

Introduction of Refugee Law Practice and Immigration Detention in Japan

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Speaker's Info

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Today's Content

1. Introduction
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3. Immigration Detention
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1. Introduction

What is your image of Japan?



What is Japanese law?

- Law:

Constitution (1947) and More than 1000 Acts

The Immigration Control and Refugee Recognition Act 1981

- Conventions:

Constitution Art. 98. Sec. 2.

The treaties concluded by Japan and established laws of nations shall be faithfully observed.

Convention Relating to the Status of Refugees, The Protocol Relating to the Status of Refugees: **Ratified in 1981**

The 1954 Convention relating to the Status of Stateless Person, The 1961 Convention on the Reduction of Statelessness: **Not Ratified**

Others: ICCPR(1979), ICECSR(1979), CAT(1999) etc.

2. Refugee Law

(1) Refugee Law and the Procedure of Refugee Recognition Decision

Domestic Law: Who is a “refugee” in Japan?

- The term “refugee” means a refugee who falls under the provisions of Article 1 of the Convention relating to the Status of Refugees (hereinafter referred to as the "Refugee Convention") or the provisions of Article 1 of the Protocol relating to the Status of Refugees.

Art. 2 (iii)-2 of the Immigration Control and Refugee Recognition Act

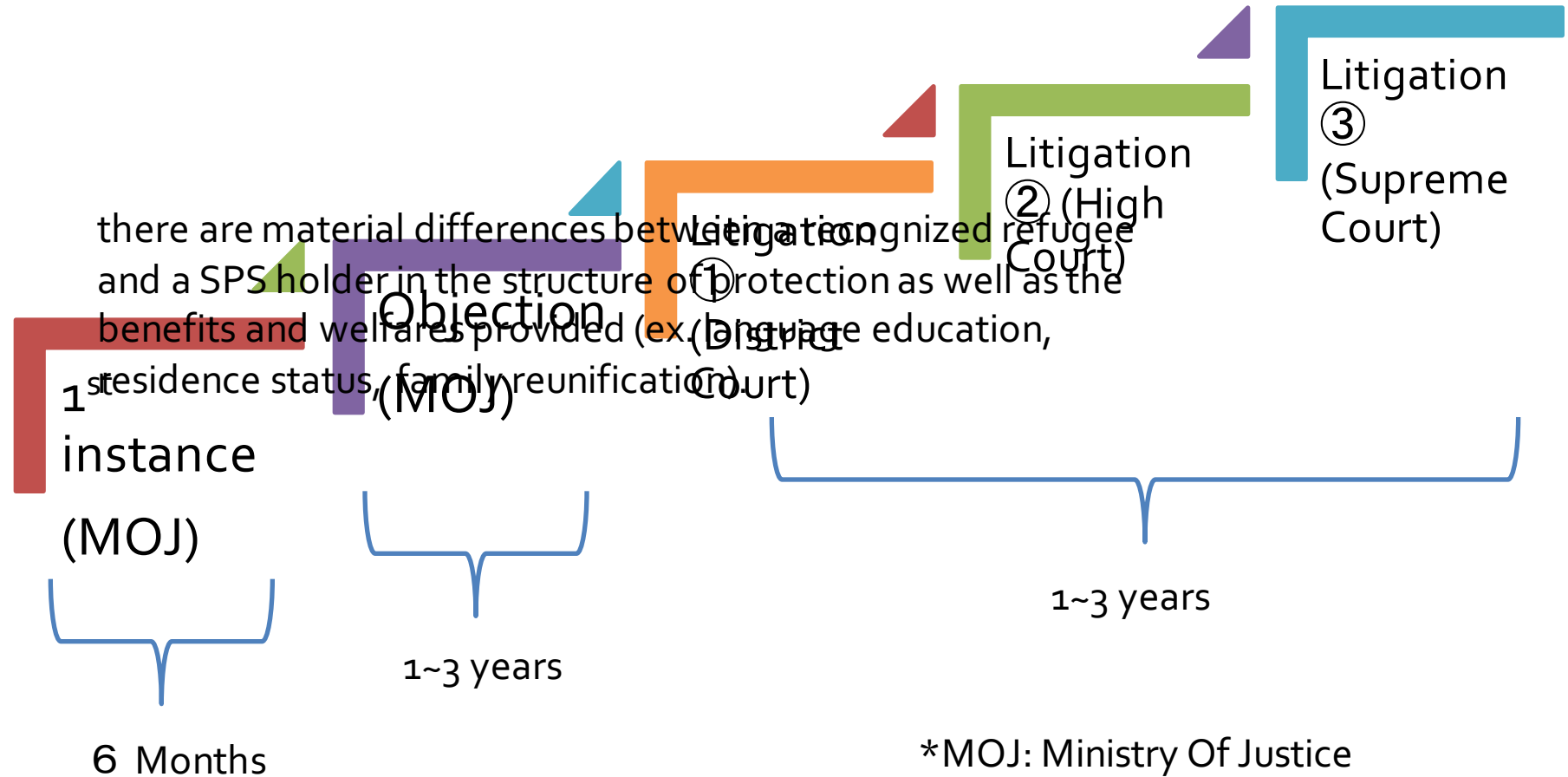
- Asylum seekers who only satisfy Sec 3 b) or Sec 3 c) in Refugees Act 130 of 1998 are not recognized as refugees in Japanese law.

Notable Features of Japanese Law

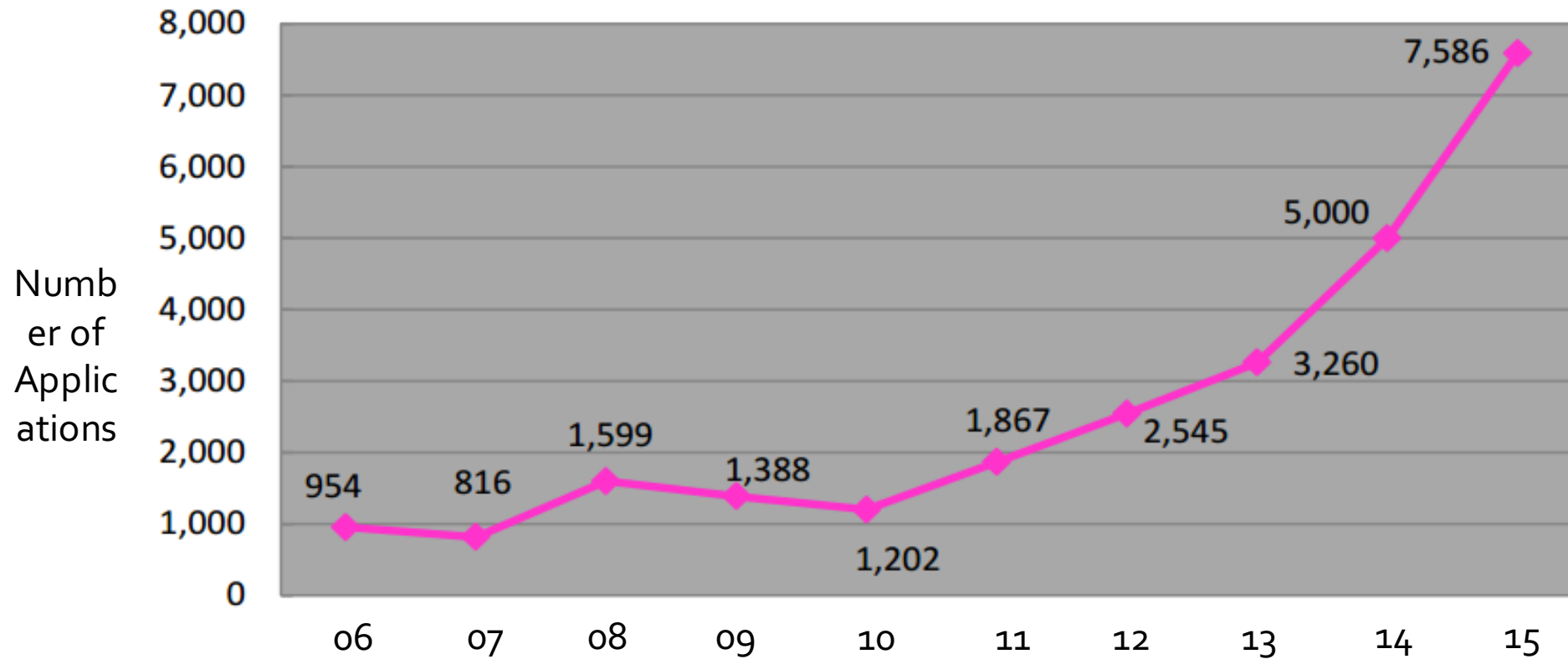
- Immigration Control and Refugee Recognition are regulated together in the same law. No independent 'Refugees Act'.
- Even if you are not recognized as Refugees, you may be granted 'Special Permission to Stay on Humanitarian Grounds (SPS)', which enable you to stay legally in Japan.
- However, there are material differences between a recognized refugee and a SPS holder in the structure of protection as well as the benefits and welfares provided (ex. language education, residence status, family reunification).

Refugee Status Determination(RSD) in Japan

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(2) Statistics



Top 5 countries of origin

Year	1	2	3	4	5
2012	Turkey(423)	Myanmar (Burma) (368)	Nepal(320)	Pakistan(298)	Sri Lanka(255)
2013	Turkey(658)	Nepal(544)	Myanmar (Burma) (380)	Sri Lanka(345)	Pakistan(241)
2014	Nepal(1,293)	Turkey(845)	Sri Lanka(485)	Myanmar (Burma) (434)	Vietnam(294)
2015	Nepal(1,768)	Indonesia (969)	Turkey (926)	Myanmar (Burma) (808)	Vietnam (572)

Statistics of RSD

Year	Number of Disposed Applications	Number of Recognitions	Recognition rate
2012	3194 (2198)	18 (5) *of which 15 were Burmese *SPS=112	0.56%
2013	3777 (2642)	6 (3) SPS=151	0.16%
2014	4689(3169)	11 (6) SPS=110	0.21%
2015	3898 (number of only 1 st instance)	27(19) SPS=79	0.48% (1 st instance recognition rate)

() are figures of the first instances
SPS=number of Special Permission to Stay on Humanitarian Grounds granted

Number of Syrian Refugees

Stats of Syrian refugee applicants:

- In the U.K, 91% were recognized as “refugee” in 2014.
- In Germany, 87% were recognized as “refugee” in 2014 (92% in the first quarter of 2015).
- In Greece, 43% were recognized as “refugee” in 2014 (99% in the first quarter of 2015).
- *In Japan, 3 among 61 applicants were granted refugee status by the end of March 2015. Others were granted SPS permits.*

(3) Suggested cause of low recognition rate

~ Thinking from the case of Rohingya ~

- Too much “abusive claims”?
- Cultural background?
 - ▪ ▪ can be considered as the causes. But not the essentials.
- Too narrow interpretation/high criteria for “Refugee”
- Non-compliance with international standards and norms

① Interpretation of “Persecution”

Collective lawsuit of Rohingya refugees in 2007

- Decision from the Tokyo District Court was handed down on October 29, 2010.
- Of the 20 applicants, 2 were recognized as being a “Refugee” whereas 18 were not. Eventually at the High Court, just one more was recognized.
- Too narrow interpretation of “persecution.”

Who are Rohingya?

- Myanmar government confiscated lands owned by Rohingya.
- A lot of Rohingya are not granted status of Myanmar national.
- Rohingya suffered from forced labors, such as construction of roads, clearing jungles and cultivation of rice fields.
- Hardly any children complete elementary education due to the restriction of education.
- Rohingya cannot take appropriate medical care due to the restriction of health care and movement.

Narrow interpretation of “persecution”

“There are occasions where the forced labor imposed on the Rohingyas can be exempted by paying money. Adding to this, it is recognized that the purpose of the forced labor is not to restrain their freedom of liberty but to conscript labor. Moreover, there are many cases where the nature of the forced labor does not inhere special physical harm. Its frequency and length varies so it cannot be recognized that the frequency is always high or the duration is always long. Therefore, in general, it cannot be said that the forced labor imposed on Rohingyas amounts to “persecution”.”

December 9, 2012, Tokyo High Court Decision

“There is no universally accepted definition of “persecution”, and various attempts to formulate such a definition have met with little success. From Article 33 of the 1951 Convention, it may be inferred that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution. Other serious violations of human rights – for the same reasons – would also constitute persecution.”

(Par.51 of the "HANDBOOK AND GUIDELINES ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS")

② Compliance to international standards

Judgements from courts in Japan

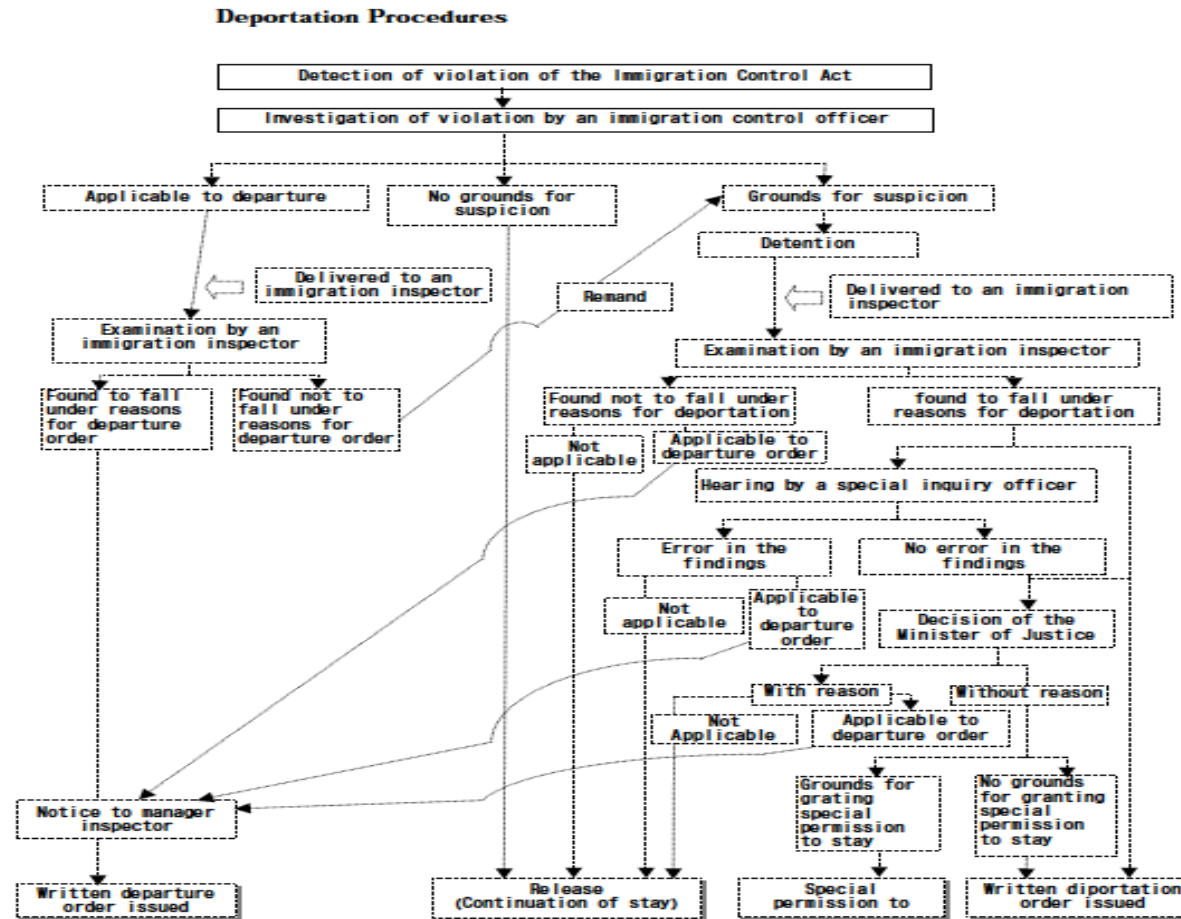
- “The UNHCR Handbook is aimed at providing guidance to the state governments and **it itself is not legally binding.**”
- “Considering that it is not provided in the Refugee Convention that the interpretation of the “refugee” must be align with that of other states or the UNHCR, it shall be comprehend that, in principle, **the power how to interpret the meaning of “Refugee” is vested to the respective state parties.**”

“Although the “HANDBOOK AND GUIDELINES ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS” is published by the UNHCR, it is a practical manual on refugee status determination procedure and, as indicated in the “Forward” part, it is intended to guide government officials. Following the preamble of the Refugee Convention and considering that the UNHCR has the mandate to supervise the application of the provisions of the Convention by its state parties and that the state parties are obliged to cooperate in the exercise of the UNHCR functions (art. 35 (1) of the Refugee Convention), though the Handbook is not legally binding, **it is appropriate to say that the state parties shall respect the Handbook when interpreting and applying the Refugee Convention.**”

Decision by the Seoul Administrative Court

3. Immigration Detention

(1) Procedural of Deportation



Shortening of denial term of landing

Cf. http://www.immi-moj.go.jp/english/tetuduki/taikyo/taikyo_flow.pdf

(2) Problems

- After a deportation order is issued, the Immigration Bureau can detain a foreigner in the detention center forever (at least there is no restriction in law).
- Even you apply for refugee recognition, you can be detained.
- Condition of facilities have been seen as a serious problem.
- It is not easy to access Immigration centers. Higashi Nihon (East-Japan) Immigration Center, the biggest one, is located far from major cities in Japan.
- Serious condition is reported by several media.

Cf. <http://www.economist.com/blogs/banyan/2012/01/japans-immigration-control>

<http://uk.reuters.com/article/uk-japan-detention-idUKKCN0ZOoWZ>



Higashi Nihon (East-Japan) Immigration Center
(Ushiku, Ibaraki)



Tokyo Immigration Bureau
(Shinagawa, Tokyo)

(3) ICCPR observation

- Expulsion and detention of asylum-seekers and undocumented immigrants

19. The Committee expresses concern about reported cases of ill-treatment during deportations, which resulted in the death of a person in 2010. The Committee is also concerned that, despite the amendment to the Immigration Control and Refugee Recognition Act, the principle of non-refoulement is not implemented effectively in practice. The Committee remains further concerned at the lack of an independent appeal mechanism with suspensive effect against negative decisions on asylum as well as at the prolonged periods of administrative detention without adequate giving of reasons and without independent review of the detention decision (arts. 2, 7, 9 and 13).

The State party should:

- (a) Take all appropriate measures to guarantee that immigrants are not subject to ill-treatment during their deportation;
- (b) Ensure that all persons applying for international protection are given access to fair procedures for determination and for protection against refoulement, and have access to an independent appeal mechanism with suspensive effect against negative decisions;
- (c) Take measures to ensure that detention is resorted to for the shortest appropriate period and only if the existing alternatives to administrative detention have been duly considered and that immigrants are able to bring proceedings before a court that will decide on the lawfulness of their detention.

(Human Rights Committee Concluding Observation on the Sixth Periodic Report of Japan, 2014

<http://hrn.or.jp/eng/wp-content/uploads/2014/08/Concluding-Observations.pdf>)

4. Internship at Japanese Law Office

Basic info about FISS

- Law Office: Tokyo Public Law Office, Foreign Nationals and International Service Section (FISS)
- Number of Lawyers: 8 (7 Japanese, 1 Zainichi Korean (Korean resident with permanent Japanese residency).)
- Features: Established in 2010 with the assistance of Tokyo Bar Association to enhance legal access to foreign residence in Japan, including those without sufficient financial means. FISS lawyers cater to wide range of legal matters; family law, civil law, criminal cases, immigration law and refugee cases etc.

cf. <http://www.t-pblo.jp/fiss/index.html>

Career of FISS lawyers

- Mikiko Otani, ex-representative of FISS, was elected to the United Nations Committee on the Rights of the Child in June 2016.
- Hiroshi Miyauchi, ex-lawyer at FISS, started his career at UNHCR Malaysia in May 2016.
- More lawyers at FISS are expected to work for international organizations in future.



My Works

- My Daily Works: Draft, Research, Translation (English ⇌ Japanese), attending consultation, going to the court etc.
- Conferences Attended: Lawyers' Network for Foreigners (LNF), the Committee on International Human Rights of the Japan Federation of Bar Association, Legal Seminar for foreign consular staffs etc.
- Places Visited: Tokyo District court and High court, Tokyo Bar Association, Japan Federation of Bar Association, Tokyo Immigration Bureau, Higashi Nihon (East-Japan) Immigration Center etc.

Notes

- Immigration and Refugees cases are just a part of jobs lawyers are dealing with. Even though a lot of cases are assisted by Legal Aid sector, it seemed still difficult to handle a lot of those cases.
- They collaborate with a lot of NGOs and university students majoring in foreign languages for translation.
- FISS lawyers have been struggling everyday to realize rights of foreigners within a limited budget.

Thank you for your attention!