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上智大学法学会

## 論 説

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# Refugee Protection in Japan: Systems and the Influences of International Human Rights Treaties

Tatematsu Miyako

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1. Introduction
2. Historical background
  - (1) Acceptance of refugees from Indochina (since the late 1970s)
  - (2) Ratification of the Refugee Convention and concomitant amendments of domestic laws
  - (3) Third-country resettlement
3. Japan's system for recognising refugees
  - (1) Outline of refugee recognition procedures
  - (2) Decisions on refugee recognition
  - (3) Examination request procedures
  - (4) Later procedures
4. Various rights of refugee applicants and recognised refugees in Japan
  - (1) Various rights of refugee applicants
  - (2) Convention refugees, individuals under complementary form of protection, and third-country resettlers
  - (3) Residence permission through humanitarian considerations
5. Influence of international human rights treaties on Japan's recognition of refugees
  - (1) Domestic precedents
  - (2) Influence on the Immigration Control Policies
  - (3) State reports under the International Human Rights Treaties
6. Conclusion

## 1. Introduction

Since the onset of the COVID-19 pandemic in 2020, countries significantly limited international travel to prevent the spread of infection. Japan was no exception, experiencing a drastic decline in the influx of foreign nationals to nearly one-tenth of pre-pandemic levels.<sup>(1)</sup> This situation prompts reflection on the restrictions imposed by domestic laws in protecting national safety, public health, and other concerns, despite the recognition of freedom of movement as a basic human right. Presently, individuals' right to reside elsewhere remains undefined.<sup>(2)</sup>

As of 2023, Japan lacks a comprehensive system for accepting foreign workers; individuals need a visa for entry and a designated status to remain upon entry or extend their stay. The Immigration Services Agency department oversees the examination of these matters, holding authority over accepting and approving applications for continued stay, refugee recognition, supplementary form of protection, and deportation. The governing legislation guiding the Immigration Services Agency's operations is the Immigration Control and Refugee Recognition Act (the Immigration Control Act)<sup>(3)</sup> enacted in 1981. This Act governs immigration and refugee recognition and falls under the supervision of the Immigration Services

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(1) On the number of foreign nationals entering Japan, see the statistics from the Immigration Services Agency, Ministry of Justice, 'Shutsunyūkoku kanri tōkei tōkei hyō' [Statistical tables of immigration control statistics], <[https://www.moj.go.jp/isa/policies/statistics/toukei\\_ichiran\\_nyukan.html](https://www.moj.go.jp/isa/policies/statistics/toukei_ichiran_nyukan.html)> accessed September 23 2023

(2) Obata Kaoru, 'Imin Nanminhō niokeru Seigihōu Hihan--"Chikyūjyōno Dokokani Sumu Kenri" no tameni' [A Critique of the Theories of Justice in the Sphere of Refugee and Migration Law: In the Light of the "Right to Reside Somewhere on the Earth"] (2015) 34 *Yearbook of World Law* 111-126.

(3) With the ratification of the Refugee Convention, the Immigration Control Order, which had previously only provided for entering and departing from Japan, was amended to form the Immigration Control and Refugee Recognition Act. For an English translation by the Ministry of Justice, see Immigration Control and Refugee Recognition Act, <[www.japaneselawtranslation.go.jp/law/detail/?id=3549&vm=04&re=01&new=1](http://www.japaneselawtranslation.go.jp/law/detail/?id=3549&vm=04&re=01&new=1)> accessed 22 August 2020.

Agency, an external organ of the Ministry of Justice.

One challenge within Japan's refugee system is the limited number of individuals recognised as refugees.<sup>(4)</sup> Entry into Japan requires foreign nationals to possess a valid passport and visa. Those who intend to stay for 90 days or less without engaging in any remunerative activity are eligible for a "short-term stay visa." Employment visas cater to work and extend stays (90 days or more), a "general visa" addresses international students, and a "special visa" is designated for individuals married to Japanese citizens.<sup>(5)</sup> However, visas permitting employment require the specification of a workplace or sponsoring organisation before entry. Notably, Japan lacks a system enabling individuals to seek employment post-entry or enter as immigrants. Consequently, discussions surrounding Japan's recognition often intertwine with problems of residency status and forced deportation, contributing to a perceived complication.<sup>(6)</sup>

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(4) The Human Rights Committee expressed concern at the low rate of refugee recognition in its review of Japan's fifth periodic report of States parties in 2008. Concluding observations of the Human Rights Committee, CCPR/C/JPN/CO/5, para.25.

(5) Ministry of Foreign Affairs, "Visa", (<https://www.mofa.go.jp/mofaj/toko/visa/index.html>), accessed 3 October 2023.

(6) Sam Blay, 'Regional Developments: Asia' para. 34, 156, in *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: a commentary*, Zimmermann, Andreas (ed), Oxford Univ. Press, 2011, claims 'The Immigration Bureau detains every foreign national without the status of a resident'. The Immigration Control Act before the 2023 amendment also stipulated a 'provisional release' system under which individuals were temporarily released from detention if they had health reasons, the need to prepare for leaving the country, or other grounds (Art. 54). Immigration Services Agency, 'Shūyō, menkai, sashiire, karihōmen' [Detention, meetings and outside supplies, provisional release], ([https://www.moj.go.jp/isa/applications/procedures/tetuduki\\_taikyo\\_syuyou\\_00001.html](https://www.moj.go.jp/isa/applications/procedures/tetuduki_taikyo_syuyou_00001.html)) accessed 3 October 2023. Illegal residents numbered about 79, 101 as of July 1, 2023. Immigration Service Agency, 'Honpō ni okeru fuhō zanryūsha sū ni tsuite (Reiwa 5-nen 7-gatsu 1-nichi genzai)' [On the number of individuals overstaying visas in Japan (as of 1 July 2023)]

(<https://www.moj.go.jp/isa/content/001403958.pdf>) accessed 2 October 2023. The Immigration Control Act before the 2023 amendment provided that illegal residents would be detained in detention facilities until deportation, and those who refused to be repatriated were detained over a long time. In 2021, amidst the COVID-19 pandemic, of the 3,224 individuals who refused repatriation, 79 were detained, 2,546 were on provisional release, and 599 had absconded while on

Professor Takizawa Saburō ascribes the low number of refugees accepted by Japan to Japan's failure in satisfying geographic conditions, historical ties, the presence of a community of compatriots, language, the impressions of a country that refugees may have when selecting a destination country, the weakness of its social infrastructure for accepting refugees, and its utilization of the 1951 Refugee Convention as a criteria for recognising refugee status.<sup>(7)</sup>

This paper outlines the history of refugee acceptance in Japan and its refugee recognition system as of 2023 and compares the rights of applicants for refugee status, Convention refugees,<sup>(8)</sup> individuals with residence permission through humanitarian consideration, and those who came to Japan as refugees wishing to settle in a third country. Additionally, it examines the Human Rights Committee's Concluding Observations on Japan's state reports under the International Covenant on Civil and Political Rights and analyses their mentions of asylum-seekers' protection in Japan.

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provisional release. Immigration Services Agency, 'Shutsunyūkoku zairyū kanri no genjō ②' [Current state of immigration and residency control (2)] (<https://www.moj.go.jp/isa/content/001391850.pdf>) accessed 2 Oct. 2023. To improve conditions in detention, the 2009 amendment of the Immigration Control Act added Article 61-7-2 to the Act, and the Immigration Detention Facilities Visiting Committee, a third-party organ, was established in July 2010. The committee visits detention facilities, meets with detainees who wish to do so, and interviews them about their issues. Based on these visits, the committee suggests improvements, and the Ministry of Justice publishes on its website measures that the facilities take in response. Immigration Services Agency, 'Kaku nyūkoku shūyōjo tō shisatsu iinkai no iken ni tai suru kentō kekka hōkoku (gaiyō) ichiranhyō' [List of reports on the results of examinations in response to opinions of the inspection committees of immigrant detention centers, etc. (outline)] (<https://www.moj.go.jp/isa/content/001402187.pdf>) accessed 30 September 2023. For details about deportation, see Immigration Services Agency, '2022 Immigration Control and Residency Management' 47-67, (<https://www.moj.go.jp/isa/content/001385114.pdf>) accessed 19 September, 2023.

- (7) Takizawa Saburō, 'Nihon no "nanmin seisaku" no kadai to tenbō' [Issues and outlook for Japan's 'refugee policy'] (2017) 662 *International Affairs*, 40.
- (8) 'Convention refugees' refers to individuals who are recognised as refugees within the meaning of the Refugee Convention under the Immigration Control Act. This term is used for convenience throughout this paper.

## 2. Historical background

### (1) Acceptance of refugees from Indochina (since the late 1970s)

Japan's acceptance of refugees after World War II began with refugees from Indochina in the late 1970s.<sup>(9)</sup> Indochinese refugees, mainly from Vietnam, Laos, and Cambodia, were accepted according to Cabinet decisions at the time because domestic laws had not been developed due to Japan not being a state party to the Refugee Convention at the time.<sup>(10)</sup>

First, under a cabinet understanding of 24 June 1975, emergency relief measures focusing on economic support were implemented for Vietnamese and Cambodian students in difficult economic circumstances who were resident in Japan,<sup>(11)</sup> and boat people were also permitted to land in Japan temporarily. As Indochinese refugees continued entering Japan thereafter, the Japanese Cabinet made decisions to open temporary residence facilities, provide medical treatment, and offer occupational and technical training as necessary after 1977. A Cabinet understanding of 28 April 1978 permitted temporary resident Vietnamese to settle, and this was later expanded to include individuals from Laos and Cambodia. Those desiring long-term residence were provided with Japanese language education, employment referral, and occupational training.<sup>(12)</sup> More than 10,000 Indochinese refugees settled in Japan between 1978 and 2000,<sup>(13)</sup> after which this initiative ended.

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(9) Ministry of Foreign Affairs, 'Refugee Assistance', <[www.mofa.go.jp/policy/un/pamph2000\\_archive/refugee.html](http://www.mofa.go.jp/policy/un/pamph2000_archive/refugee.html)> accessed 13 August 2023.

(10) Cabinet Office, 'Indoshina nanmin no teijū kyōka ni kan suru kakugi ryōkai no suii' [Changes to cabinet understandings on permission for Indochinese refugees to settle], 1 <[www.cas.go.jp/jp/seisaku/nanmin/yusikishakaigi/dai4/siryō2.pdf](http://www.cas.go.jp/jp/seisaku/nanmin/yusikishakaigi/dai4/siryō2.pdf)> accessed 17 August 2023.

(11) *ibid* 2.

(12) *ibid* 3.

(13) Ministry of Foreign Affairs of Japan, 'Refugee Assistance' (n 9).

## (2) Ratification of the Refugee Convention and concomitant amendments of domestic laws

As Japan's involvement with the refugee problem suddenly deepened with the vast influx of refugees from Indochina from 1979 onward, the Japanese government thought it desirable to improve protection and relief for refugees by becoming a state party to the Refugee Convention and also sought to expand its international cooperation.<sup>(14)</sup> Japan ratified the Refugee Convention in 1981 and the Protocol in 1982. When doing so, the Cabinet decided that the Minister of Justice would supervise the refugee system in Japan.<sup>(15)</sup> At the time, Japan was not expecting refugees other than those from Indochina, and the government did not recognize the need to establish a ministry in charge of refugees.

In conjunction with the ratification of the Refugee Convention, Japan amended the Immigration Control Order to create the Immigration Control Act, which includes provisions for a refugee recognition system. Additionally, because of the necessity of implementing social security systems for individuals recognised as refugees under the Immigration Control Act, mirroring the provisions for Japanese citizens, and performing its obligations as a state party to the Convention, Japan partially amended the National Pension Act, Child Rearing Allowance Act, Act on Special Child Rearing Allowance, and Child Allowance Act, and also removed the previous nationality requirements for social security systems, and enacted the law from 1982.<sup>(16)</sup>

Thereafter, in 2004, a provisional stay permission system was implemented to stabilize the legal status of those refugee applicants who are illegal residents in

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(14) Ministry of Foreign Affairs, 'Nanmin jōyaku' [Refugee Convention], 5, 29 <[www.mofa.go.jp/mofaj/press/pr/pub/pamph/pdfs/nanmin2.pdf](http://www.mofa.go.jp/mofaj/press/pr/pub/pamph/pdfs/nanmin2.pdf)> accessed 14 August 2023.

(15) Ministry of Justice, 'Nanmin nintei seido ni kan suru kentō kekka (saishū hōkoku)' [Results of evaluation of refugee recognition system (final report)] (submitted 16December 2003) <[www.moj.go.jp/nyuukokukanri/kouhou/nyukan\\_nyukan13-16.html](http://www.moj.go.jp/nyuukokukanri/kouhou/nyukan_nyukan13-16.html)> accessed 14 August 2023.

(16) Ministry of Foreign Affairs, "Refugee Convention' (n 14) 26-29.

Japan. With this legal status, if an irregular resident applies for refugee status, they will receive permission to stay provisionally in Japan if they fulfil certain conditions, regardless of whether they are irregular residents with no residence status.<sup>(17)</sup> Even if there are grounds for deportation of the applicant, the deportation proceedings will be suspended and the applicant will be released from detention while a decision is being made on the refugee application (including appeals).<sup>(18)</sup> In the same year, a system was established by which refugee examination counsellors would give opinions to ensure the fairness and neutrality of the procedures for refugee applicants to appeal against decisions to not grant refugee status.<sup>(19)</sup>

Furthermore, the government provided living support payments (public assistance payments) to refugee applicants living in difficult circumstances from 1982 and emergency accommodation facilities for those with no place to live from December 2003.<sup>(20)</sup> As a general rule, the maximum payments are ¥1,600 per day

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(17) Conditions for permission for provisional stay include being a person to whom an event making them a refugee occurs after they enter Japan or during their stay in Japan and filing an application for refugee status within six months of learning that fact, and entering Japan directly from a territory where the person was at risk of persecution under the Refugee Convention. Immigration Services Agency, 'Nanmin nintei seido: 2. Kari-taizai no kyoka' [Refugee recognition system: 2. Permission for provisional stay]

([https://www.moj.go.jp/isa/applications/procedures/nanmin\\_00001.html](https://www.moj.go.jp/isa/applications/procedures/nanmin_00001.html)), accessed 14 August 2023. Immigration Service Agency, Ministry of Justice, 'Nanmin nintei gyōmu ni suite' [Concerning refugee recognition operations] ([www.moj.go.jp/content/001245719.pdf](http://www.moj.go.jp/content/001245719.pdf)) 5, accessed 14 August 2023.

(18) *ibid.*, Immigration Service Agency, 'Refugee recognition system'. Permission for provisional stay is generally granted for six months and must be renewed. Those receiving permission for provisional stay are restricted in terms of residence and the scope of their activities and are prohibited from working. Following the amendment of the Immigration Act in 2023, the suspension of deportation of applicants for refugee and complementary form of protection is now subject to restrictions, as discussed below.

(19) Immigration Service Agency, 'Nanmin shinsa san'yoin seido ni suite' [Concerning the refugee examination counsellor system] ([https://www.moj.go.jp/isa/publications/materials/nyukan\\_nyukan58.html](https://www.moj.go.jp/isa/publications/materials/nyukan_nyukan58.html)) accessed 28 August 2023.

(20) Cabinet Secretariat, 'Nanmin shinseisha e no shien ni suite' [Concerning support for refugee applicants] (dated 8 July 2004) ([www.cas.go.jp/jp/seisaku/nanmin/040708sien.html](http://www.cas.go.jp/jp/seisaku/nanmin/040708sien.html)) accessed 3 December 2023.

for living expenses, ¥40,000 per month for accommodation expenses, and ¥30,000 per month for medical expenses. However, the rapid rise in refugee applicants in 2009 put pressure on this budget, and with the review of operations in March 2010, applicants were universally allowed to start work to stabilise their lifestyle once six months had passed from their application, if they wished to do so.<sup>(21)</sup>

In 2019, the Ministry of Justice presented a Basic Plan for Immigration and Residency Management,<sup>(22)</sup> which clarified residence permission through humanitarian considerations. The plan allowed for individuals who did not fulfil the criteria for refugee status under the Refugee Convention, but still required humanitarian consideration, to be granted residence permission in Japan as an evacuation opportunity, based on international social trends and given norms under international human rights laws, and it set out the eligible individuals.<sup>(23)</sup>

In 2023, the Immigration Control Act was extensively amended.<sup>(24)</sup> First, a new procedure was created to recognise those who did not fulfil the grounds for the five persecution requirements under the Refugee Convention as ‘persons eligible for complementary form of protection’ (Immigration Control Act, Art. 61-2 (2)). These individuals can stay with the residence status of ‘long-term resident’, similar to a

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(21) Immigration Bureau, Ministry of Justice, ‘Nanmin nintei seido no un’yōno saranaru minaoshi go no jōkyō ni tsuite’ 3 [Concerning the state of operation of the refugee recognition system after further review] <[www.moj.go.jp/content/001270500.pdf](http://www.moj.go.jp/content/001270500.pdf)> accessed 20 August 2023. Employment is permitted only for those who hold legitimate residency status at the time they apply for asylum.

(22) Ministry of Justice, *Basic Plan for Immigration and Residency Management*. <<https://www.moj.go.jp/isa/content/930002141.pdf>> 77-87, accessed 30 October 2023.

(23) *ibid.* The applicant’s home country being in civil war can be confirmed as an example of a dispute evacuation opportunity, and frequent sexual violence against women, while the home country’s police and/or judicial system being weak can be confirmed as an example of residence permission through humanitarian consideration. Immigration Service Agency, ‘Case examples of residence permission through humanitarian consideration and the key points in the determination’, <<https://www.moj.go.jp/isa/content/930005071.pdf>> 23, accessed 28 November 2023.

(24) Immigration Services Agency, ‘Nyūkanhō kaisei an ni tsuite’ [On the draft amendment to the Immigration Control Act], <[https://www.moj.go.jp/isa/laws/bill/05\\_0007.html](https://www.moj.go.jp/isa/laws/bill/05_0007.html)> accessed 7 October 2023. ISA, ‘Nyūkanhō tō Kaiseihō no Gaiyō tō’ [Summary of the amended Immigration Act.] <<https://www.moj.go.jp/isa/content/001404358.pdf>>, accessed 11 December 2023.

refugee under the Refugee Convention, and can benefit from long-term residence support programmes (Japanese language education, everyday life guidance, provision of accommodation, everyday life support).<sup>(25)</sup>

Under the Immigration Control Act *before* the 2023 amendments, a person who did not fall within the definition of a refugee under the Refugee Convention was allowed to stay based on humanitarian concerns and was granted a status of residence (Designated Activities).<sup>(26)</sup> Since Russia invaded Ukraine in late February 2022, about 2,000 Ukrainian evacuees have been accepted through a Cabinet decision. They were given a status of residence that allowed them to work (Designated Activities, One Year) and enrol in the national health insurance system; they have also been issued a certificate proving that they are Ukrainian evacuees.<sup>(27)</sup> Ukrainian evacuees who have no guarantor have been provided with temporary

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(25) Immigration Services Agency, ‘Hokanteki hogo taishōsha e no shien ni tsuite’ [Support for persons subject to complementary protection], ([https://www.moj.go.jp/isa/support/fresc/12\\_00122.html](https://www.moj.go.jp/isa/support/fresc/12_00122.html)) accessed 11 December 2023. The complementary form of protection system is implemented from 1 December 2023. Immigration Service Agency, ‘Hokantekihogo taishōsha to sono Kazoku no tameno teijyū shien proguramu’, [Programmes of settlement assistance for individuals subject to complementary protection and their families], (<https://www.moj.go.jp/isa/content/001403710.pdf>), accessed 11 December 2023.

(26) Owing to the unstable state of affairs in Myanmar after its military’s *coup d’état* on 1 February 2021, Myanmar nationals wishing to stay in Japan were granted residence permits as an emergency evacuation measure on humanitarian grounds. Immigration Service Agency of Japan, ‘Hongoku jōsei wo fumaeta zairyū myanmā-jin no kinkyū hinan sochi, Kaitei’ [Emergency evacuation measures for resident Myanmar nationals given the situation in Myanmar (revised)], (<https://www.moj.go.jp/isa/content/001349360.pdf>), accessed 10 October 2023. Through this system, 9,527 Myanmar nationals were permitted to stay in Japan on the basis of humanitarian concerns as of the end of December 2022. Of all the those who applied as refugees in 2022, 1,760 individuals including Myanmar nationals, were permitted to stay on the basis of humanitarian concerns owing to circumstances or conditions in their countries of origin and were granted the status of residence of designated activities. Immigration Services Agency, ‘Reiwa 4-nen ni okeru nanmin ninteisha sū tō ni tsuite’ [On the number of persons recognized as refugees in 2022], (<https://www.moj.go.jp/isa/content/001393012.pdf>) accessed 1 September 2023.

(27) Immigration Services Agency, ‘Ukuraina hinanmin ni kan suru jōhō’ [Information on Ukrainian evacuees], ([https://www.moj.go.jp/isa/publications/materials/01\\_00234.html](https://www.moj.go.jp/isa/publications/materials/01_00234.html)) accessed 9 October 2023.

accommodation and lifestyle support residences and supplied with Japanese language education and living expenses.<sup>(28)</sup> Even if individuals who were forced to leave their country were not recognised as refugees under the Refugee Convention, the government handled their situation flexibly in this form.

However, this setup lacks provisions as a legal system—it relies on the discretion of the Minister of Justice. The 2023 amendment on the Immigration Control Act, [Art.61-2 (2)] makes it possible for individuals in this situation to be recognised as a new category of individuals eligible for complementary form of protection, who are considered to have greater legal stability by being eligible for legal protection rather than staying at the minister’s discretion.

Second, the amended act split from those for refugee recognition (Immigration Control Act, Art. 50 (1)) and developed the application procedures for special permits for residence. The circumstances for consideration, which are to be taken into account in these procedures, are listed in Article 50 (5) of the Act. If a permit is not granted, the applicant is to be notified of the reasons for that decision (*id.*, Para. (10)). This amendment is considered to improve the transparency of decisions on granting permits.

Third, repatriation is no longer generally suspended during a refugee application albeit with conditions. Before the 2023 amendment, repatriation was suspended when a refugee claim was made. Under the amended Act [Art.61-2-9 (4)], individuals who are making their third or further application for recognition as a refugee without making new assertions, persons who have received a sentence of three or more years of imprisonment without probation, and terrorists will not have their repatriation suspended—they can be deported. However, even if a person is making their third or further application, if they can submit ‘documents with sufficient grounds’ to be recognised as a refugee or individuals eligible for complementary form of protection, they will be ineligible for deportation.

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(28) Immigration Services Agency, ‘Ukuraina hinanmin no ukeire, shien tō no jōkyō ni tsuite’ [On the state of acceptance, support, etc. of Ukrainian evacuees] (dated 6 October 2023), <<https://www.moj.go.jp/isa/content/001388202.pdf>> accessed 9 October 2023.

Fourth, the amendment revised provisions that stipulated detention in principle for persons subject to repatriation. Persons who refused repatriation were sometimes detained for longer. The detention of persons refusing repatriation was prolonged, and the only way to be released from it was through a system of ‘provisional release’, which originally only allowed for temporary release from detention for health reasons and other reasons. However, the current amended Immigration Control Act created a new system of ‘custodial measures’ that allows a family member or acquaintance to assume custody of the detained person and be appointed their ‘custodian’, after which the detainee moves forward with deportation procedures without being detained, under the supervision of the custodian (Immigration Control Act, Art. 44-2, etc.). This amendment significantly changed the provisions of the Immigration Control Act, which previously provided for detention in principle. The necessity of detention is considered for each case, and a decision is made that also includes the extent of the risks, such as flight, and the detriment that the person will suffer owing to detention. The necessity of detention is reviewed every three months for individuals currently in detention, and a mechanism has been introduced to transfer persons who need not be detained to supervision measures (Immigration Control Act, Art. 52-8).<sup>(29)</sup> These revisions to the system make detention more limited and remedy long-term detention.

### (3) Third-country resettlement

Third-country resettlement means the transfer of individuals who initially sought asylum at a refugee camp in the first asylum country to another country that agreed to accept them and then grant them the right to stay long-term. The UNHCR

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(29) Immigration Services Agency, ‘On the draft amendment to the Immigration Control Act’, (n24). Some of the 2023 amendments are to be enacted from 1 November 2023; all will be enacted within one year at the latest. (<<https://www.moj.go.jp/isa/laws/bill/index.html>> accessed 7 October 2023. Maeda Naoko, “Nyukanhou Kaisei to Nihon no Nanmin Ninteiseido no Genzai: Kokusajinkenhou no Shiten kara”, [Revision of the Immigration Control and Refugee Recognition Act and Japan’s Refugee Recognition System in the Present: A Perspective on International Human Rights Law], (2023), 1591, *Jurist* 72-77.

lists voluntary repatriation, integration in the first asylum country, and third-country resettlement among the long-lasting solutions to the refugee problem.<sup>(30)</sup>

With the 2008 Cabinet decision, the acceptance of refugees for third-country resettlement began addressing the refugee problems occurring in Asia.<sup>(31)</sup> From 2010, Japan accepted Myanmar families staying in Thai refugee camps, from 2015, Myanmar refugees staying in Malaysia,<sup>(32)</sup> and from 2020, the scope has been expanded to refugees staying in the Asia region.<sup>(33)</sup> Concurrently, Japan also began to accept the families of refugees who have come to Japan under resettlement.<sup>(34)</sup> As of October 2023, Japan has accepted 250 individuals.

Under third-country resettlement,<sup>(35)</sup> Japan receives a list of applicants who live in Asian countries without refugee status and wish to settle in Japan from the United Nations High Commissioner for Refugees (UNHCR) and selects them based on their documents. Then, with the cooperation of UNHCR and the International Organization for Migration (IOM), the Japanese government conducts interviews at the first asylum country. The IOM under contract from the Japanese government provides them with pre-exit training, including a health check, lifestyle orientation, and Japanese language training. Resettlers come to Japan after receiving this training, and after entering the country, they are provided

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(30) UNHCR, “Solutions”, [〈https://www.unhcr.org/uk/what-we-do/build-better-futures/solutions〉](https://www.unhcr.org/uk/what-we-do/build-better-futures/solutions) accessed 11 October 2023.

(31) Cabinet Secretariat, ‘Daisankoku teijū ni yoru nanmin no ukeire ni kan suru pairotto kēsu no jishshi ni tsuite’ [Concerning the conduct of pilot cases on accepting refugees through third-country resettlement], [〈www.cas.go.jp/jp/seisaku/nanmin/081216ryoukai.html〉](http://www.cas.go.jp/jp/seisaku/nanmin/081216ryoukai.html) accessed 22 August 2020.

(32) Ministry of Foreign Affairs, ‘Daisankoku teijū jigyō no gaiyō’ [Outline of the third-country resettlement project] 2, [〈https://www.mofa.go.jp/mofaj/files/000343330.pdf〉](https://www.mofa.go.jp/mofaj/files/000343330.pdf) accessed 23 August 2023.

(33) *ibid.*

(34) *ibid.*

(35) Cabinet Secretariat, ‘Daisankoku teijū ni yoru nanmin no ukeire ni kan suru gutaiteki sochi ni tsuite’ [On specific measures concerning the acceptance of refugees through third-country resettlement], [〈https://www.cas.go.jp/jp/seisaku/nanmin/pdf/r010628\\_1.pdf〉](https://www.cas.go.jp/jp/seisaku/nanmin/pdf/r010628_1.pdf) accessed 11 October 2023.

with a settlement assistance programme provided by the government (Japanese language training and lifestyle guidance) and are introduced to employers, etc. There is also support for the refugees' lifestyle and other programmes after they settle.<sup>(36)</sup>

The construction of this system means that it has been included in the national budget and settlement assistance programmes have been put into action. Even if only a few individuals are accepted, the fact that a certain number of third-country resettlers come to Japan each year may contribute to diversity in the community.

### 3. Japan's system for recognising refugees

#### (1) Outline of refugee recognition procedures

The details of refugee recognition procedures are according to Article 61-2 of the Immigration Control Act and also include the information described on the Immigration Services Agency website,<sup>(37)</sup> and the following procedures. An application for recognition as a refugee begins with the submission of a refugee status application form<sup>(38)</sup> filled out by the foreign citizen staying in Japan who

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(36) *ibid.*

(37) Immigration Services Agency, 'Refugee recognition system', (n17). The guide on refugee recognition procedures is published in thirteen languages besides Japanese: English, Turkish, Burmese, Korean, Chinese, French, Spanish, Arabic, Persian, Russian, Urdu, Dari, and Pashto, 'Nanmin nintei tetsuduki', [Refugee recognition procedure], <<https://www.moj.go.jp/isa/applications/procedures/16-6.html>>, accessed 12 December 2023. The Immigration Act was amended in 2023 and the complementary form of protection came into force on 1 December of the same year. Accordingly, applications for complementary protection are made on the same application forms as refugee application. The system of recognition of complementary protection is almost identical to that of refugee status.

(38) The PDF version of the application forms is prepared on the Immigration Service Agency web page 'Nanmin nintei shinseisho' [Refugee recognition application forms] in English, Amharic, Arabic, Indonesian, Urdu, Cambodian, Sinhalese, Spanish, Swahili, Thai, Tagalog, Tamil, Dari, Turkish, Nepalese, Pashto, Punjabi, Hindi, French, Vietnamese, Persian, Bengalese, Portuguese, Burmese, Mongolian, Russian, Korean, and Chinese. <[https://www.moj.go.jp/isa/applications/procedures/nyuukokukanri03\\_00091.html](https://www.moj.go.jp/isa/applications/procedures/nyuukokukanri03_00091.html)> accessed 12 December 2023.

wishes to apply for refugee status to the regional immigration office with jurisdiction over the applicant's place of residence. If the applicant is under sixteen years of age or cannot attend the office due to illness or another reason, their parent, spouse, child, or relative may apply on their behalf. The provisions limiting the term for refugee applications were deleted as a result of the 2005 amendments to the Immigration Control Act.

The September 2015 amendments to the Administrative Handling Guidelines for Refugee Recognition were applied to refugee applications submitted on or after 15 January 2018.<sup>(39)</sup> Under these amendments, the chief examiner must classify refugee applications within two months of receiving them and determine whether to permit work and impose residence restrictions according to the classification.<sup>(40)</sup>

Applications are allocated into four groups, lettered A to D.<sup>(41)</sup> Group A are those that appear likely to be refugees under the Refugee Convention and that appear likely to require humanitarian consideration due to circumstances in the home country, etc. Group B consists of cases where the applicant asserts conditions that do not constitute persecution under the Refugee Convention. Applications that are classified as Group B become Group D if it is necessary to examine the need for humanitarian consideration. Group C are reapplications in which the applicant does not have legitimate grounds and repeats similar assertions to the previous application. In other words, Group C covers cases in which the authorities have

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(39) The awareness that applying for refugee status would enable the applicant to work in Japan spread, causing an increase in the number of applicants, which led to the amendment aimed at preventing such abuse and misuse of the system. Reuters, 'Hōmushō, nanmin shinsei-go 6-kagetsu de no shūrō kyōka o haishi, zairyū no seigen kyōka' [Ministry of Justice abolishes work permit at 6 months after refugee application, strengthens restrictions on residence], 12 January 2018 (<https://jp.reuters.com/article/japan-immigrants-idJPKBN1F10MC>) accessed 22 August 2020. *Asahi Shinbun*, 'Nanmin shinseisha no shūrō, ōhaba seigen e, hōmushō shomen shinsa de senbetsu' [Work for refugee applicants to be widely restricted, Ministry of Justice selection by document screening] 12 January 2018, (<https://digital.asahi.com/articles/ASL1C7F61LICUTIL04V.html>) accessed 22 August 2020.

(40) Immigration Bureau, 'Further review' (n 21) 2.

(41) *ibid* 3.

already decided not to grant the applicant refugee status and the applicant has submitted the same application. Group D covers everything else.<sup>(42)</sup>

Recognition of refugee status is granted based on the materials submitted by the applicants. Applicants are required to prove that they are refugees by themselves. If the materials to prove this are written in a foreign language, a Japanese translation must be attached.<sup>(43)</sup>

After applying, applicants are interviewed by a refugee investigator, who is an officer of the Immigration Services Agency, as part of fact-finding (Immigration Control Act, Art. 61-2-14). The interview is also attended by an interpreter arranged by the agency.<sup>(44)</sup> The substance of the interview is recorded as a record of a statement, which is read out through interpretation after it is completed. Applicants may request to correct the record at this time and sign it afterwards. If the materials alone are not sufficient for proof, the refugee investigator is permitted to make inquiries with government offices and public and private organisations to verify the facts in the applicant's petition. Based on the application submitted by the refugee and the interview, the director of the regional immigration agency decides whether to grant refugee status under authority delegated by the Minister of Justice.<sup>(45)</sup> Applicants who are recognised as refugees receive a certificate of refugee

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(42) The results of external experts' verification of whether the allocation of applications was appropriate were published. Ministry of Justice, 'Nanmin nintei seido un'yōno minaoshi jōkyō ni kan suru kenshō kekka ni tsuite' [Concerning the verification results on the state of review of refugee recognition system operation] 28 July 2017. <[www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri08\\_00033.html](http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri08_00033.html)> accessed 7 September 2023.

(43) Immigration Services Agency, 'Nanmin nintei tetsuzuki annai' [Refugee recognition procedure guide] 4, <[www.immi-moj.go.jp/tetuduki/nanmin/pdf/japanese.pdf](http://www.immi-moj.go.jp/tetuduki/nanmin/pdf/japanese.pdf)>, accessed 14 August 2022.

(44) The interpreters arranged by the Immigration Services Agency are not required to be qualified, and they have been criticised for the lack of objective security regarding their quality and abilities. Seki Sousuke, 'Zoku Nihon no nanmin nintei seido no genjō to kadai (Tokushū nanmin 'hogo' o kangaeru)' [The Situation and Problems with the Refugee Recognition Procedure in Japan Revisited], (2012) 2 *Refugee Studies Journal* 10.

(45) From June 2019, the authority to decide refugee status, which had been held exclusively by the Minister of Justice, was delegated to the directors of the regional immigration bureaus while also being retained by the Minister of Justice.

recognition. The Japan Federation of Bar Associations (JFBA; Nichibenren) criticises that adult applicants are generally not permitted to have a lawyer or other acquaintance attend the interview with them.<sup>(46)</sup>

## (2) Decisions on refugee recognition

Refugee recognition in Japan relies on Article 2 (iii-2) of the Immigration Control Act, which is based on the Refugee Convention and its protocol. However, these documents are not free from ambiguities, and the Immigration Services Agency has published on its website examples of the decisions to recognise or not recognise that it has made.<sup>(47)</sup> The Agency published ‘Guidelines for Determining Refugee Eligibility’ in March 2023.<sup>(48)</sup> To prepare this document, the Agency sought advice from the Expert Committee on the Refugee Recognition System under the Sixth Immigration Control Policy Council, used precedents in practice and the courts concerning refugee recognition as bases, referred to documents, and received advice from the Office of the UNHCR, and referred to guidelines published in various countries.<sup>(49)</sup> Having immigration personnel refer to these guidelines in their refugee recognition work is expected to produce appropriate,

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(46) Japan Federation of Bar Associations, ‘Proposals on Refugee Status Recognition System and Status of Refugee Applicants in Japan’ 21 February 2014: ‘(3) (iii) Status of a legal counsel acting as an attorney should be adequately recognized, and his/her attendance at the interviews should be permitted as rights of the Applicants and the attorney’; <[www.nichibenren.or.jp/en/document/opinionpapers/140221.html](http://www.nichibenren.or.jp/en/document/opinionpapers/140221.html)> accessed 22 August 2020. The Japan Legal Support Center provides free, legal support and advice from lawyers by telephone consultation (in nine languages) Japan Legal Support Center, ‘Legal Information for Foreign Nationals’ <[www.houterasu.or.jp/multilingual/index.html](http://www.houterasu.or.jp/multilingual/index.html)>, accessed 22 August 2023.

(47) Immigration Services Agency, ‘Nanmin to shite nintei shita jirei tō ni tsuite’ [On examples recognised as refugees, etc.] <<https://www.moj.go.jp/isa/content/001393015.pdf>> accessed 14 October 2023.

(48) Immigration Services Agency, ‘Nanmin gaitōsei handan no tebiki’ [Guidelines for Determining Refugee Eligibility] (March 2023), <<https://www.moj.go.jp/isa/content/001393172.pdf>> accessed 4 September 2023.

(49) Immigration Services Agency, ‘Nanmin gaitōsei no tebiki no sakutei ni tsuite’ [On the formulation of the refugee eligibility guidelines], <[https://www.moj.go.jp/isa/publications/press/07\\_00036.html](https://www.moj.go.jp/isa/publications/press/07_00036.html)> accessed 21 October 2023.

efficient examinations.<sup>(50)</sup>

A characteristic of the newly adopted guidelines is that they explicitly refer to persecution relating to belonging to a sexual minority and facing gender-based discrimination in the ‘specific social groups’.<sup>(51)</sup> Moreover, concerning gender-based discrimination, the guidelines note that female genital mutilation (FGM), in particular, is a violation of the victim’s life or body and constitutes persecution.<sup>(52)</sup> The guidelines further state that the living situation in the country of a woman’s nationality should be considered when recognising gender-based discrimination.<sup>(53)</sup> The protection of the country of nationality has also been described in more concrete detail.<sup>(54)</sup> These guidelines have more concrete information on what to refer to when applying, but ultimately, the guidelines highlight establishing a thorough understanding of the applicant’s individual circumstances.

### (3) Examination request procedures

Applicants who are not recognised as refugees can request an examination with the Minister of Justice within seven days of receiving notice denying recognition (Immigration Control Act, Art. 61-2-9 (1) and (2)). The request for examination is also made in writing to the regional immigration bureau with jurisdiction over the applicant’s place of residence.<sup>(55)</sup> The Minister of Justice determines the examination request (Immigration Control Act, Art. 61-2-9 (1)).

A refugee examination counsellor system was enacted in 2005, in which three counsellors form each panel. As of 2022, there are 118 counsellors on 34 panels.<sup>(56)</sup>

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(50) *ibid.*

(51) Immigration Services Agency, ‘Guidelines’ (n 48) 10–12.

(52) *ibid.*, 12.

(53) *ibid.*, 13.

(54) *Ibid.*, 15–17.

(55) Immigration Service Agency, ‘Refugee recognition procedure guide’ (n 43) 6.

(56) Immigration Service Agency, ‘Concerning the refugee examination counsellor system’ (n 19).

Refugee examination counsellors must be appointed from persons of reputable character who are

Examination by counsellors consists of an investigation of the documents and evidence submitted by the applicant and oral statements of opinion by and interviews with the applicant.<sup>(57)</sup>

The examination interview is conducted in the language desired by the applicant with an interpreter in attendance. Attorneys are also permitted to participate. After the investigation and interview, the three refugee examination counsellors submit one written opinion, which the Minister of Justice refers to when rendering a final determination and issuing a judgment.<sup>(58)</sup> The counsellors' opinion is not legally binding, but the Minister of Justice respects their opinion when making a judgment.<sup>(59)</sup> If the judgment finds that the denial of recognition was in error, the applicant is recognised as a refugee, whereas if the applicant's examination request is found to be groundless, the refugee recognition procedures terminate.

With the enactment of the new Administrative Appeal Act on 1 April 2016, the individual requesting examination because their refugee application was not recognised may now request the presence of the regional immigration officer at the interview. When doing so, the applicant is required to indicate whether they will be

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capable of making fair judgments on the objection filed in connection with denial of refugee status and who have an academic background in law or current international affairs. They are appointed by the Minister of Justice on recommendations from the UNHCR, Japan Federation of Bar Association, Refugee Assistance Headquarters, and NGOs. In addition to recommending refugee counsellors, the UNHCR conducts workshops and lectures for counsellors and refugee examiners. There is no system for UNHCR to participate in the interview and screening of applicants.

(57) Oral statements of the counsellors' opinions were made at the objecting party's request, but as a result of the enforcement of the amended Administrative Appeal Act, it was held that there was no need to provide an opportunity to state opinions if the written statement contained no grounds for refugee status. For a criticism of this point, see the JFBA statement. Japan Federation of Bar Associations, 'Explanatory Text for the JFBA President's Statement on the Draft Revision of the Immigration Control and Refugee Recognition Act in Line with the Revision of the Administrative Appeal Act' ([www.nichibenren.or.jp/en/document/statements/140523.html](http://www.nichibenren.or.jp/en/document/statements/140523.html)) accessed 4 September 2022.

(58) Immigration Service Agency, 'Concerning the refugee examination counsellor system' (n 19).

(59) *ibid.*

asking questions and, if so, the substance of the questions.

#### (4) Later procedures

Before the 2023 amendment of the Immigration Control Act, applicants not found to meet the criteria for refugee status were not subject to any restrictions on the number of times they could apply—they could apply for refugee recognition several times.<sup>(60)</sup> A different form from the initial application form is prepared in this case, and the applicant must indicate the state of their previous refugee recognition application, whether there are new grounds for applying for refugee recognition, and if there are, the contents thereof. Additionally, it is possible to file an administrative action, which the applicant must do within six months of the denial of recognition (Administrative Case Litigation Act, Art. 14).

Moreover, before the 2023 amendment of the Immigration Control Act, applicants would generally have their repatriation under a forcible deportation order suspended while they were applying for refugee recognition. However, the amendment enabled applicants to be deported even during a refugee application if they were applying for refugee recognition for a third or further time and had not introduced any new assertions. Repatriation is suspended if they submit ‘documents with reasonable grounds’ allowing them to be recognised as a refugee or as eligible for a complementary form of protection. Additionally, application procedures were also created for existing special permission to stay, apart from a complementary form of protection. This is predicted to enable applicants to file an application that would suit their individual circumstances, rather than for every status of residence in the application for refugee recognition.

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(60) Of the 3,772 applicants for refugee status in 2022, 1,202 (approx. 32%) had applied several times. Immigration Services Agency, ‘Reiwa 4-nen ni okeru nanmin ninteisha sū tō ni tsuite’ [On the number of recognized refugees in 2022, etc.] (<https://www.moj.go.jp/isa/content/001393012.pdf>) 3. accessed 30 September 2023.

## 4. Various rights of refugee applicants and recognised refugees in Japan

### (1) Various rights of refugee applicants<sup>(61)</sup>

The rights afforded to applicants for refugee recognition differ depending on their residence status when they apply and the way their application is classified.<sup>(62)</sup> Initial applications that are likely to be for refugees under the Refugee Convention (Group A) are promptly granted the ‘Designated Activities (work permitted)’ residence status. For Group B, in which the applicant asserts conditions that do not constitute persecution under the Refugee Convention (excluding cases where humanitarian consideration is needed), work and residence are restricted. Group D issues are handled differently depending on the situation at the time of application. Individuals who apply after ceasing visa activities and individuals who apply during the departure preparation period<sup>(63)</sup> are granted the ‘Designated Activities

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(61) Handbooks for refugee applicants, refugees, and others to live in Japan are published on supporting NGOs’ websites, for example, the Japan Association for Refugees website <[www.refugee.or.jp/for\\_refugees/#living](http://www.refugee.or.jp/for_refugees/#living)> accessed 22 August 2020.

(62) Immigration Service Agency, ‘Further review’ (n 21) 2.

(63) If a decision to revoke a person’s residence status has been made, a period of up to thirty days for the preparations necessary for departure (departure grace period) is designated, and the person must depart the country voluntarily within this period. Immigration Services Agency, Q14: ‘If the immigration control authority decides to revoke my residence status, do I have to immediately leave Japan?’ ([www.immi-moj.go.jp/english/tetuduki/zairyuu/qa.html](http://www.immi-moj.go.jp/english/tetuduki/zairyuu/qa.html)) accessed 20 September 2020. Because the applicant files an application for recognition of refugee status after ceasing their activities within the original residence status and losing the basis for staying (these applicants will be classified as Group D1), even though it is possible to file the application while continuing the activities, restrictions on work are imposed due to a belief that applications that abuse or misuse the system for the purpose of continuing work or study are likely and that the average period from entry to application for applicants who underwent technical training or studied in Japan is about 23 months and applicants have been earning a certain amount of money for their living expenses. Furthermore, because applications during the departure grace period are filed during the short period after the applicant’s representation of their own intention to return to their home country, in

(three months)’ residence status but are not permitted to work. Other Group D2 applicants receive ‘Designated Activities (three months)’ residence status without the ability to work until six months after their application and are permitted to work once six months have passed from their application. For second and further applications, applicants are promptly granted the ‘Designated Activities, Six Months (work permitted)’ residence status if they are in Group A, but other applicants are subject to residence restrictions.

A refugee applicant with Designated Activities (six months) or provisional stay residence status may join the National Health Insurance and access medical services with a 30% payment.<sup>(64)</sup> Concerning children’s education, foreign citizens are not subject to Japan’s compulsory education system, but the children of refugee applicants can enrol in public elementary and junior high schools. Financial support for refugee applicants can include the above-mentioned public assistance payments made by the Ministry of Foreign Affairs and welfare benefits, depending on the case.<sup>(65)</sup> The applicant may leave Japan while their application is in progress, but whether they can receive a permit to re-enter Japan will depend on the case.

## (2) Convention refugees, individuals under complementary form of protection, and third-country resettlers

Foreign citizens who have been recognised as refugees, that is, Convention refugees, receive a certificate of refugee status and their residence status becomes ‘Long-term Resident’.<sup>(66)</sup> Individuals recognised as complementary form of

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spite of that representation, restrictions on work are imposed due to the likelihood of applications that abuse or misuse the system for the purpose of continuing stay in Japan. Ministry of Justice, ‘Shūrō seigen no taishō to naru nanmin nintei shinseisha ni tsuite’ [Concerning the refugee applicants subject to work restrictions] ([www.moj.go.jp/content/001250865.pdf](http://www.moj.go.jp/content/001250865.pdf)) accessed 21 September 2020.

(64) Japan Association for Refugees, ‘Information for living in Japan’ ([www.refugee.or.jp/for\\_refugees/info/social\\_jp.shtml](http://www.refugee.or.jp/for_refugees/info/social_jp.shtml)) accessed 22 August 2020.

(65) Refugee Countermeasure Liaison and Adjustment Conference, ‘Nanmin shinseisha e no shien ni tsuite’ [Concerning support for refugee applicants] 8 July 2004 ([www.cas.go.jp/jp/seisaku/nanmin/040708sien.html](http://www.cas.go.jp/jp/seisaku/nanmin/040708sien.html)) accessed 28 August 2020.

protection and third-country resettlers are also accorded the ‘Long-term Resident’ residence status. This residence status permits unrestricted work. Convention refugees, persons eligible for complementary form of protection, and third-country resettlers are treated in the same way as Japanese citizens (excluding political rights, etc. that are afforded only to citizens) or ordinary foreign citizens: they can join the National Health Insurance for medical treatment and can qualify for national pension, child-rearing allowance, and welfare benefits.<sup>(67)</sup> They are provided with Japanese language education, employment referrals, occupational training, payments for living support, and settlement allowances, among other things.<sup>(68)</sup>

When a Convention refugee seeks to leave Japan, they are given a refugee travel document by the Minister of Justice instead of their passport, which allows them to exit and re-enter the country multiple times during the one-year term of validity.<sup>(69)</sup> As third-country resettlers are not Convention refugees, they do not receive a refugee travel document. Concerning financial assistance, public assistance payments limited to refugee applicants are not paid because Convention refugees are ineligible, but they are eligible for public assistance.<sup>(70)</sup>

When a Convention refugee applies for permanent residence, they are not

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(66) Immigration Service Agency, ‘Refugee recognition procedure guide’ (n 43) 5. In general, a five-year period of stay is granted.

(67) *ibid* 2.

(68) Refugee Countermeasure Liaison and Adjustment Conference, ‘Jōyaku nanmin ni tai suru teijū shien taisaku oyobi nanmin nintai shinseisha e no shien ni kan suru tōmen no gutaiteki sochi tō ni tsuite’ [Concerning settlement support measures for Convention refugees and immediate concrete measures relating to support for refugee recognition applicants, etc.] 7 August 2002 (<[www.cas.go.jp/jp/seisaku/nanmin/020807kettei.html](http://www.cas.go.jp/jp/seisaku/nanmin/020807kettei.html)> accessed 29 August 2020. From 1 December 2023, the Complementary Protection Scheme will come into force and those recognised under it will receive the same support as Convention refugees. Immigration Service Agency, ‘Support for persons subject to complementary protection’ (n 25).

(69) Immigration Service Agency, ‘Refugee recognition procedure guide’ (n 43) 7.

(70) Social Welfare Bureau, Ministry of Health and Welfare notice, ‘Nanmin tō ni tai suru seikatsu hogo no sochi ni tsuite’ [Concerning welfare benefits measures for refugees, etc.] 4 January 1982 (<[www.mhlw.go.jp/web/t\\_doc?dataId=00ta1613&dataType=1&pageNo=1](http://www.mhlw.go.jp/web/t_doc?dataId=00ta1613&dataType=1&pageNo=1)> accessed 27 August 2020.

required to fulfil the legal requirements of assets and skills for leading an independent life, and in general, despite the ten-year residency requirement, they can receive a permanent residency at the Minister of Justice's discretion if they have lived continuously in Japan for at least five years.<sup>(71)</sup>

Article 2 of the Nationality Act provides that the acquisition of Japanese nationality by birth follows the principle of parental *jus sanguinis*. For this reason, children born to parents who are Convention refugees, Indochinese refugees, third-country resettlers, persons eligible for complementary form of protection, or individuals with permission to stay through humanitarian consideration do not automatically acquire Japanese nationality. The children's nationality follows the law of the parents' countries of birth. As a result, each person who wishes to acquire Japanese nationality must apply to naturalise. Naturalisation requires the person to renounce their previous nationality.<sup>(72)</sup>

### (3) Residence permission through humanitarian considerations<sup>(73)</sup>

Individuals who are not recognised as Convention refugees under the

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(71) Ministry of Justice, 'Eijū kyōka ni kan suru gaidorain' [Guidelines on permanent residence] (revised 31 May 2019), <[www.moj.go.jp/nyuukokukanri/kouhou/nyukan\\_nyukan50.html](http://www.moj.go.jp/nyuukokukanri/kouhou/nyukan_nyukan50.html)> accessed 23 August 2020. Immigration Service Agency, 'Refugee recognition procedure guide' (n 43) 2.

(72) Nationality Act, Art. 5 (2). Recognised refugees receive favourable treatment when naturalising, in that they do not need to fulfil the economic requirements. Note that if the person cannot lose their nationality by their own volition, naturalisation may be permitted without fulfilling that condition. Second-generation refugees are at risk of becoming *de facto* stateless, as their parents may not register his/her birth with the embassy of his/her country of origin.

(73) Convention refugees are recognized when they fall under the race, religion, social group, or political opinions stipulated under the Refugee Convention. On the other hand, until the 2023 amendment of the Immigration Control Act, residence permits were based on humanitarian consideration, with special permission for residence or change in status of residence based on the circumstances of each individual case. Residence permits could be recognized in cases of escape from conflict, or when based on a family of Japanese residents. Immigration Services Agency, Press Release 'Nanmin to nintai shita jirei nado nitsuite [Cases of Recognition as Refugees, etc.]' <[www.moj.go.jp/isa/content/001345020.pdf](http://www.moj.go.jp/isa/content/001345020.pdf)> 14–18, accessed 25 November 2023. After the creation of a new application system for complementary protection and special permission to stay

Immigration Control Act but are granted residence permission through humanitarian considerations, taking account of their circumstances, are granted ‘Long-term Resident’ or ‘Designated Activities’ residence status with a one-year length of stay.<sup>(74)</sup> Neither residence status has any restrictions on work, and both allow the holder to join the National Health Insurance for medical treatment, meaning that the holder is treated almost the same way as a Convention refugee. Differences from Convention refugees that have been highlighted include the issue of Japanese language education not being publicly funded and the difficulty of inviting family members who are still in another country.<sup>(75)</sup>

## 5. Influence of international human rights treaties on Japan’s recognition of refugees

### (1) Domestic precedents

This section is an overview of the impact of international human rights treaties in Japan. Japan has ratified several human rights treaties and presented national reports. However, Japan’s courts are considered hesitant to directly apply treaties,<sup>(76)</sup> and in many cases, they apply human rights treaties indirectly by using

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by the 2023 amendment of the Immigration Control Act, recognition of these individuals and their rights under the enactment of this law will need to be examined.

(74) Which residence status will be granted is supposed to be decided based on the length of stay in Japan when the disposition is made and other factors. Honda Manami, ‘Nihon ni okeru nanmin ninte no jitsujō’ [The reality of refugee recognition in Japan] in Ōkubo Shirō, Hizume Makoto, and Yoshida Mikio (eds), *Hito no kokusai idō to gendai nihon no hō* [International movement of individuals and modern Japanese law] (Nippon Hyoronsha 2017) 396.

(75) *ibid* 396–397. As residence permission through humanitarian consideration has been given the status of designated activities, inviting others is supposed to be difficult, but cases where family members in refugee camps outside Japan have been invited to Japan have been reported. *Asahi Shinbun* 28 September 2015 (<<https://digital.asahi.com/articles/DA3S11986904.html>> accessed 28 August 2020).

(76) It is very rare for Japanese courts to issue judgments based directly on the articles from human rights treaties. Yonezawa Kōichi, ‘Kokusai shakai to jinken’ [International society and human

them as a guide when construing domestic laws. Even Article 98 (2) of the Japanese Constitution stipulates that Japan shall faithfully observe the treaties concluded and Japan takes a unitary position on the relationship between international law and municipal law. Actions to request the rescission, etc. of dispositions denying recognition of refugee status are conducted as administrative litigation, and in many cases, if a court ruled to rescind a disposition denying recognition of refugee status, the Minister of Justice would receive a further application and would carry out the refugee examination again to determine whether the applicant is a refugee.

There have been cases in which the judgment has rescinded the Minister of Justice's disposition denying recognition and the Minister of Justice has decided not to recognise the applicant as a refugee in a second application, and these have been argued as far as the Tokyo High Court. The Tokyo High Court held in December 2018 that if a court has ruled to rescind a disposition denying recognition and the Minister of Justice decides not to recognise the applicant as a refugee in their second application for recognition of refugee status, this falls within the cessation provisions of the Refugee Convention.<sup>(77)</sup> When doing so, the court held that a foreign citizen, for whom a decision to rescind a disposition denying recognition has been finalised, is confirmed as a refugee as a matter of right under public law, to whom the Refugee Convention applies at the time of the disposition, without requiring recognition as a refugee by the Minister of Justice. The Minister of Justice is also bound by the decision to revoke the non-recognition judgment.

In response to this judgment, the Immigration control authorities issued a notice to the officers in charge of refugee investigation in regional immigration bureaus in January 2019, asking them to evaluate whether the cessation provisions apply to

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rights] in Higuchi Yōichi (ed), *Kōza: Kenpōgaku*, vol. 2: *Shuken to kokusai shakai* [Lecture: Constitutional studies, vol. 2: Sovereignty and international society (Nippon Hyoronsha 1994) 184.

(77) Appeal of request to rescind disposition denying recognition of refugee status, etc., Tokyo High Court, 2018(Gyō-ko) 228 (5 December 2018, 2412 *Hanrei Jihō* 3).

any foreign citizens for whom a decision was made to rescind a disposition denying recognition of refugee status on the grounds of their qualification as refugees, and if they do not apply, to recognise them as refugees promptly.<sup>(78)</sup> This case made it possible for the judiciary to decide on the recognition of refugees, and the accumulation of such decisions may directly affect the operation of the refugee recognition system.

## (2) Influence on the Immigration Control Policies

To enable the Minister of Justice to refer to expert opinions on efforts to recognise refugees properly and swiftly, a specialist subcommittee relating to the refugee recognition system was established in 2014 under the Immigration Control Policy Colloquium, which is a private panel discussion for the Minister of Justice.<sup>(79)</sup> Its report was the 2014 ‘Results of Consideration on Directions for Reviewing the Refugee Recognition System (Report)’.<sup>(80)</sup>

The report contains a section that mentions international human rights norms and trends in international society. For example, it lists recognising ‘persecution in new forms’ as Convention refugees under the Refugee Convention and offering protection to them.<sup>(81)</sup> It provides examples of persecution due to gender, persecution by non-state bodies, and persecution due to sexual orientation. Furthermore, the Executive Director of United Nations International Children’s

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(78) Murakami Masanao, ‘Saibansho ni yori nanmin funintei shobun ga torikesareta mono no nanmin gaitōsei’ [Refugee qualification of individuals whose disposition denying recognition of refugee status was rescinded by courts] (October 2019) 25 *Shin-hanrei kaisetsu Watch* [New case commentary Watch], 295.

(79) Immigration Service Agency, ‘Nanmin nintei seido ni kan suru senmon bukai’ nitsuite [Concerning the Specialist subcommittee on the refugee recognition system] ([https://www.moj.go.jp/isa/policies/policies/nyuukokukanri03\\_00096.html](https://www.moj.go.jp/isa/policies/policies/nyuukokukanri03_00096.html)) accessed 23 October 2023.

(80) Specialist subcommittee on the refugee recognition system, ‘Nanmin nintei seido no minaoshi no hōkōsei ni kan suru kentō kekka (hōkoku)’ [Results of consideration on directions for reviewing the refugee recognition system (report)] (<https://www.moj.go.jp/isa/content/930003065.pdf>) accessed 13 October 2023.

(81) *ibid* 9.

Emergency Funds (UNICEF) gave a speech to the United Nations Commission on the Status of Women,<sup>(82)</sup> in the course of which female genital mutilation (FGM) was highlighted as a human rights issue. As mentioned in Section 2, the discussion in the specialist subcommittee pointed out that given this international situation and human rights norms, Japan would also follow the interpretation that those affected by FGM constitute a particular social group' and would view it as persecution. This point was added to the guidelines for determining refugee eligibility created by the Immigration Services Agency in March 2023.

Moreover, the specialist subcommittee also advised granting residence permission as an evacuation opportunity, based on international trends and international human rights norms, which would be treated as residence permission through humanitarian consideration separate from Convention refugees in the Immigration Control Policies Basic Plan produced in 2019.<sup>(83)</sup> This advice was given regarding the international protection systems in the EU and other areas, and it ultimately bore fruit in the complementary form of protection system in the 2023 amendment.

Conversely, the opinion was raised that the prohibitions on torture and cruel treatment, punishment, etc. in the International Covenant on Civil and Political Rights (ICCPR) and 'the best interests of the child' in the Convention on the Rights of the Child should be considered within the scope of protection founded upon norms under international human rights treaties, in addition to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearances, under which the Immigration Control Act prohibits deportation as of 2014.<sup>(84)</sup> However, the subcommittee did not conclude these points<sup>(85)</sup>. This

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(82) UNICEF, 63rd United Nations Commission on the Status of Women, speech by UNICEF executive director 14 March 2019 <[www.unicef.or.jp/news/2019/0041.html](http://www.unicef.or.jp/news/2019/0041.html)> accessed 2 September 2023.

(83) Ministry of Justice, *Basic Plan for Immigration and Residency Management* (n 22) 61.

(84) Specialist subcommittee on the refugee recognition system, (n 80) 9–10.

advice by the specialist subcommittee was prepared regarding the international performance of international human rights treaties and state performance by the EU and other countries and is ultimately reflected in amendments to domestic laws and response strategies.

### (3) State reports under the International Human Rights Treaties

Treaties on universal human rights are provided with systems to ensure implementation, the most basic being the state reporting system. In this system, the treaty body (committee) stipulated by each treaty reviews reports submitted regularly by the state parties on their performance of the treaty. This is a bidirectional exchange between the treaty bodies and state parties, and it has been used as constructive dialogue to further international cooperation for the protection of human rights.<sup>(86)</sup> According to the Office of the High Commissioner of Human Rights, “This procedure is not supposed to be adversarial and the committee does not aim to pass judgment on the State party in a judicial sense. Instead, the aim is to engage with the State party in a constructive dialogue to assist the Government in its efforts to implement the treaty as fully and effectively as possible. The notion of constructive dialogue underpins the view that the treaty bodies are not judicial bodies (even if some of their functions are quasi-judicial) but rather are bodies created

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(85) The best interests of children of foreign nationals have conventionally been affected by their parents' status of residence, an issue that has been a matter for debate. However, the following response was published by Minister of Justice Saitō Ken on 4 August 2023, the Japanese government is set to make foreign nationals under the age of 18 and born and raised in Japan eligible for special permission for residency provided their cases fulfill certain requirements. Kyodo News, “Foreign minors who grow up in Japan to be eligible for residence” ([https://english.kyodonews.net/news/2023/08/1de6491b9078-foreign-minors-who-grow-up-in-japan-to-be-eligible-for-residence.html#google\\_vignette](https://english.kyodonews.net/news/2023/08/1de6491b9078-foreign-minors-who-grow-up-in-japan-to-be-eligible-for-residence.html#google_vignette)) accessed 14 November 2023. Ministry of Justice, ‘Hōmu Daijin rinji kisha kaiken no gaiyō’, [ Summary of the Minister of Justice’s ad hoc press conference] ,([https://www.moj.go.jp/hisho/kouhou/hisho08\\_00435.html](https://www.moj.go.jp/hisho/kouhou/hisho08_00435.html)), accessed 11 December 2023.

(86) Teraya Kōji, ‘Jinken jōyaku no jikkōsei to kōsei: “Kensetsuteki taiwa” no seidoteki jōken nikan suru oboegaki’ [Effectiveness and fairness of human rights treaties: Memorandum on structural conditions of ‘constructive dialogue’], 680 *International Affairs*, (Apr. 2019), 6.

to monitor the implementation of the treaties.”<sup>(87)</sup> Treaty bodies send additional written questions and hold in-person discussions in response to the reports submitted by state parties, and they adopt and release the opinion of the entire treaty body, which is known as the Concluding Observations and is not legally binding.

The Human Rights Committee’s Concluding Observations on Japan’s Fifth State Report (2008) highlighted several issues, including the lack of explicit prohibition on deporting asylum-seekers to countries with a risk of torture, a low rate of refugee recognition, restrictions on applicants’ ability to work during refugee recognition procedures with limited social support, and non-binding opinions of counsellors who were not an independent organ.<sup>(88)</sup> The Japanese government has not provided a direct response to these observations.<sup>(89)</sup>

The Committee of the Convention against Torture, in its conclusions and recommendations after the review of Japan’s initial report in 2007, noted that “the State party should explicitly prohibit deportations to countries where substantial grounds exist for asserting that individuals facing deportation would be at risk of torture”<sup>(90)</sup>.

The Immigration Act was amended in 2009 to expressly include and specify the prohibition on repatriation as stipulated in the Convention against Torture and the Convention for the Protection of all Persons against Enforced Disappearance. The principle of *non-refoulement* stipulated in Article 33.1 of the Refugee Convention, Article 3.1 of the Convention against Torture and Article 16.1 of the Convention

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(87) Office of the High Commissioner for Human Rights, “Constructive Dialogue” (<https://www2.ohchr.org/english/bodies/treaty/glossary.htm#:~:text=Concluding%20observations%20refer%20both%20to%20positive%20aspects%20of,action%20needs%20to%20be%20taken%20by%20the%20State>), accessed 23 October 2023.

(88) Ministry of Foreign Affairs, Comments by the Government of Japan on the Concluding Observations of the Human Rights Committee ([www.mofa.go.jp/policy/human/cove\\_comment0912.pdf](http://www.mofa.go.jp/policy/human/cove_comment0912.pdf)), accessed 30 August 2020. Human Rights Committee, (n4), para.25.

(89) *ibid*

(90) CAT/C/JPN/CO/1 para.14 1 (a). SHIN Hae Bong, *Kokusai jinken hō (dai-2-han)* [International Human Rights Law] (2nd ed, Shinzan-sha 2016) 54–55.

against Enforced Disappearance were explicitly incorporated into Article 53(3) of the Immigration Control Act as directed in the concluding observations of the Human Rights Committee. As mentioned earlier, since 2010, applicants have been universally allowed to work for six months after their refugee application.

The concluding observations on the Sixth State Report (2014) noted that the principle of *non-refoulement* had not been effectively implemented and that no independent appeal mechanism with a suspensive effect against negative asylum decisions existed.<sup>(91)</sup> Japan was also required to implement measures to provide fair procedures for all individuals who sought international protection.<sup>(92)</sup> The study has not been able to confirm follow-up comments by the Japanese government in response to this.

Concerning the Seventh State Report, the Japanese government has been asked to report on measures taken on the prior list of issues<sup>(93)</sup> presented by the Human Rights Committee in December 2017, to: (a) prevent ill-treatment during deportations; (b) ensure that all persons applying for international protection, including those in groups B/C, are given access to fair and efficient asylum procedures and protection against *refoulement*; (c) provide access to an independent appeal mechanism with suspensive effect against negative decisions on asylum; (d) implement in good faith positive opinions rendered by refugee examination counsellors (also known as ‘refugee adjudication counsellors’) and the High Court in refugee cases; and (e) accept the involvement of legal representatives at all stages of asylum application procedures.

The Japanese government responded to each of these points as follows.<sup>(94)</sup>

(a) Applicants staying legally in Japan at the time of their application for recognition of refugee status are not detained. An applicant for recognition of

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(91) CCPR/C/JPN/CO/6 (2014/8/20), para. 19.

(92) *ibid.*

(93) CCPR/C/JPN/QPR/7, para. 21.

(94) ‘Seventh Periodic Report submitted by Japan under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2018’, CCPR/C/JPN/7.

refugee status without residence status is granted permission for provisional stay and not detained unless an exception applies. If a person applies for recognition of refugee status after deportation has been decided through the recognised process, the person is detained but deportation is suspended, and the person may be provisionally released.<sup>(95)</sup>

(b) The government has taken measures to refuse residence status and work permission for applicants of refugee status who are abusing or misusing the process, who fall into groups B and C, but as a general rule, a decision to grant recognition or not is made following the same procedures as for other applicants applying for recognition of refugee status. If they are not recognised as refugees, the provisions of Article 53 (3) of the Immigration Control Act apply, in which the principle of *non-refoulement* is clearly stated.<sup>(96)</sup>

(c) The system of examination by refugee examination counsellors exists, and there are provisions to suspend deportation during the process of applications and requests for review. The Japanese government does not deport asylum applicants. Furthermore, applicants may file an administrative action for judicial review concerning recognition of refugee status.<sup>(97)</sup>

(d) In over 90% of cases, the refugee examination counsellors and the Minister of Justice reached the same conclusion.<sup>(98)</sup> In cases where a judgment rescinds a disposition denying recognition of refugee status, the government reconsiders whether or not the applicant is a refugee, based on the contents of the judgment.<sup>(99)</sup> The aforementioned judgment is considered to grant refugee status to individuals

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(95) *ibid.* paras. 179–81.

(96) *ibid.* paras. 185–86.

(97) *ibid.* paras. 188–90.

(98) Ministry of Justice, 8th meeting ‘Dai-7-ji shutsunyūkoku kanri seisaku kondankai gijiroku’ [Minutes of 7th Immigration Control Policy Colloquium] (held 19 December 2019), 13. (<[www.moj.go.jp/content/001257455.pdf](http://www.moj.go.jp/content/001257455.pdf)> accessed 30 October 2023. The Immigration Bureau trial section manager replied that there were 13 cases in which the majority opinion of the refugee examination counsellors and the Minister of Justice’s ultimate decision differ, of which 11 were granted residence permission.

(99) Japan 7th. State Report, (n94), paras. 191–92.

for whom a judgment rescinding a disposition denying recognition was handed down and to whom the cessation provisions of the Refugee Convention do not apply.

(e) The government allows individuals who were not recognised as refugees to stay, taking account of various circumstances, such as difficulty returning to their home country due to the circumstances there. It is vital to ensure an environment where the applicant can make statements on facts known only to the applicant and the private matters of other individuals in the application for refugee recognition; third parties are generally not allowed to be involved in refugee recognition application procedures. However, this is allowed if the applicant is a minor unaccompanied by a guardian, a person with severe physical or mental disabilities, or a person with a severe illness, and any of these types of applicants requests the attendance of a certain person, such as an attorney, at the interview.<sup>(100)</sup>

Regarding the Seventh periodic State Report, the Japanese government stated that it had granted refugee status and special permission to stay to an increasing number of individuals, that very few applicants were held in detention facilities, even if they were not granted permission to stay, and that it was considering the possibility of amending the Immigration Control Act, considering alternative methods to prevent long-term detention.<sup>(101)</sup> The committee members asked about medical problems in the detention facilities, whether access to an independent appeal mechanism with temporary suspensive effect in the asylum procedures was guaranteed, about reports that individuals without a status of residence were unable to work and their children were placed in extremely unstable circumstances as a result, and about Japan's remedies in response to these issues.<sup>(102)</sup>

The Concluding Observations of the Human Rights Committee on Japan's Seventh periodic State Report express interest in the possibility of amending the Immigration Control and Refugee Recognition Act. This amendment, providing for

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(100) *ibid.* paras. 194–97.

(101) CCPR/C/SR.3925, para.8.

(102) CCPR/C/SR.3926, paras.32–33.

alternative measures to detention, introduces a system for complementary protection, and also welcomes Japan's willingness to consider measures to avoid long-term detention.<sup>(103)</sup> The Concluding Observations also describe ongoing concerns regarding the low rate of refugee recognition.<sup>(104)</sup> They recommend that Japan should<sup>(105)</sup> (a) promptly adopt comprehensive refugee protection legislation, in accordance with international standards; (b) improve medical and other treatment in detention facilities; (c) support immigrants on provisional release and establish employment opportunities; (d) ensure that the principle of non-refoulement is respected and that individuals applying for international protection, are given access to independent judicial appeals mechanism with suspensive effect; (e) provide alternatives to detention and limit detention to the shortest period necessary, and if a person is detained, implement measures that enable proceedings before a court for a decision on lawfulness; and (f) guarantee adequate training of border-guard officials and immigration personnel to ensure respect for the rights of asylum seekers.

As mentioned in Section 2, the 2023 amendment to the Immigration Control Act introduced a complementary form of protection system, made improvements that enabled physicians to work concurrently in detention facilities, and introduced the custodian system as an alternative measure to detention. However, as demonstrated by the considerable criticism of the suspension of forcible repatriation,<sup>(106)</sup> forcible repatriation is limited by the 2023 amendment because the number of times an applicant can apply for refugee status has been specified and the applicant's background is also considered.

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(103) Japan 7th. State Report, (n94) para.32.

(104) *ibid.*

(105) *ibid.* para.33.

(106) Motoji Kobayashi (President of Japan Federation of Bar Associations), "Statement Concerning the Enactment of the Amended Immigration Control and Refugee Recognition Act" (<https://www.nichibenren.or.jp/en/document/statements/230706.html>) accessed 23 September, 2023.

## 6. Conclusion

Human rights treaties delineate domestic matters for each state party, and implementation by one state party does not affect that of another. Specifically, human rights treaties are characterised by their non-reciprocal nature. Additionally, the implementation of human rights treaties involves the modest method of establishing treaty bodies that regularly hold constructive dialogue with state parties on their performance. Notably, these treaty bodies are involved in the realisation of the substance of the human rights treaties. Both human rights protection and immigration control cannot remain as mere stipulations in a human rights treaty—they are only realised once they are stipulated in each state party's domestic laws that are then implemented.

To draft a new treaty, each state must agree on the substance of the norms therein. Concerning immigration control, international society has succeeded in expanding the scope through regional refugee treaties. However, international society has not managed to codify a universal refugee treaty since the adoption of the Protocol Relating to the Status of Refugees. International society is not homogeneous to the extent that it can agree to a new treaty on immigration control. Moreover, circumstances differ between countries and even within regions. This difference is apparent in the opposing viewpoints among countries, even within the EU.

Opinions on state reports adopted by the treaty body of a universal human rights treaty are limited to the human rights covered by that treaty and are not legally binding *per se*. This is a significant difference from judgments rendered by the international human rights courts established in regional human rights treaties. The applications of a treaties by the domestic courts of a state party become the treaty interpretation in that country and make up the state's practices. However, the general opinions and concluding observations issued by human rights treaty bodies neither form new treaty provisions nor bind the state parties—failure to comply

with them does not necessarily constitute a breach of the treaty.

In 2023, Japan amended the Immigration Control Act, introducing a complementary protection system and measures to prevent long-term detention, among other changes. No report has explicitly attributed these amendments to the adoption of the Human Rights Committee's opinion or other recommendations from international human rights treaty bodies. Naturally, the existence of individuals crossing borders owing to the war in Ukraine and the *coups d'état* in Myanmar and Afghanistan may have had a direct effect and have been considered in creating these institutions. Given the process of submitting documents to the treaty body until the consideration of reports under the ICCPR and the fact that the individuals who have made up previous government symposia have referred to these treaty body reports, it is unlikely that international society did not influence them at all. The report review system in human rights treaty bodies may have had at least a ripple effect on immigration control in Japan.

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