自由権規約委員会 第7回日本政府報告(2020年3月30日)・抜粋

日本の第7回政府報告に関する事前質問票	Seventh periodic report submitted by Japan under article 40 of the Covenant
	pursuant to the optional reporting procedure, due in 2018
難民及び庇護申請者を含む外国人の取扱い(第7条,第9条,第10条及び	Treatment of aliens, including refugees and asylum seekers (arts. 7, 9, 10 and 13)
第 13 条)	
問21 前回の総括所見(パラ19)に関し、以下について取られている措置に	21. With reference to the previous concluding observations (para. 19), please report
つき報告願いたい:	on measures taken to
	Reply to paragraph 21 of the list of issues
【参考】日本の第6回定期報告に対する総括所見・抜粋	Concluding Observations on the sixth periodic report of Japan
難民申請者及び非正規滞在者の追放及び収容	Expulsion and detention of asylum-seekers and undocumented immigrants
19. 委員会は、送還中に残虐な取扱いを受けたと報告されている事件(2010	19. The Committee expresses concern about reported cases of ill-treatment during
年にはその結果として死亡事件も起きている) について懸念を表明する。委	deportations, which resulted in the death of a person in 2010. The Committee is also
員会はまた、入管法が改正されたにもかかわらず、ノン・ルフールマン原則	concerned that, despite the amendment to the Immigration Control and Refugee
が実務において効果的に実現されていないことについて懸念を表明する。委	Recognition Act, the principle of non-refoulement is not implemented effectively in
員会は今なお、理由を適切に告げられない行政手続きによる収容と、収容決	practice. The Committee remains further concerned at the lack of an independent
定に対する独立した審査が存在しないことに加え、難民の認定をしない決定	appeal mechanism with suspensive effect against negative decisions on asylum as
に対して停止効のある独立した不服申立手続の欠如について、懸念を有し続	well as at the prolonged periods of administrative detention without adequate giving
けている (規約2条、7条及び13条)。	of reasons and without independent review of the detention decision (arts. 2, 7, 9 and
政府は、	13).
(a) 送還中に外国人が残虐な取扱いを受けないことを保障するためのあら	The State party should:
ゆる適切な方策を取るべきである。	(a) Take all appropriate measures to guarantee that immigrants are not subject to ill-
(b) 国際的な保護を求めている全ての者が決定及びルフールマンからの保	treatment during their deportation;
護についての公正な手続へのアクセスを与えられること、及び、不認定決定	(b) Ensure that all persons applying for international protection are given access to

に対する停止効を伴った独立した不服申立手続にアクセスできるように、確保するべきである。

(c) 収容が最短の適切な期間でかつ行政手続上の収容に対する現存する代替手段が十分に検討された後にのみ使用されること、また、外国人が自身の収容の合法性について決定をする裁判所に訴訟を提起することができるように、確保する方策を採るべきである。

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.

(a) 退去強制中の不当な扱いを防ぐこと。

(答)

178 人権擁護の観点から,退去強制手続は,入国警備官の違反調査の後,入国審査官の審査,特別審理官の口頭審理及び法務大臣の異議申出に対する裁決の三審制という極めて慎重な手続を取っている。

179 難民認定申請時に正規在留中の者は収容されることはなく,在留資格を持たない者が難民認定申請をした場合については,逃亡のおそれがある等,一定の除外事由に該当する場合を除き,仮滞在許可がなされ,収容されることはない。

180 他方,適正な退去強制手続を経て退去が決定した後に難民認定申請をした場合等は、収容の上、難民認定手続を進めることになるが、難民認定手続中は送還は停止され、特に人道上の配慮が必要な者については、仮放免を弾力的に運用することで最大限配慮している。

(a) prevent ill-treatment during deportations;

Reply to paragraph 21 (a)

178. To protect human rights, the deportation procedures are executed extremely carefully and based on a three-trial system, which is conducted after the investigation into violations by the immigration control officer. This system consists of an inspection by immigration inspectors, a hearing by special inquiry officers, and a decision by the Minister of Justice with respect to the objections filed.

179. Applicants for recognition of refugee status staying legally in Japan at the time of application are not detained. An applicant for recognition of refugee status without status of residence is granted permission for provisional stay and not detained unless he/she is recognized as falling under certain grounds such as a case where he/she is likely to flee.

180. On the other hand, in a case where the person applies for recognition of refugee status after deportation has been decided through the proper deportation process, the refugee recognition procedure is to be processed only after the person concerned is detained. However, deportation is suspended during the refugee recognition

	procedures, and the maximum consideration is given to people for whom particular
	humanitarian considerations are needed, by flexible implementation of provisional
	release.
181 また、親を伴わない年少者(難民認定申請時に16才未満の者)からの	181. Furthermore, applications for recognition of refugee status from minors (persons
難民認定申請については、インタビューの際等その状況に配慮しつつ、処理	under 16 years old at the time of the application for recognition of refugee status)
することとしている。	unaccompanied by a guardian are processed, giving consideration to that situation at
	the time of the interview.
182 入管収容施設に収容されている被収容者の処遇については,人権尊重	182. Regarding the treatment of detainees in immigration detention facilities, the
を図るという観点から、入国警備官を対象とした人権尊重に係る教育・啓発	Government is implementing trainings and awareness-raising programs for
等を実施している。	immigration control officers from the perspective of respect for human rights.
183 また, 2017年に発生したベトナム人被収容者及び 2019年に発生したナ	183. Furthermore, given cases of the death of a Vietnamese detainee in 2017 and a
イジェリア人被収容者の死亡事案を踏まえ、改めて入管収容施設において	Nigerian detainee in 2019, the Government is making its utmost efforts to thoroughly
は、被収容者の健康状態や動静の把握を徹底している。	grasp the health condition and the behavior of the detainees in immigration detention
	facilities.
184 出入国在留管理庁においては、安全かつ確実な送還を実施するため、護	184. In order to implement safe and secure deportation, the ISA has developed a range
送・送還に係る各種要領を整備し、更に護送・送還担当者の実技訓練を実施	of guidelines pertaining to escorts and deportation. Moreover, it is implementing
しているほか、チャーター機や IOM 帰還支援プログラムの活用を積極的に	practical trainings for the officers in charge of escorts and deportation, and is
検討する等している。	positively considering the utilization of chartered flights and the IOM return
	assistance program.
(b)「ファストトラック」手順の対象者(グループ B/C)を含め、国際的	(b) ensure that all persons applying for international protection, including those on
保護を求める全ての人々に対し、公正で効率的な庇護手続き及びルフールマ	the "fast track" (group B/C), are given access to fair and efficient asylum procedures
ン(迫害を受ける危険のある国家へ追放・送還すること)からの保護の機会	and to protection against refoulement;
が与えられるよう保障すること。	

(答)

185 法務省では,近年の濫用・誤用的な難民認定申請の急増により,真の難民の迅速な保護に支障が生じている事態を改善するため,難民認定制度の運用の更なる見直しを行い,2018年1月15日以降の申請者について実施している。

186 具体的には、正規在留者が難民認定申請(一次審査)した場合、難民である可能性が高い等、真に庇護が必要な者に対しては、そのことが判明次第、就労を認めることにより、これまでより早期に生活の安定が図れるようにし、他方、濫用・誤用的な申請者(「ファストトラック」手順の対象者)には、在留や就労を認めない措置をとっている。「ファストトラック」手順の対象者であっても、原則として、通常の難民認定申請者と同様の手続を経た上で、認定・不認定の処分を行っている。また、不認定となった者の送還に関しては、ノン・ルフールマンの原則を明文化した入管法第53条第3項の規定が適用される。

187 この更なる見直しの結果, 2018年の申請数は, 前年と比べて約47%減少し, また, 2018年の処理数は, 前年と比べて約19%増加する等, 難民認定制度の運用の見直しが, 就労等を目的とする者による濫用や誤用的な難民認定申請の抑制に一定程度の効果をあげ, 真に保護が必要な難民の迅速な保護

Reply to paragraph 21 (b)

185. In recent years, the sharp increase of applications attempting to abuse or misuse the refugee recognition system has been creating an obstacle to the provision of prompt protection for genuine refugees. In order to improve this situation, the MoJ carried out further revisions for operation of the refugee recognition system, and the system with such revisions have been operated for applicants from January 15, 2018 onwards.

186. Specifically, when a legal resident applies for recognition of refugee status (the first examination), those who are truly in need of asylum, such as applicants who are likely to be recognized as refugees, are able to live a stable life much earlier than before through being allowed to work as soon as it becomes clear that they are such applicants. On the other hand, applicants attempting to abuse or misuse the system (people subject to the "fast track" procedure) will not be granted residential status or a work permit. In principle, even people subject to the "fast track" procedure are recognized or not recognized as refugees only after going through the same procedures as other applicants for recognition of refugee status. Furthermore, the provision in Paragraph 3 of Article 53 of the Immigration Control Act, which clearly states the principle of non-refoulement, is applied to the deportation of persons who are not recognized as refugees.

187. As a result of these further revisions, the number of applications in 2018 declined by approximately 47% compared to the previous year. Furthermore, the number of processed applications in 2018 increased by approximately 19% compared to the previous year. Therefore, we believe that the revisions for operation of the refugee

につながっていると考えられる。	recognition system function effectively in reducing the number of applications that
10 2.3% 2 CV 2 C 7 C 7 A V 20 0	
	attempt to abuse or misuse the system by those whose real intention is to work and
	have led to prompt protection for refugees who are truly in need of protection.
(c)庇護に関する否定的な決定に対し、(退去強制の)停止効果を有する独	(c) provide access to an independent appeal mechanism with suspensive effect against
立した上訴メカニズムを利用する機会を提供すること。	negative decisions on asylum;
(答)	Reply to paragraph 21 (c)
188 入管法に基づき,難民認定申請(一次審査)の手続において難民認定さ	188. Based on the Immigration Control Act, a person who was not recognized as a
れなかった者は法務大臣に審査請求をすることができ、その場合、法務大臣	refugee in the procedures of application for refugee recognition (the first examination)
は、法律や国際情勢に関して学識経験を有する難民審査参与員(詳細は別添	may file a request for an administrative review with the Minister of Justice. In that
資料の9参照)の意見を聴取した上で、裁決を行っている。	case, the Minister of Justice makes the determination after hearing the opinions of
	refugee examination counselors who have an academic background in law or
	international affairs (for the details see Annex 9).
189 入管法上, 難民認定申請中及び審査請求中であるときは, 退去強制令書	189. Under the Immigration Control Act, deportation is suspended even for persons
が発付されている者であっても送還を停止する旨の規定があることから、庇	to whom a written deportation order has been issued during the process of an
護申請者の送還は実施していない。	application for recognition of refugee status or of a request for review. Therefore, the
	Government does not implement the deportation of asylum applicants.
190 また審査請求の有無にかかわらず、処分に不服がある場合には行政訴	190. Regardless of whether or not there is a request for an administrative review, when
訟を提起し、司法の救済を求めることができる。また、裁判所により、退去	an applicant has an objection to the disposition, he/she may file an administrative
強制令書による送還の執行停止が決定されたときは、執行停止決定の期間が	lawsuit to seek judicial remedy. Furthermore, when the suspension of execution of
経過するまでの間、難民認定申請中の送還は停止される。	deportation, based on a written deportation order, has been decided by the court,
	deportation during the application for recognition of refugee status is suspended until
	the period decided by the suspension of execution is passed.
(d) 高裁及び難民審査参与員(refugee adjudication counsellors)により難民	(d) implement in good faith positive opinions rendered by refugee adjudication

counsellors and the High Court in refugee cases;
Reply to paragraph 21 (d)
191. Looking at the overall cases in which decisions were made for requests for an
administrative review between 2005 when the refugee examination counselors system
was introduced and the end of 2017 (including decisions with respect to objections),
the Minister of Justice reached the same judgment as the majority opinion of the
counselors in more than 90% of those. Appropriate opinions are obtained from the
refugee examination counselors based on their respective expertise, and the
Government endeavors to achieve appropriate operation of the refugee examination
counselors system.
192. In cases where a judgment revoking a disposition denying recognition of refugee
status has been handed down in court, the Government has reconsidered whether or
not the applicant qualifies as a refugee, taking into account the content of the
judgments, and then addressed the situation appropriately.
(e) ensure that asylum seekers are detained only as a measure of last resort, for the
shortest possible period and only after existing alternatives to administrative
detention have been duly considered, and that asylum seekers are able to challenge
the lawfulness of their detention before a court.
Reply to paragraph 21 (e)
193. The detention of refugee applicants is as stated in paragraph 179 and 180.
Furthermore, if a detainee in an immigration detention facility has an objection to that
disposition, he/she has the right to file an administrative lawsuit. Notice of such right
is given appropriately in writing or verbally based on the relevant laws and

更に、現在行われている収容に対する代替手段の実施と、現在の収容代替手段を拡張する計画があるかにつき説明願いたい。締約国(日本)は、庇護に関する包括的な法制度を導入し、入国者の収容期間に上限を定め、庇護申請手続きの全ての段階において法定代理人の関与を受け入れ、庇護申請者及び難民の労働市場へのアクセスを容易にする予定があるか説明されたい。また、2017年3月25日のベトナム人男性の死亡につながったとされている入国者収容施設における医療ケアの不備に関する報告につき回答願いたい。

regulations.

In addition, please report on the implementation of alternatives to detention in practice and indicate whether there are plans to expand the existing alternatives. Please clarify whether the State party intends to adopt comprehensive asylum legislation, introduce a maximum period of immigration detention and allow legal representatives to participate at all stages of the asylum procedure, and to facilitate access by asylum seekers and refugees to the job market. Please also respond to reports of poor medical care in immigration detention facilities, which allegedly led to the death of a Vietnamese man on 25 March 2017.

(答)

194 入管法上、収容令書による収容期間は30日以内であるが、主任審査官がやむを得ない理由があると認めるときは、30日に限り延長することができる。また、退去強制令書による収容は送還可能なときまでとされているが、法に則り適正に退去強制手続を執っており、収容期間が長期化しないよう速やかな送還を期するとともに、被収容者に病気等のやむを得ない事情がある場合には仮放免を弾力的に活用している。

194. For the latter part of the questions, under the Immigration Control Act, the detention period based on a written detention order shall be up to 30 days. However, if a supervising immigration inspector finds that there are unavoidable reasons, he/she may extend such period by only a further 30 days. Furthermore, detention based on a written deportation order is deemed to continue until his/her deportation. Such deportation procedures are carried out properly in accordance with the relevant legislation. The Government ensures prompt deportation so that the detention period is not prolonged. When there are unavoidable circumstances such as a detainee getting sick, the Government utilizes provisional release flexibly.

195 我が国は、難民の受入れを国際社会において果たすべき重要な責務と認識し、全ての難民認定申請について、難民条約上の難民に該当するか否かを個別に審査し、難民と認定すべき者を適正に認定している。また、難民条約等に規定する難民の定義には該当せず、難民として認定されなかった者に

195. Recognizing the acceptance of refugees to be an important responsibility towards the international community, the Government examines all the applications for recognition of refugee status individually to decide whether or not the applicant falls under the category of refugee as stipulated in the Refugee Convention, and properly

ついても、例えば本国の状況等により帰国が困難である者又は我が国での在 留を認めるべき特別な事情がある等の特殊な事情がある者に対しては、諸般 の事情を考慮し我が国への在留を認めており、出入国管理行政の枠の中で柔 軟に対応している。

identify people who should be recognized as refugees. On the other hand, after taking into account various circumstances, flexible treatment is accorded within the framework of immigration and residence management administration by granting permission to stay even to those who do not fall under the definition of refugee as stipulated in the Refugee Convention and are not recognized as refugees. Such persons include, for example, those who will find it difficult to return to their home country due to the circumstances of their home country or those for whom there are special circumstances necessitating that permission to stay in Japan be granted.

196 難民認定手続においては、証拠の多くが海外にあってその収集が困難である上、申請者から物的証拠の提出を受けることが期待しにくく、申請者の供述の信ぴょう性が難民該当性判断を大きく左右することから、申請者のみにしか知り得ない事実や他者のプライバシーについて、ありのまま供述できる環境を確保することが重要である。こういった観点から、難民認定申請(一次審査)の手続において第三者を交えることは原則として認めていない。ただし、難民認定申請(一次審査)を行っている者のうち、親を伴わない年少者、重度の身体的障害を有する者、精神的障害を有する者及び重篤な疾病を抱える者が、面接による事情聴取に弁護士等の一定の者の立会いを申し出た場合には、これを認めている。

196. In the refugee recognition procedures, much evidence is located overseas and difficult to collect. In addition, it is difficult to receive physical evidence from the applicant. Therefore, the credibility of the applicant's statement greatly influences the judgment on the recognition of refugee status. It is thus important to ensure an environment where an applicant can make statements without hiding on the facts known only by the applicant and the private matters of other people. In this respect, the involvement of third parties in the procedures of the application for recognition of refugee status (the first examination) is, in principle, not allowed. However, this is allowed in the case where an applicant who is a minor unaccompanied by guardian, a person with severe physical or mental disabilities, or a person with severe illnesses, requests attendance of a certain person, such as an attorney, at the time of the interview.

197 難民認定制度の見直しについては、パラ 185 及び 186 のとおり。また、第三国定住難民並びに難民の認定を受けている者及びその家族に対しては、難民を総合的に支援する定住施設等において、職業相談員による職業相談・

197. With regard to the revised operation of the system for refugee recognition, see paragraphs 185 and 186. In addition, in the settlement facilities, the Government offers comprehensive support measures – such as vocational consultations, guidance

職業指導・職業紹介等の支援を行っている。	and job placements by vocational counselors – to both refugees by resettlement to a
	third country and refugees under the United Nations Refugee Convention and their
	families.
198 なお、ベトナム人被収容者の死亡事案後の対応については、パラ 183 に	198. The Government's response after the case of the death of a Vietnamese detainee
記載のとおり。	is as stated in paragraph 183.

以上