**Date: March 31, 2019**

**Organization Information**

**Name of Organization Completing Form:**

**NGO “Ushiku shuyojo mondaiwo kangaeru kai” or “Ushiku no kai”**

**Website:** <http://www011.upp.so-net.ne.jp/ushikunokai/>

**Country: Japan**

**\*Brief Information about Ushikuno kai**

*Ushiku no kai* (or Ushiku shuyojo mondaiwo kangaeru kai) visits the East Japan (Higashi Nihon) Immigration Center – one of the two major long-term immigration detention facilities in Japan – every Wednesday. “Ushiku shuyojo mondaiwo kangaroo kai” literally means the group that aims to rethink immigration detention issues at Ushiku Immigration (East Japan Immigration Center).”

*Ushiku no kai* has been conducting weekly detention visits since early 1990s when Tanaka who is the founder of the organization first learned about the existence of the detention facility as well as the plight of foreign detainees. *Ushiku no kai* has more than 80 members consist of both Japanese and foreigners. Ushiku no kai received the 25th Human Rights Award from the Tokyo Bar Association in 2011. This report is based on (1) our weekly interviews with detainees at the East Japan Immigration Center, (2) our survey conducted with 265 detainees in 2018, (3) Immigration Control and Refugee Recognition Act (ICRRA), (4) Websites of the Ministry of Justice and the Immigration Bureau, and (5) “Japan Immigration Detention Profile” provided by the Global Detention Project. <https://www.globaldetentionproject.org/countries/asia-pacific/japan>

**Part A: General Information**

1. **Please describe the process by which migrants are detained in your country. Which authorities are tasked with this responsibility? Who or what body oversees these authorities?**

Detention Process:

Detention is adjudicated by the Immigration Bureau that is administrated under the Ministry of Justice. The detention process is governed based on the Immigration Control and Refugee Recognition Act (ICRRA). The Immigration Bureau can detain a foreign individual when there is “reasonable grounds to believe that a suspect falls under any of the items of Article 24 of ICRRA.” Detainment of an individual would be proceeded based on a detention order (*shuyo reisho*) or a deportation order (*taikyo kyosei reisho*) issued by the Immigration Bureau. However, Article 43 of ICRRA also stipulates that an immigration control officer can detain a person without a written detention order.

The legality of detention decisions will be adjudicated based on the following three steps: (1) An immigration inspector will examine the specific violation addressed in a detention order (Article 44 & 45 of ICRRA), (2) a hearing by a special inquiry officer (Article 48 of ICRRA), and (3) a final decision by the Ministry of Justice (Article 49 of ICRRA)

First step: The legality of a detention decision must be examined by an immigration inspector within 48 hours from the arrest. The immigration inspector will examine the evidence on which the detention order is based (ICRRA Article 44, 45). The burden of proof is on the detained individual (ICRRA Article 46, Detention Project p.8).

If the legality of the detainment (specific violation of ICRRA) is justified and the detainee has no objection to the findings, the immigration inspector may issue (1) a deportation order or (2) a departure order – voluntary departure without detention (ICRRA Article 47). If the legality of the detainment is not established, the person shall immediately be released.

Second step: If the detainee has an objection to the findings (legality of detention), the person can orally request a special inquiry officer for a hearing within 3 days from the date of notice (ICRRA Article 48). If the detainee has no objection to the findings provided by the special inquiry officer, the immigration inspector will issue a deportation order or a departure order (ICRRA Article 47, 52. Regarding a departure order, please see in Part D: Alternatives to detention in this document).

Third step: If the detainee disagrees with the findings provided by the special inquiry office, the person can file an objection with the Minister of Justice by submitting a written statement containing the grounds for his/her complaint (ICRRA Article 49). If the Ministry of Justice issues a notice of the determination that the objection is without reason, the detainee will be notified with the issuance of a written deportation order.

After the rejection by the Ministry of Justice, the only way to challenge the legality of the deportation order is to bring the case to the court. However, actual actions for such legal proceedings are significantly constrained due to the detainee’s financial capacity to hire legal counsel (limited availability of pro bono lawyers), the detainee’s limited access to legal information (and language barriers), and extremely limited chances of winning such cases at the court.

Detention period (under a detention order or a deportation order): Detention of an individual is legalized based on an issuance of a detention order or a deportation order.

Article 41 of ICRRA stipulates that under a detention order, the period of detention shall be within 30 days. This can be extended for an additional 30 days. Once a deportation order is issued, there is no maximum detention time that is set by ICRRA. Article 52-5 contains that if the detainee cannot be deported immediately, the immigration control officer may detain the person in an immigration facility until such time as deportation becomes possible. Such legal arrangement (without setting an maximum time of detention under a deportation order) is the main root cause of protracted detention overwhelmingly experienced by the current detainees in the East Japan Immigration Facility.

1. **Where do arrests and detentions take place? Is force typically used during arrest or detention? Are there standards for treatment of migrants during an arrest? To what extent are migrants informed of what is going on during an arrest (why they are being detained, possible charges against them, etc.)?**

Detention facilities:

Article 41of ICRRA contains that the places of detention include immigration detention centers, detention houses, or any other proper place “designated by the Minister of Justice or by a supervising immigration inspector commissioned by the Minister of Justice.”

As of March 30, 2019, there are a total of fifteen (15) regional and short-term immigration detention facilities (both regional and district immigration bureaus) as well as two (2) long-term immigration detention facilities in Japan (The Immigration Bureau <http://www.immi-moj.go.jp/english/soshiki/index.html>). The East Japan Immigration Center, or locally known as “Ushiku detention center” is one of the two long-term detention facilities with a capacity of 700 detainees in Japan.

Standards of treatment (in detention facilities)

Article 61-7 of ICRRA provides that “a person detained in an immigration detention center or detention house shall be given maximum liberty consistent with the security requirements of the immigration detention center or the detention house.” However, the actual provision of “maximum liberty” is not materialized due to the criminalization of detainees.

Arrests

Arrests of foreigners (who are considered as “suspects” under ICRRA Article 24) may take place various locations including: (1) airport upon one’s entry; (2) personal residence and work place; (3) an immigration bureau office upon one’s application to renewal of “provisional release” or other residence permit; and (4) other various public spaces such as a train station.

Individuals who are considered as “suspects” under ICRRA are sent to immigration facilities governed by the Immigration Bureau. For some cases, temporary cells in local police stations are also used to hold an individual before sending the person to detention facilities (Article 41 of ICRRA, “a police official may, upon the request of a supervising immigration inspector who finds it necessary, place a suspect under custody in a detention facility.”)

The intensification of surveillance against migrants is rooted in the Japan’s introduction of the centralized foreign residence management system (Zairyu card system) in 2012 that further tightens the control of migrants without valid legal status and limits their ability to receive social services (The Detention Project, page 6).

Physical aggressions

Majority of the detainees complained about the traumatic experience due to the excessive physical and verbal aggressions employed by immigration officers. Given the overwhelming complaints by detainees regardingimmigration officers’ aggressive and violent manners, it is hard to recognize any moral standards for the treatment of migrants during an arrest, detention, and deportation. Any individual who resists detention would be subject to violent aggression by immigration officers

The media has also reported a series of physical aggressions against migrants during detention as well as deportation. For example, Asahi Shimbum (national news paper) reported the case of physical aggressions against a male Kurdish asylum-seeker (from Turkey) by 8 immigration officers in the Osaka immigration center in May 2018. The asylum-seeker broken his right arm due to the aggression (The Asahi Shimbun, May 29, 2018).

<https://www.asahi.com/articles/ASL5Y3W73L5YPTIL00P.html>

Another example was a Ghanaian deportee, Abubakar Awudu Suraji, died after being restrained when he was put on a flight to Cairo at Narita Airport in March 2010 ( The Japan Times, November 11, 2016).

<https://www.japantimes.co.jp/news/2016/11/11/national/crime-legal/no-redress-deportation-death-ghanaian-man-narita-airport-supreme-court/#.XJeEjURKjeQ>)

Provision of information upon arrest (legality of the detainment)

Article 42 of ICRRA provides that “an immigration control officer shall, when he/she detains a suspect pursuant to a written detention order, show the detention order to the suspect.” Thus, it is clear that, in theory, all persons in immigration detention proceedings will have the right to access adequate information especially the legality of their detainment (reasons for the detention) as well as of the deportation order.

Detention orders: Article 40 of ICRRA further provides that a written detention order shall contain the name, place of residence, nationality, a summary of suspected offense, place of detention, valid period and date of issuance of the order, and other matters provided for in a Ministry of Justice ordinance.

Deportation orders: Article 51 of ICRRA provides that a written deportation order shall contain the full name, age, nationality of the subject to deportation, reason for the deportation, destination, date of issuance of the deportation order, and other matters provided for in a Ministry of Justice ordinance.

In practice, it is very questionable that immigration officers always respect the principle for providing adequate information regarding the legality of detainment. Majority of the detainees whom we have met in the East Japan Immigration Center complained that they were not informed regarding the reasons for the detainment upon arrest. For example, a Kurd asylum-seeker demanded proper information regarding his detainment. However, the immigration bureau provided a detention order with most of the information erased in black ink (based on Tanaka’s interview in the East Japan Immigration Center).

1. **Who are the personnel that staff facilities that hold people in detention (corrections officers, law enforcement, social workers, etc.)? What are the professional qualifications of staff at these detention facilities? Who oversees staff at detention facilities?**

The main personnel in the East Japan Immigration Center are: (1) immigration guards who regulate and control detainee’s everyday lives in the facility; (2) immigration front-line officers who register visitors (family members, lawyers, and advocacy groups) and receive (and examine) gifts for detainees at the reception, (3) medical professionals (an in-house doctor) during daytime (9-5pm) between Monday and Friday, (4) immigration officers who handle broader bureaucratic tasks pertaining to the management of the immigration detention facility, and (5) a psychiatrist who visits the detention facility only once or twice per month.

1. **Who owns the facilities used to house migrants who are detained? Who operates the facilities used to house detained migrants? Are facilities that house detained migrants public or private?**

The Ministry of Justice owns and operates immigration detention facilities in Japan. Detention facilities are public (Article 41 of ICRRA).

1. **Does your country monitor detention facilities? Who monitors detention facilities? What are the standards that detention facilities must adhere to?**

Yes, Japan established an official detention monitory body called Immigration Detention Facilities Visiting Committee (Nyukokusha shuyojo tou shisatsu iinkai) in July 2010. <http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri02_00026.html>

The monitory body is divided into two sub-groups between the East Japan Committee and the West Japan Committee. Each group comprised of a total of 10 individuals including law professionals (2), academics (2), health professionals (2), intergovernmental organizations and civil society (2), and local community members (2). These members are appointed by the Ministry of Justice (Article 61-7-3 ICRRA). For example, between April 2016 and March 2017, the East Japan Committee made a total of 9 visits to detention facilities in East Japan. The committee conducted a total of 81 interviews with detainees. The committee proposed a total of 27 suggestions based on the visitations.

However, the independence, the capacity, and the neutrality of these committees are questionable. The main concerns could be summarized in the following four points. 1) the committee members are appointed by the Ministry of Justice that governs immigration, (2) the committee’s inspections are arranged and facilitated by the Immigration Bureau thus these official inspections largely lack the capacity to investigate the details of human rights violations, (3) there are limited financial resources to reinforce the capacity of the monitoring committees, and (4) the constrained capacity of the monitoring committees in terms of addressing the depth of human rights violations.

This is particularly evident in the annual reports produced by the two committees. The committee reports discuss issues that are not related to specific human rights violations. The reports primarily discuss specific daily services including additional daily commodities, food concerns (the availability of halal meals), room facilities (for example, the lack of windows, plants, calendar), shower rooms (lack of privacy), and clinic facilities. Although some recommendations are related to well-being of detainees, these reports do not engage with more significant human rights violations including the overwhelming presence of long-term detainees, health damage pertaining the long-term detainees, medical neglect (some would potentially lead to serious and fatal outcomes), and other forms of medical violations (overdose of painkiller). <http://www.moj.go.jp/content/001229852.pdf>

1. **During detention, do detainees have access to communication with their families, legal counsel, and their own consular authorities? Are detainees provided with information on the process they are going through?**

The Treatment of Detainee Regulation (hishuyosha shogu kisoku) stipulates the details of rules (control and management of detainees) as well as the services and equipment that are provided in detention facilities. Article 33 of the regulation contains that the detainee is allowed to see (1) one’s own consular authority, (2) a lawyer, and (3) other visitors who are not subject to any potential security and sanitation concerns. The visitor must provide the name, the relationship with the detainee, and the reason for the visitation.

[http://elaws.e-gov.go.jp/search/elawsSearch/elaws\_search/lsg0500/detail?lawId=356M 50000010059#28](http://elaws.e-gov.go.jp/search/elawsSearch/elaws_search/lsg0500/detail?lawId=356M%2050000010059#28)

Thus, in theory, the detainee has the right to communicate with the outside world and receive visits by their family members, friends, lawyers, consular, or civil society supporters in detention facilities. For example, he East Japan Immigration Center has 5 visitation rooms and a family room (upon request).

However, visitors experience the inflexibility regarding the visitation hours and rules, but also the highly restrictive administrative arrangements. These include: (1) each visit is limited to 30 minutes (including family members); (2) visitation hours only on weekdays between 9am and 5pm (except 12:00-13:00); (3) if a visitor does not know the new room number (or the new building block) of the detainee, even providing the correct information (the full name and the nationality of the detainee), the visitor is not allowed to see the detainee. The geographical isolation of the East Japan Immigration Center (very limited available public transportation) further constrains visitors’ capacity to visit detainees (especially family members).

Detainees are allowed to use public telephones that are installed in detention facilities to communicate with their families and lawyers. However, the main problems are that (1) the cost of communication is burdened by the detainee, (2) the restricted time of telecommunication (not necessarily convenient for family members, lawyers, or supporters) and (3) the absence of other forms of communication including internet or cellphone.

Deprived access to information: In general, detainees experience the deprived access to proper legal information including (1) the legality of the detainment, (2) available legal proceedings to contest the detention, (3) available legal proceedings to contest the rejection of their “provisional release” request, (4) the duration of the detention especially for a long-term detainee, (5) the basic rights of the detainee in the detection facility (including the access to food, health, and proper shelter) and (6) the right to communicate with one’s family members, lawyers, and migrant advocacy groups. The access to information is oftentimes impeded by the limited translation services within the detention facility. Non-Japanese speakers especially non-English speakers are affected by the access to information.

1. **Are the particular needs of women and other groups of people met? Is consideration given to the status of asylum seekers, victims of torture and trafficking, and other migrants who are particularly vulnerable?**

The Treatment of Detainee Regulation nor ICRRA does not suggest any particular consideration applied to vulnerable groups especially pregnant women, asylum-seekers, victims of torture and trafficking, and sexual minorities. For example, Article 50 stipulates that the Minister of Justice may grant special permission to stay to victims of human trafficking. However, since Article 24 criminalizes prostitution, victims of human trafficking often subject to detention and deportation.

1. **Does the detention process look any different if minors are involved?**

Japan’s detention facilities no longer detain minors (See Part C, 3&4 on this document).

**Part B: Legal Treatment**

1. **What is the legal basis for detaining migrants in your country? What purpose does detention of irregular migrants serve? How has this purpose been articulated through legislation and through the judicial system and public policies? Please identify any relevant cases in your country’s court system.**

The Immigration Bureau can detain a foreign individual when there is “reasonable grounds to believe that a suspect falls under any of the items of Article 24 of ICRRA.” Detainment of an individual would be proceeded based on a written detention order (shuyo reisho) issued by the Immigration Bureau. However, Article 43 of ICRRA also stipulates that an immigration control officer can detain a person without a written detention order if an immigration control officer finds reasonable grounds to believe that a person has violated one of the items of Article 24 of ICRRA.

1. **Is immigration governed by criminal law or administrative law?**

Japan’s immigration is governed by administrative law, namely the Immigration Control and Refugee Recognition Act (ICRRA)

1. **Does the immigration detention proceed ex officio or there is an individualized analysis of its pertinence and proportionality?**

Detention is adjudicated by the single government authority, the Immigration Bureau (under the Ministry of Justice). Thus, there is no independent authority that judges its pertinence and proportionality of the detention in Japan (unlike Canada for example has the separate government authority Immigration Refugee Board that adjudicates the legality of detention).

A detainee is held custody based on a “detention order (shuyo reisho)” or a “deportation order (taikyokyosei reisho)”.

Furthermore, as Japanese human rights lawyers argue, the Ministry of Justice applies a mandatory detention policy (shuyo zenchi shugi) to any foreign individual who is considered as a “suspect” of violating the immigration law (Takahashi and Kodama 2009, Migration Policy Review, Vol. 1). Thus, those who claim asylum upon one’s entry of Japan will be also subject to detention because these individuals are immediately considered as “suspects” regardless of the evidence of refugeeness.

1. **Does legislation establish a maximum amount of time for immigration detention? What is the maximum amount of time that someone can be detained? Are there any exceptions or extensions allowed by law?**

Article 41 of ICRRA stipulates that under a detention order, the period of detention shall be within 30 days. This can be extended for an additional 30 days. Once a deportation order is issued, there is no maximum detention time that is set by ICRRA. This legal arrangement is the very root cause of protracted detention overwhelmingly experienced by the current detainees in the East Japan Immigration Center.

1. **Does legislation provide any mechanism to challenge the legality of the detention?**

On theory, the legality of the detention could be challenged based on a legal provision guaranteed by the Ministry of Justice.

According to ICRRA, the legality of detention decisions would be adjudicated based on the following three steps: (1) An immigration inspector will examine the specific violation discussed in the detention order (Article 44 & 45 of ICRRA), (2) a hearing by a special inquiry officer (Article 45 of ICRRA) regarding the legality of the deportation order, and (3) a decision of the Ministry of Justice.”

(The Immigration Bureau 2017 <http://www.moj.go.jp/content/001241954.pdf>).

However, in practice, detainees are not informed that they have the right to challenge the legality of their detention. Even those who contest the legality, in most cases, detainees experience the denial of their right of habeas corpus. There are very few court cases that actually recognized the right of habeas corpus for immigration detainees in the past.

1. **Is there any national legislation that guarantees legal representation or interpreters in immigration proceedings? Is there a guarantee of access to free legal representation?**

Yes, legal representation and interpreters are guaranteed in immigration proceedings. However, the costs of legal counsel are covered by detainees. The access to a pro bono lawyer is extremely limited. Furthermore, due to the limited availability of bilingual lawyers in law firms, detainees face language barriers to access to legal services.

1. **Is there any legislation that establishes the right to consular assistance for migrants? Is this right guaranteed in practice?**

Article 33 of the Treatment of Detainee Regulation (hishuyosha shogu kisoku) contains that the detainee is allowed to see (1) one’s own consular authority, (2) a lawyer, and (3) other visitors who are not subject to any potential security and sanitation concerns. The visitor must provide the name, the relationship with the detainee, and the reason for the visitation.

For example, the Philippine Embassy in Tokyo offers consular assistance to Filipino detainees. However, in many cases, migrants receive very limited support from the own consular authority due to the actual judicial capacity of the Embassy as well as the criminalization of detainees.

1. **Does your country recognize the due process rights of non-citizens to the extent that it recognizes the due process rights of citizens? If not, what are the differences?**

In theory, Japan’s Constitution establishes the equal due process rights of non-citizens vis-à-vis citizens. However, in practice, as human rights lawyers argue, Japan’s immigration law (ICRRA) and the Immigration Bureau significantly constrain detainees’ ability to claim their equal human rights. Unfortunately, Japan’s legal system prioritizes ICRRA over the Constitution in terms of the treatment of non-citizens.

1. **Is information available to detainees regarding the processes of requesting asylum or applying for refugee status?**

In theory, yes, as the Immigration Bureau is required to provide information to detainees regarding the processes of their refugee applications. However, in practice, detainees have limited access to information without legal counsel or civil society actors.

1. **What do proceedings that determine migration status look like? Who is the decision-maker or decision-makers? What are the qualifications of the decision-makers? Are they appointed or elected?**

In a big picture, the Ministry of Justice controls all the processes pertaining to protection, detainment, and removal. These processes include: (1) facilitation of detention and deportation, (2) examination of the legality of detention decisions, and (3) determination of refugee status, provisional release, or special permission to stay. Regarding the details of the legal proceedings, please refer to Part A (1) on this answer sheet.

1. **Is there a duty to ensure that decisions are duly motivated by legal reasoning? How is that ensured in practice?**

Please refer to the Part A -1 on this answer sheet.

1. **How much time elapses after arrest before a determination of migration status is made? How long does the initial determination of status process take?**

It depends on each case. A determination of migration status may take further longer if the detainee disagrees with the detention or the deportation order.

ICRRA stipulates that within 48 hours from the arrest, an immigration inspector examine the evidence of a violation addressed in the detention order (Article 44 of ICRRA). After the immigration inspector confirms the legality of the detention, if the detainee disagrees with the decision, the person should orally request a special inquiry officer for a hearing within 3 days from the date of notice (Article 48 of ICRRA).

1. **If families are involved, are their cases determined separately or together? Is consideration given to the special circumstances of children?**

If families are involved, their cases are likely determined together. For some cases, “Special Permission to Stay” may be granted to a family with school-age children who are grown up in Japan.

1. **What are the consequences of a finding of irregular migration? Is an individual who is found to have entered the country in an irregular manner returned to detention or moved to a different facility? Are the conditions different for individuals found to be irregular migrants? Are irregular migrants eligible to be released on bond/bail until a final determination has been made?**

Japan applies very restrictive measures against irregular migration. For example, Article 70 of ICRRA provides the details of penal provisions against those who entered the country without obtaining permission for landing from an immigration inspector as well as those who have stayed beyond the period of residence permission. The penal provisions include imprisonment for the maximum 3 years or a fine not exceeding 3 million yen.

1. **Is there a right to appeal of finding of irregular migration status? What does the appeal of a finding of irregular migration status look like? How much time elapses from a judgment of irregular migration status to an appeal? What due process guarantees are given during the appeal process of a finding of irregular migration status? Does the appeal process have suspensive effect regarding deportations?**

**Part C: Impact on Detainees**

1. **Please describe the impact that detention has on detainees’ physical and mental health.**

The impact of detention on detainee’s physical and mental health is particularly clear. Based on Ushiku-no-kai’s regular visits to the East Japan Immigration Center as well as our regular communication with detainees’ family members, detention has proved the high prevalence of harmful health impacts on detainees’ physical and mental well-being. We would like to highlight the distinct forms of health injustices that are perpetuated in the immigration detention facilities in Japan.

Linkage between protracted (long-term) detention and health deterioration: Majority of detainees (in the East Japan Immigration Center) complains multiple health damages that are greatly exacerbated in the detention facility. In particular, those who are detained for more than 6 months are susceptible to both mental and physical health problems. The main illnesses include high blood pressure, heart disease, and organ failures. The high prevalence of these illnesses among detainees speaks of harmful effects of long-term detention.

Institutional medical neglect by the Immigration Bureau: Detainees experience multiple forms of medical neglect committed by immigration detention officers. The practice of medical neglect is rooted in the institutional discrimination against detainees.

For example, there was a recent outcry by migrant supporters when the Tokyo Regional Immigration Bureau denied a Kurdish detainee’s right to seek medical examination on March 12, 2019. The Kurdish detainee complained about severe pain to his wife by telephone. His family member called an ambulance to the Tokyo Immigration Bureau. However, the ambulance retuned without taking the Kurdish detainee. The Kurdish detainee is an asylum-seeker and he has been detained since January 2018 (protracted detention) (The Japan Times March 26, 2019 “Did Tokyo Immigration Officials Allow Proper Treatment for Ailing Kurdish Detainee?”).

1. **Please describe the varying impacts on particularly vulnerable groups, including racial and ethnic minorities. What systems or practices are in place to prevent discrimination in both proceedings and detention?**

One could argue that immigration detention is the discrimination on the basis of nationality (especially against low-income countries). Some detainees have complained about negative cultural stereotypes toward certain groups.

Statistically speaking, detainee population primarily consists of asylum-seekers, visa-overstayers, former foreign trainees, foreign spouses (who are separated), and Nikkei Latinos (Brazil and Peru). This composition explains that the presence of undocumented individuals, or “aliens without a status of residence”, is inherently rooted in the confluence of the restrictive immigration policies and the strong demand for cheap and disposable foreign workers in Japan’s labor markets (for example, abusive treatment of foreign trainees)

1. **Please describe the way in which detention of migrants in your country particularly affects children who are detained. How does the detention affect education? Are educational resources available in the facilities in which they are held? Please describe any of these programs.**

According to the Global Detention Project, in 2002, 318 children were detained in Japan’s immigration detention facilities. However, the number of child detentions has significantly dropped in the past 2 decades. In the East Japan immigration Center, there was no child held in the facility.

While Japan currently does not detain children, migrant children are highly affected by family separation due to the detention of family members (their fathers and mothers). Especially if both parents are detained, the child is taken by a child welfare facility. However, for some cases, the Tokyo Immigration Bureau allows small children to be detained alongside their mothers in the same room.

1. **Is consideration given to keeping families together?**

The current system significantly lacks the concerns for families with small children. Detention facilities provide very minimal consideration for family members’ visitation. For example, the East Japan Immigration Center has a family visitation room without a partition. However, a detainee is only allowed to touch children and not allowed to touch one’s spouse (based on Ushiku-no-kai’s interviews with detainees).

1. **Are children typically kept in detention? How long?**

N/A

1. **How does the detention of migrants in your country particularly affect women? Are health resources for women made available to women in detention? How can women in detention access health resources? Are resources available for pregnant women in detention? How are pregnant women accommodated with respect to the conditions of detention?**

Pregnant women face extreme difficulties in detention facilities. In general, there is no particular accommodation for a pregnant detainee. Since detention facilities prioritize control and removal of individuals, pregnant detainees have no access to reproductive health care services, food and nutrition, and sanitation products.

**Part D: Alternatives to Detention**

1. **What alternatives to detention exist in your country? Please describe these alternatives to detention and how they are generally perceived and implemented in your country.**

Based on the immigration law (ICRRA), there exist three forms of alternatives to detention. These include: (1) provisional release (*karihomen* Article 54 of ICRRA), (2) permission for provisional stay (*karitaizai,* Article 61-2-4 of ICRRA), and (3) a departure order without detention (*shukkoku meireisho* Article 24-3, 47, 55-2, 55-3 of ICRRA).

1. Provisional release (*karihomen*): According to Article 54 of ICRRA, “the director of the immigration detention center or a supervising immigration inspector may accord provisional release to the alien detained pursuant to a written detention order or deportation order upon the application.” The grounds to approve a provisional release request include “such matters as circumstances, evidence produced in support of the application, character and the assets of the alien.” In order to be released from detention, the detainee has to pay a deposit “not exceeding 3 million yen” as well as to provide a “letter of guarantee submitted by a person” other than the detainee.

Provisional release is considered as an immediate solution to detention – deprivation of freedom and liberty. However, we would like to highlight the following macro and micro issues pertaining the system of provisional release in Japan.

* The limited approvals of provisional release (See the next section Part D-2)
* Significant burdens and constraints experienced by detainees: In order to obtain provisional release, the applicant should be able to provide deposit (the current average is JPY 100,000-200,000). This financial cost serves as a huge burden on the detainee. Furthermore, the detainee would experience difficulties in terms of finding a guarantor who would be responsible during the time of provisional release. Needless to say, an asylum-seeker who is detained at the airport would unlikely know a person who would be a guarantor.
* Continued surveillance and intensified precarity even after release: According to Article 54 of ICRRA, an individual under provisional release must comply for the conditions including restrictions (a) on the place of residence, (b) area of movement (the person must report to the Immigration Bureau if he/she wants to travel beyond the prefecture that the person is registered), (c) the obligation of appearing at a summons (the person must renew one’s provisional release at an immigration office every one or two months). Furthermore, upon receiving provisional release, the detainee must agree that the person does not obtain employment during the release. This issue of employment is not included in ICRRA but documented in a provisional release approval document that the detainee must sign.
* Repeated detention: Because of the restrictive control and rules imposed on individuals under provisional release, these individuals constantly face fear of re-detention if they violate one of the rules (residence, mobility, and employment). Many detainees in the East Japan Immigration Center experience repeated detentions due to the restrictive surveillance by the Immigration Bureau and local police forces. Furthermore, some individuals are subject to re-detention due to minor traffic violations.
* (2) Permission for provisional stay (*karitaizai*) : According to Article 61-2-4 of ICRRA, permission for provisional stay will be issued when “an alien without a status of residence” has been “granted permission for provisional landing”. Permission for provisional stay will impose certain restrictions on an individual without a status of residence (undocumented individual). These restrictions are placed on the place of residence, area of movement, activities, the obligation of appearing at a summons.
* In general, while fathers are subject to detention, children and mothers are not detained and granted “permission for provisional stay” (especially for asylum-seekers, Article 61-2-4 of ICRRA).

(3) Departure order (without detention) : According to Article 24-3 of ICRRA, a departure order will be issued to an individual who “voluntarily appeared at an immigration office with the intension of departing from Japan promptly.” Furthermore, an individual with a departure order will not be subject to detention. The departure order system has much less punitive impacts on individuals compared to a “deportation order”. While an individual under a deportation order will be barred from entering Japan for next 10 years, an individual under a departure order will be barred from entering Japan only for a year from the departure.

According to the Deportation Project, the departure order system is established in order to facilitate simple procedures without proceeding detention. The system aims to encourage undocumented migrants to appear at the regional immigration bureaus voluntary and to depart from Japan promptly and efficiently. The system is enforced since December 2004 (Deportation Project p3). However, the idea of “departure” is questionable in practice, if threats or manipulation are used by immigration officers without considering risks of return especially *non-refoulement* principle. Furthermore, there are cases of departure orders for undocumented individuals who are married to Japanese spouses (based on Takamura’s interviews with returned migrants in the Philippines, July 2018).

1. **Have all detainees access to alternatives to detention? How many persons get an alternative to detention in comparison with the number of detainees?**

In theory, all detainees are eligible to apply for provisional release (Article 54 of ICRRA). However, in practice, the Immigration Bureau has significantly lowered the total number of provisional release approvals. For example, based on our survey conducted with 265 detainees in 2018 in the East Japan Immigration Center, 80 % of the detainees (211 out of 265) were rejected their PR applications for 3 times or more. 31% of the detainees were rejected their PR applications for more than 7 times.

1. **Have there been any policies proposed in your country that could achieve the same objectives as detention? How have these proposals for alternatives to detention been received in your country? Are proposals for alternatives to detention generally met with favor or have they been rejected? Please describe the criticisms of the policies for alternatives to detention by the general public. If these proposals have been rejected, what was the rationale for rejecting them?**

Civil society actors and human rights lawyers (especially Tokyo Bar Association) have strongly proposed the humane treatment of detainees individuals with ensuring proportionality and fairness. For example, *Ushiku-no-kai* demands: (1) to limit the period of detention to less than 6 months; (2) to ensure speedy, transparent, and fair adjudication of provisional release approvals; and (3) to end detain asylum-seekers.

**Part E. Additional information**

**Please add any other information that you consider to be relevant for the CMW to take into account in the elaboration of this general comments.**

We would like to highlight the following five broader problems pertaining to Japan’s detention proceedings.

1. There is no independent authority that evaluates and oversees its pertinence and proportionality of the detention in Japan. The Ministry of Japan is the single authority that is responsible for the facilitation of detention, deportation, the adjudication of detention and deportation, and the evaluation of refugee applications. As a consequence, Japan’s detention and deportation practices significantly lacks transparency and accountability.
2. The Immigration Bureau (under the Ministry of Justice) applies the principle of mandatory detention (zenken shuyoshugi). Thus, highly precarious asylum-seekers as well as other migrant members who have legitimate reasons for not be detained are also subject to detention and categorized as “deportable foreigners”.
3. The Immigration Bureau does not provide valid and adequate legal information concerning (a) the grounds of detention, (b) fair judicial proceedings that allow detainees to contest detention – or the right of habeas corpus, and (c) other fundamental human rights of the detainee that are guaranteed under ICRRA (immigration law) as well as under Japan’s Constitution.
4. The Immigration Bureau increasingly normalizes the practice of long-term and repeated detention. For example, based on the recent survey conducted with 265 detainees by Ushiku-no-kai at the East Japan Immigration Center in 2018, 77% of the respondents (205 out of 265) claimed that they were detained for more than 12 months (including initial detainments in another detention facilities. Majority of the detainees was held in provincial/regional/airport detention facilities before being transferred to the East Japan Immigration Center). Furthermore, those who were detained for more than 25 months consist 36% of the total respondents (97 out of 265). These detainees are not just detained for longer times, but also these individuals (especially asylum-seekers) experience repeated forms of detention. For example, 99 respondents (37%) claimed that they were detained for two times. 12 respondents claimed for three times.
5. The negative impacts of both protracted and repeated detentions are particularly evident in the East Japan Immigration Center. The negative impacts on detained individuals include: the prevalence of unexplained deaths, suicides, and serious health damages including long-term mental and physical damages in Japan’s detention facilities. Furthermore, despite of these negative health and life-threatening implications, immigration detention facilities do not provide adequate health services and potential measurements to release individuals from detention.