanese nationality on the grounds that the recognition is contrary to the facts, and the child is treated as an irregular foreign resident if the child stays in Japan. However, this treatment makes the child's status extremely unstable and is contrary their best interests. The child is not a person who has any responsibility for the fact that recognition has been made contrary to the facts, and there is no practical reason why such a serious disadvantage should be imposed on the child.

Therefore, Article 3, Paragraph 3 of the Nationality Law should be abolished, and a child whose recognition should no longer be open to invalidation should not lose the Japanese nationality he/she/they has already acquired.

2. Article 2, Item 3 of the Nationality Law provides that if both parents of a child born in Japan are unknown or have no nationality, the child acquires Japanese nationality. However, the interpretation of "when both parents are unknown" is undefined, and the definition of "not having nationality" does not exist in Japanese law. In addition, the scope of application is also narrow, such as in the case of "paternalism," in which the parents are known but the child cannot acquire the nationality of the parents

according to the law of the child's home country, and the child cannot acquire Japanese nationality by birth. Furthermore, Article 8, Item 4 of the Nationality Law requires legal residency for simplified naturalization and the decision is left to the discretion of the Minister of Justice. Since the child has no responsibility for the situation of statelessness, and the necessity for protection does not depend on the cause of statelessness, the scope of acquisition of Japanese nationality for children whose nationality does not succeed from their parents' should be expanded.

3. In Japan, there is no system for recognizing statelessness, and decisions are often made on a case-by-case basis without any consideration for the child's nationality, and there have been cases in which a child has either nationality but is listed as stateless on his/her residence card (or the opposite case may also happen). Moreover, there is no system to confirm the Japanese nationality of children who qualify under Article 2, Item 3 of the Nationality Law, and each child must go through the court procedure of "petition for registration," which is mentally and economically burdensome, resulting in the child being left stateless and without protection.

Therefore, a system to recognize statelessness and a system to confirm the Japanese nationality of stateless children should be established.

4. The reason for the lack of progress in the improvement of measures for the prevention and reduction of statelessness and the protection of stateless people in Japan is due to the erroneous perception that the treatment of stateless people is a matter of domestic jurisdiction. Therefore, Japan should accede to the Convention on the Reduction of Statelessness and the Convention on the Status of Stateless Persons to ensure that the prevention and reduction of statelessness and the protection of stateless people are effectively implemented in Japan.

LOI Para 23-1: Rural Women and Women of Disadvantaged Groups
(Support for Women Facing Difficulties Act)

Proposed Recommendations

1. Regardless of possession of or type of residence status, make all women eligible for assistance under the new Support for Women Facing Difficulties Act.
2. In the implementation of this Act, ensure that government cooperation with private organizations include migrant women support groups with migrant women members.

Background and Current Situation

1. This Law aims to protect women's human rights, and realize a society in which women can live safely and independently, and stipulates the necessary conditions for the support and advancement of the social welfare of women experiencing difficulties. However, this Law does not reflect the difficulties experienced by migrant women who live in Japan and are part of Japanese society today. According to the end-of-December 2023 statistics of the Immigration Services Agency, of the 3,400,000 million foreign nationals in Japan, about half, or 1,697,000, are women. With the recent significant increases in migrant women with work-related residence statuses and those who accompany their husbands as "Dependent" residence status holders, there has been a diversification in the residence statuses that migrant women hold.

As women and as foreign nationals, migrant women are susceptible to intersectional discrimination and experience many difficulties on the basis of gender, nationality, ethnicity and race, but whether one possesses a residence status and what type of residence status one possesses, affects the extent of support to which migrant women have access. For example, for fear of losing their residence status, even victims of domestic violence find it difficult to flee from the violence, and even if one is able to escape, their access to social welfare services that are readily available to Japanese nationals is limited by their residence status. Migrant women's livelihoods are vulnerable, already making them susceptible to falling into precarious livelihood conditions, but their exclusion from safety nets such as public assistance because of their residence status, further compounds their dire situations, and makes the protection of women's human rights and the realization of safe and independent livelihoods a far cry from reality. Just under 786,500 women are excluded from welfare, or 46.3% of all foreign women. To realize this Law's aims, it is necessary to clearly stipulate that migrant women, regardless of their possession of or type of residence status, are eligible for assistance.

2. This Law stipulates that there should be cooperative efforts with private organizations to provide assistance that pays particular attention to the interests and independence of women (Article 13). Initiatives to assist migrant women up until now, have played an important role in establishing assistance for women in need, and while respecting the ethnic identities of migrant women experiencing difficulties, have committed to and realized various forms of livelihood support for migrant women in Japan. However, unfortunately, there have been regional discrepancies in this public-private collaborative effort. To also remedy this issue, cooperative efforts between the social

resources of the private sector and the government and public organizations, must be clearly stipulated in the Law.

LOI Para 23-2 LBT: Residence Status of Same Sex Partners and Immigration Detention

Proposed Recommendations

1. The Government of Japan should grant residence status to foreign nationals who are in same-sex partner relationships with Japanese nationals based on such partner relationships, and the residence status should be equivalent to that based on opposite-sex partner relationships. If same-sex marriage is not recognized in the foreign national's home country, marriage should not be a requirement to be granted residence status based on partner relationship.
2. In immigration detention facilities, transgender migrant women should be treated fairly according to their gender identity and needs.

Background and Current Situation

1. Same-sex marriage is not recognized in Japan. In addition, there are no laws that explicitly prohibit discrimination based on sexual orientation or gender identity. Against this background, in the case of same-sex couples between a Japanese national and a foreign national, the foreign partner is not granted residence status based on the partner relationship, even if the marriage is registered in the partner's home country. This treatment was judged to be contrary to the intent of Article 14 of the Constitution which stipulates equality under the law (because as compared to the treatment of same-sex couples between foreign nationals, if the marriage is notified in the home country of both of them and one of them has a residence status in Japan, the other can, in principle, obtain the "Designated Activities" residence status based on their partnership) (Tokyo District Court, September 30, 2022 decision). Since then, foreign nationals who are the same-sex partner of a Japanese national are, in principle, granted a "Designated Activities" residence status if their marriage is registered in the foreign national's home country.

However, compared to the residence status granted to foreign nationals who are the opposite-sex partner of a Japanese national, the "Designated Activities" residence status is inferior in that it does not allow work as a matter of course, and even when it does, it has time limits. This is discrimination based on sexual orientation.

In addition, if same-sex marriage is not recognized in the foreign national's home country, the foreign national who is the same-sex partner of a Japanese national cannot obtain a residence status based on their partnership. Such couples have no choice but to give up living together in Japan despite the fact that the Japanese national is a party to the couple, unless the foreign national is able to obtain residence status through his or her own work or other means. This is discrimination based on sexual orientation, violation of the respect for family relationships and private life as well as the right to family formation, and infringement on the freedom of residence of Japanese nationals, and should be corrected. In addition, if a foreign national does not have residence status, he/she/they cannot register as a resident and may be denied partnership by the local government.

2. Against this backdrop, transgender migrants in Japan are sometimes placed in solitary

confinement or otherwise segregated in immigration detention facilities. In addition, the use of hormones is not permitted in detention facilities, and transgender migrants tend to suffer from physical and mental disorders.

<**Reference Information**> (see separate supplementary document)

<https://www.asahi.com/ajw/articles/15271758>

Japanese lesbian couple granted refugee status in Canada

THE ASAHI SHIMBUN, May 18, 2024

<https://english.kyodonews.net/news/2022/09/31607c098903-court-rejects-long-stay-visa-for-gay-us-man-married-to-japanese.html>

Japan court reject long-stay visa for U.S. man in same-sex marriage

Kyodo News, September 30, 2022

<https://www.japantimes.co.jp/community/2020/10/19/issues/transgender-woman-japan-immigration/>

A transgender woman caught in the system finds help from the community

The Japan Times, October 19, 2020

Refugee and Asylum-Seeking Women (Related article: Art. 2 of CEDAW)

Proposed Recommendations

1. Strictly observe the principle of non-refoulement for all women and girls in need of international protection by upholding the suspension of deportation for all refugee applicants and by taking all measures necessary to ensure that women and girls are not repatriated under any circumstance to any country in which their life would be at risk or where they might be subjected to serious forms of discrimination, including gender-based violence, or torture or inhuman or degrading treatment or punishment.
2. Ensure that international protection needs are determined comprehensively, including by properly recognizing refugee claims on the basis of gender-related forms of persecution and by taking into account the factual situation of asylum-seeking women and girls in their countries of origin and by ensuring a gender-sensitive approach throughout the asylum process, including the permission to bring their legal representatives or assisting persons to their asylum interviews.
3. Ensure, throughout the asylum procedure, an adequate standard of living, including safe accommodation, food, necessary social services, and health care, including sexual and reproductive health and rights, by increasing the material support and the number of available reception centers for refugees and asylum seekers, with particular attention to the needs of women and girls.

Background and Current Situation

1. The amended Immigration Control and Refugee Recognition Act, which took effect in June 2024, allows for foreign nationals who apply for refugee status three or more times (those who have been rejected for refugee status on two or more occasions) to be subject to deportation even before their refugee status application is fully processed. The refugee status determination procedure in Japan has problems in various aspects, and it is difficult to assert that those who should be recognized as refugees are recognized adequately on their first application. It is particularly problematic for those who fear gender-related persecution since it was not until 2023 that the Government formulated the “Guide to Determining Refugee Eligibility” and set clear guidance on the recognition of such claims. Hence, it is not appropriate to deport asylum-seeking women based on previous non-recognition of their refugee status.
2. In 2023, 13,823 people applied for refugee status in Japan. Of these, 2,363 people were women, and 514 people were under the age of 20. In the same year, only 303 people were granted refugee status, while 7,627 people were rejected (total of primary examination and appeal process). There is no clear gender breakdown for those granted and denied refugee status. The average processing times for asylum applications are about three years, though it is not unusual for a case to take more than ten years for recognition. In the case of a female asylum seeker who was a victim of sexual violence, refugee recognition was granted almost six and a half years after the application and almost three years after the asylum interview.
The above-mentioned “Guide,” which stipulates the interpretation of the Refugee

Convention in a national context, refers only to female genital mutilation (FGM) as a specific example of gender-based persecution. Also, the Government of Japan does not clearly assess the existence of effective protections by the country of origin. For example, a female asylum seeker who suffered gender-based persecution from a non-state actor was rejected for refugee status on the basis that she did not seek protection from state authorities while she was in her country of origin.

During the asylum process, a supportive environment where the claimant can provide her account is not provided, which leads to difficulties for survivors of trauma and sexual violence to disclose sensitive and personal information. As a rule, refugee applicants are not allowed to bring any third parties, including their lawyers, to their interview in the primary examination. In the case of an asylum seeker who suffered sexual violence, she was asked inappropriate questions during an interview in the appeal process, such as, “Were you targeted because you were beautiful?” In addition, there are no mechanisms for referral to psychological counselling and other support services before and after the asylum interview.

3. The Government does not play a role in ensuring an adequate standard of living, including safe accommodation, health, and food, for asylum seekers, including women. Many asylum seekers who have just arrived in Japan experience homelessness without any public assistance. In 2023, the number of asylum seekers to whom the government provided housing was 88. Of those, 23 were women – only a fraction of the year’s total number of refugee applicants. The number of refugee applicants who received financial assistance was 658 last year, and the average time from application to receipt was 61 days.

One NGO provided accommodation to approximately 250 people in one year – mainly vulnerable asylum seekers, including women. For example, one woman, a single mother, was unable to receive any government assistance for about five months after applying for refugee status, and had to move between various locations, including hotels and shelters arranged by non-governmental organizations.

<Reference Information> (see separate supplementary document)

<https://eastasiaforum.org/2023/08/16/refugee-rights-in-japan-are-fading-fast/>

Refugee rights in Japan are fading fast

East Asia Forum, August 16, 2023

Revocation of Residence Status (Related article: Art. 2 of CEDAW)

Proposed Recommendation

The Government of Japan should repeal the creation of new grounds for the revocation of the residence statuses of “Permanent Resident” residence status holders as well as related provisions (regarding the requirements for the conferral of permanent resident residence status and the reporting by national or local government officials of residence status revocations) included in the amended Immigration Control and Refugee Recognition Act, which was enacted in June 2024 and is scheduled to take effect within three years.

Background and Current Situation

In June 2024, the Immigration Control and Refugee Recognition Act was amended to make the residence statuses of foreign nationals with a “Permanent Resident” residence status subject to revocation if they (1) fail to comply with their obligations under the Immigration Control and Refugee Recognition Act; (2) willfully fail to pay taxes or social insurance payments; or (3) are convicted of certain crimes and sentenced to detention. In addition to tightening the requirements for permanent resident residence status, the amended law also includes a provision allowing national and local government officials to report to the Immigration Service Agency instances of residence status revocations. The amended law is expected to take effect within three years.

The new grounds for residence status revocation are intended for permanent residents – whose livelihoods are rooted in Japan, including those who were born in Japan and those who have lived in Japan since they were minors – and can be carried out in response to minor violations of the law. These new grounds will destabilize the social and legal standings of foreign nationals regardless of gender, but of the grounds for revocation, the one that stipulates “willful failure to pay taxes or social insurance premiums,” may be particularly detrimental for migrant women raising children as single mothers or migrant women spouses who cannot pay their taxes or social insurance premiums due to poverty. If they are unable to pay, they may be subject to residence status revocation. In Japan, the poverty rate for single-parent households is extremely high at 44.5% in 2021 (National Survey of Living Standards, Ministry of Health, Labour and Welfare), and although there is no data by nationality, the same is thought to apply to foreign national single-parent households.

In response to this policy that allows the revocation of permanent resident residence status, on 25 June 2024, the UN Committee on the Elimination of Racial Discrimination (CERD) sent a letter to the Government of Japan, requesting a response on measures to review or repeal the revocation in order to ensure the protection of foreign nationals living with permanent resident residence statuses.

The letter sent by CERD under the early warning and urgent measures procedures:
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FALE%2FJPN%2F10004&Lang=en

CREDITS

(in alphabetical order of last name)

Report contributors (member organizations)

Akira Hatate (Japan Civil Liberties Union; Network for the Rights of Technical Intern Trainees)

Shiori Ikuta (Japan Association for Refugees)

Rieko Ito (Citizen's Network for Japanese-Filipino Children)

Hironori Kondo (Lawyer)

Yuko Kono (Lawyer)

Yuki Maruyama (Lawyer)

Hisano Niikura (Wako University; Kalabaw Japan for Migrants' Rights and Lives)

Aya Sadamatsu (Keisen University; C189 Study Group, Research Group on International Migration and Gender)

Yoriko Sakuma (Kumusta Ka - Association for Living Together with Migrants)

Masako Suzuki (Lawyer)

Sachi Takaya (University of Tokyo; Migrant Women Project, SMJ)

Motoko Yamagishi (KALAKASAN-Migrant Women Empowerment Center)

Editors

Nobuki Fujimoto (HURIGHTS OSAKA; Division of International Human Rights, SMJ)

Ralph I. Hosoki (Sophia University; Division of International Human Rights, SMJ)

Yuki Muranishi (NGO Network for Foreigners' Assistance KOBE; Migrant Women Project, SMJ)

<Japanese edition editors>

Sachi Takaya (University of Tokyo; Migrant Women Project, SMJ)

Motoko Yamagishi (Migrant Women Project, SMJ)