

# *Perspectives on the Negotiated Status of Filipino Irregular Migrants in Japan*

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**ABSTRACT:** This paper examines the contradictory positions of the state on the treatment of immigrants and irregular migrants. It does so by reflecting on the case study of five Filipino irregular migrants in Japan. Just as any other modern democratic state faced with migration issues, Japan on the one hand needs to regulate migration inflows including irregular channels, and on the other hand protects its citizens and non-citizens alike within its borders, including “illegal aliens.” Underlying this contradiction is the question of the cost of liberalizing immigration. While doing so is in accordance with international conventions and other human rights instruments, it can have an impact on the economic, cultural, and political life of the state. The paper examines this “liberal paradox” within which most host countries, including Japan, find themselves and its impact on future immigration policies.

**KEYWORDS:** Japan, migration, human rights, sovereignty, state, citizens

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## **Introduction**

Six women dressed as nuns caught by immigration officials at the Ninoy Aquino International Airport (NAIA) in Manila made the headline in May of 2011. They were headed for Hong Kong for a seminar, they claimed, but eventually confessed that they were bound for Lebanon to work illegally as maids (Philippine Daily Inquirer 2011). News like this

is common in the Philippines. A very long queue of migrant workers at the international airport terminal is a normal scene for travelers to and from the capital city. As observed in the last five years, about 2,000 to 3,000 Overseas Filipino Workers (OFWs) are deployed every day for employment abroad on a contractual basis. As suggested by government statistics, the number is rising. For instance, in 2002 alone, a total of 636,000 contract workers left the country (Tyner 2004). The figure almost doubled in 2005 when 988,615 Filipinos were deployed to over 180 receiving countries. Recent estimates suggest that about a million Filipinos are still employed abroad annually despite the worsening economic recession affecting the whole world (Philippine Overseas Employment Administration [POEA] 2012).

As one of the top labor exporters in the world, with around 10 percent of the country's population living and/or working abroad, current estimates suggest that over nine million Filipinos live outside the country, including a million irregular migrants (Commission on Filipinos Overseas [CFO] 2012). Studies have also shown that a huge percentage of OFWs is deployed in the Middle East (largely in Saudi Arabia), while many others are working in Asia, mainly in Singapore and Hong Kong, as well as in South Korea and Japan (National Statistics Office [NSO] 2012). These numbers only show the documented migrants. The number could be higher as global data on irregular migration is inaccurate and unreliable (Koser 2005). In fact, estimates suggest that of the million or so irregular Filipino workers abroad, about 300,000 are in Asia, mostly in East Asian countries (CFO 2012).

In periods of economic recession, recipient countries automatically resort to stricter migration control on the pretext of maintaining social stability. They restrict the entry of migrants, claiming that migration is a growing problem for their country and citizenry, and more often than not, speed up the process of detaining and deporting illegal migrants. In 2009, the Philippines's Department of Foreign Affairs (DFA) confirmed that more than a thousand OFWs languished in jails and immigration detention centers abroad, an unpleasant plight for these workers who are hailed by the state as the "saviors" of the Philippine economy through the billions of dollars in remittances they send annually from across the globe (NSO 2011).

Moreover, the DFA reported in July of 2004 that 2,856 Filipinos were imprisoned in fifty-six states, with 1,115 in Saudi Arabia alone. At the end of that year, the same office noted that at least 4,775 Filipinos were still “languishing in foreign jails, and of these, 1,103 were women.” Most of them were detained for violating immigration laws. The crackdown in Sabah, Malaysia in 2005 led to the detention of at least 1,200 Filipinos. In 2009, DFA issued another statement that there were still some 3,000 Filipinos jailed in different countries around the world. This figure has not changed that much since 1998 when records showed that 2,091 Filipinos were in foreign jails for various offenses (Kyodo News 1999). About 70 percent of the detainees faced immigration-related charges and were deported after serving their brief sentences. The rest were in custody for committing common crimes, including theft and drug trafficking. In the Middle East alone, sixty-two OFWs were detained for drug-related charges in 2009. Of that number, forty-three, mostly women, were in Riyadh, Saudi Arabia. In 2005, a number of detention centers in Asia had Filipinos jailed, including those in Saudi Arabia (213), Kuwait (forty-seven), Singapore (192), Hong Kong (seventy-seven), and Japan (314), among others. More recent estimates suggest that the figure is relatively unchanging (Bulatlat 2005; Esplanada 2009). In 2011, three Filipinos were convicted of drug trafficking in China and were sentenced to death while many others are still detained for serious criminal charges.

Up until 2004, Japan has been one of the top major destinations of Filipino migrant workers in Asia mostly for work related to entertainment, second only to Hong Kong which attracts mainly household/domestic work (Kondo 2008). Moreover, in terms of money remittances to the Philippines, Japan comes fourth among the top ten countries in the list (POEA 2012). Yet, despite the decreasing inflow of migrants from the Philippines, many of those affected by stricter immigration laws had overstayed. Some of them utilized their spouse’s visa to extend their stay in Japan, a means by which a number of Filipino women migrants in the Philippines used to enter Japan. The CFO reported that of the total percentage of emigrants who have alien spouses abroad, about 30 percent resides in Japan (a total of 108,245 emigrants

from 1989 to 2009). While many others came to Japan through the usual legal processes, still others were forced by their economic circumstances and fell prey to illegal recruitment. At present, Japan's Ministry of Justice (MOJ) (2012) categorizes these migrants as "illegal workers." The MOJ further reports that the Philippines is second to China in the number of irregular migrants (around 20 percent). The data also noted that while irregular male workers were more concentrated in factories and construction work, female irregular migrants were highly concentrated in the entertainment industries working as bar attendants, hostesses, and the like. The statistics only shows the documented cases that were eventually subjected to deportation procedures. Interestingly, many other irregular migrants managed to escape this expulsion procedure due to their special circumstances (Leerkes and Broeders 2010). They inadvertently capitalized on this "special procedure" as provided for by the Japanese immigration law.

This paper primarily examines the contradictory positions of the state on the treatment of immigrants and irregular migrants in Japan by reflecting on five cases of Filipino irregular migrants. Numerous studies have been conducted on the contradictory role of the state in the face of migration issues. While it needs to regulate migration inflows including irregular channels, it has to protect both its citizens and non-citizens within its border, including "illegal aliens" (Chung 2010). The current contradiction underscores the problem of whether or not immigration laws must be liberalized. Although doing so manifests compliance with international conventions on human rights and adherence to principles of international interdependence, it can have an impact on the cultural, economic, moral, and political life of the host state.

This study borrows the concept of "negotiated citizenship" as suggested by Stasiulis and Bakan (2003) who argue that non-citizens or migrants in general have gained rights and privileges previously granted exclusively to the citizens of the host country through "a network of sustained linkages that evince their transnational existence." Such discourse has been expounded by researchers on citizenship and immigration including the processes engaged by irregular migrants in negotiating their status with host countries (Parreñas 2001; Ball and Piper 2002; Ellermann 2010; Leerkes and Broeders 2010).

Finally, this paper seeks to describe the interplay of migration-institutions (mainly within recipient countries like Japan) and the experiences of former irregular Filipino migrants in normalizing their status. The paper briefly illustrates the significant role played by the state and non-state actors in helping the migrants overcome their problems, while it also describes the effects of the actions of other individuals (human agency) in expediting or hindering the regularization of their status as residents of Japan.

### **Profiling Filipino Migration in Japan**

Many scholars have indicated that hapless migrants, even at the very beginning of their journey from the Philippines, are seen as “cash cows.” They have to shell out a large sum of money to get a job abroad through the “super-migration industry” of the recruitment agencies and/or the government’s employment office—POEA (Asis 2008; Tyner 2009). When they reach and begin working abroad, they are repeatedly extracted money for family remittances sent back home.

As early as the 1990s, industries were desperate to accept illegal foreign workers to fill the vacant jobs for manual laborers. Firms and employers are dependent on their labor for the 3D<sup>1</sup> jobs that the local workers shun (see also Iguchi 1998; Debrah 2002; Portes and De Wind 2007). These employers include those in the booming entertainment industry that appears in the life stories of the informants in this paper. This presents a relatively common image of a disadvantaged group of “unskilled and temporary” foreign workers in Japan—the new entertainers.<sup>2</sup> Unskilled migrants, at the onset of their journeys, begin with practically nothing: Low-skilled and less educated, with less work experience and little or no employment training, putting them at a disadvantage when it comes to competing in the labor market. The sense of “temporariness” pushes migrants to the edge of insecurity, and thus increases their vulnerability. This is common for those who entered Japan as entertainers (*Japayuki-san*) or those who are doing “nightwork” (Allison 1994).

On the other hand, earlier reports by the Hong Kong-based Asia-Pacific Mission for Migrants (APMM 2004) revealed that there were several instances of undocumented workers locked up in jail. There are also many other distressed migrants who cannot even be located due to the failure in monitoring their cases. As a matter of fact, non-government advocacy groups have constantly assailed the Philippine government's passive stance on cases involving *migrants in distress* in spite of the reality that it is one of the major beneficiaries of foreign currency earnings from the migrants. It must be noted that a substantial number of these migrants are women who are very vulnerable to abuse, rape and other forms of violence.

In Japan, most detained OFWs—a big number of whom are women—are incarcerated due to overstaying, expired visas, or illegal entry. Up until the middle of 2004, about 100,000 Filipinas were deployed annually to this country. The Japanese government then imposed a more stringent immigration policy specifically aimed at the growing dependence on foreign labor and the issue of human trafficking. It is well-known that most potential migrants from Southeast Asia, especially the Philippines, enter Japan with entertainer or tourist visas and later take on other jobs illegally (Ball and Piper 2002). This has been common for decades, coupled with the mushrooming of the migration industry that is able to import would-be migrants from any part of the globe outside the usual bounds of legal process (Kleinschmidt 2006).

Despite the official policy that migrants must return home when their visa expires as in the case of the “guestworkers” in Germany in the 1970s, many migrants in Japan opt to extend their stay often beyond the validity of their visa. Shimada (1994) further notes that some of them “remained, married, and had children, or had their families join them,” gradually increasing their numbers. In the event that they are caught, they brought their cases to the courts. Luckily, some of them managed to legalize their status by obtaining temporary or permanent visas primarily because of their children and/or family members who have already established themselves in the country.

Not all irregular migrants have luckily escaped this predicament. An investigation of the US Immigration and Customs Enforcement (ICE) exposed a gruesome picture of the authorities' mistreatment of suspected illegal immigrants (Hsu 2007). The report further shows that, while illegal immigrants are supposedly held on administrative grounds, the state and local correctional authorities—unaware of the United States standards for detained migrants—often house them together with criminals. Similarly, as early as the 1990s, Japan had been particularly concerned with “mono-ethnic” oriented Japanese immigration policies and the growing criminalization of irregular migration by the media and the National Police Agency (NPA). Komai (1995) and Herbert (1996) describe the “xenophobic tendencies” or anti-immigrant sentiments of recipient countries' policies against foreign workers, evidently designed to criminalize irregular migrants. Other scholars have shown how the concept of national security has been juxtaposed with that of a “society's security.” Migration, in this sense, is linked to domestic crime, or is seen as a threat to national security. Hence, punitive actions against “irregulars” are justified to overcome this “threat,” and the government is given extraordinary powers to resolve this “problem” including detention and/or deportation (Arifianto 2009).

In this light, Solimano's (2010, 43) definition of “criminal illegals” somehow mirrors the kind of perception that Japan has, as a host country, of the so-called irregulars. He refers to undocumented and/or unauthorized migrants as “illegal migrants” as opposed to mere “overstayers,” whom he calls “irregular migrants.” When irregular migrants are perceived as “illegal migrants” engaging in “criminal and unlawful activities” and whose “offense goes beyond immigration laws” (Solimano 2010), then it is highly likely that anti-immigration sentiment in the host society is exacerbated. This phenomenon is usually aggravated by distorted and selective crime reporting by the media, with headlines that stereotype foreign suspects as criminals of the worst kind. Filipinos appear in newspaper stories and are depicted in ways similar to the informants' experiences in this paper. Such prejudiced reporting shows all Filipinos in a bad light and labels them as “dangerous” (Herbert 1996, 284; Shipper 2008).

Contrary to the usual negative public perception, most irregular migrants would avoid committing common crimes as they are fully aware of the risks of arrest or incarceration. An “illegal migrant” has to cope with hostile public opinion, as well as that of the Japanese police authorities. Herbert (1996, 245) outlines the “illegality stigma” that migrants suffer from, made worse by the Japanese police’s “labeling” practices after arrest, lack of legal counsel for foreign suspects, and the “pre-definition” of foreign suspects as “violators of the law.” Herbert also shows the bias in decisions of the courts against foreign suspects even in cases involving petty crimes. This is evident in the early stage of deciding whether or not to prosecute them for indictment and sentencing practices. Even the interpreters for suspects with limited facility for the Japanese language tend to predefine interrogated suspects as “criminal and guilty.” The tendency to perceive migrants as criminals has recently been mitigated by Japan’s internationalization policies at the national and local levels, as demonstrated by the provision of health care services, and access to educational facilities extended to irregular migrants and their families. Yet, such unfair notion about foreign migrants is still employed to justify the state’s reduction of migration into a security issue, thereby ensuring the state’s role to protect public safety (Herbert 1996; Shipper 2008).

### **The Five Cases**

The unit of analysis of this study is the specific phenomenon of the outcome and consequences of irregular migration which typically include migrants’ arrest, detention and deportation. Data were primarily collected through in-depth interviews (IDI) of case informants. Access to them was sought through the help of non-government organizations (NGOs) and through referrals and snowball sampling. The responses of the case informants were validated through key-informant interviews (KIIs) with NGOs that handled their cases, and from documentary analysis of secondary sources (especially in relation to policy measures and recommendations). This article is a preliminary analysis of these particular cases, and thus cannot be seen as



representing the experiences of all irregular migrants, either in Japan or in other countries.

Before proceeding to the main body of this paper, let us first provide the operational definitions of some keywords. “Irregular migration” in this context describes migrants who “enter or remain in a country of which they are not a citizen, in breach of its national laws” (Marshall 2006). Other terms for irregular migration are illegal, unauthorized, and undocumented migration.<sup>3</sup> Marshall includes, in her definition of this term, migrants who enter or remain in a country without authorization; those who are smuggled or trafficked; unsuccessful asylum-seekers, and actors “who circumvent immigration controls,” for example, through imitation or sham marriages or fake adoptions.<sup>4</sup> This paper focuses on those who circumvented immigration controls and unauthorized migrants, that is, overstaying migrants. Furthermore, “migrants” in this paper refers to unskilled/low-skilled temporary or contract migrant workers (*dekasegi* in Japanese) or those considered “non-permanent residents” as opposed to immigrants who aim for permanent settlement.

Below are the five life stories of irregular Filipino migrants in Japan:

**Case 1:** An entertainer, jailed for overstaying twice and then obtained a temporary visa after granted pardon:

*Irene was forced by circumstances to look for a way to earn a living when her eldest sister got married and left her to bear the family responsibilities.<sup>5</sup> She worked in a local snack bar and was later “discovered” by a recruiter. She was introduced to a Japanese omise (club) owner and after two weeks, she was able to enter Japan as an “entertainer” with a fake Philippine passport. In 1999 her boss ran into problems running the business. Together with six other “talent girls” who had no legal documents, she was caught by the police and then deported. Back home, life seemed to return to “normalcy” but a tougher ordeal lay ahead when she became pregnant. She had to work harder to support her family. Worse, her younger sister got pregnant as well. Later, she decided to apply again for Japan through “legal” means but because this process took a long time and because she was desperate to leave to find a better life, she resorted to an illegal but faster way.*

*She came back to Japan in 2001 with an illegal passport. For two and a half years, she worked as hostess until she decided to run away due to her “bad” mamasan (the boss in the omise). She moved from one city to another taking “3D” jobs and arubaito or paato (part-time jobs).<sup>6</sup> She was arrested a second time in 2008, and was sentenced to eighteen months in jail as a repeat offender (recidivist). In 2009, she was granted parole mainly because of her good behavior. While incarcerated, she gave birth to a son by a Japanese boyfriend. Having to work as a hostess at night, she had to hire someone to take care of her child. Her son is sick (the cause is unknown) and is currently cared for in a government facility. Through the assistance of a Filipino NGO in her city, Irene in the end received a temporary visa a year after she was released from jail. She is now an on-call volunteer working for the same NGO.*

**Case 2:** A female entertainer with a child by a jailed Japanese “salaryman:”

*Rose came to Japan in 2003 as a “talent” (used in Japan to refer to entertainers who are under contract), with a fake Philippine passport. Six months later, she met her would-be husband, a forty-two-year-old regular customer in the club where she worked. Rose was twenty years old then. Due to the strict regulations in the omise, she decided to escape from her shachou (boss) with the assurance of help from her would-be husband. Two years later, they had a son. However, they could not marry because her boyfriend was still legally married to a Japanese woman who refused to divorce him. Since her partner did not want her to work at all and that Rose had to support her family back home, the man was forced to work double time.*

*Unfortunately, Rose’s boyfriend was found guilty of embezzlement of company funds and was sentenced to five years in prison. The police interrogated her as well and discovered her irregular immigration status. She was detained at a police station for six weeks, and another six weeks in an immigration detention facility (three months in total). She said it was the most traumatic time of her life since she had to be separated from her child. Her son had to be taken care of by a government-run shelter. While incarcerated, her friends and some NGO volunteers helped her obtain special permission to stay in Japan, and then later a temporary visa.*

*Ever since then, she has been active in helping Filipino irregulars and was recently elected as one of the officers of a Filipino NGO in her city.*

- Case 3:** An irregular migrant woman, divorced from a Japanese husband, bore a child by another Japanese man who was jailed for involvement in organized crime:

*Venice started working as a hostess in an omise owned by a Japanese businessman married to a Filipina wife. She was just twenty-one years old when she came to Japan for the first time in 2005, the year of a massive crackdown on illegal foreigners or, to use the politically correct term, “overstayers.” When her entertainer’s visa was not renewed, she was forced to marry a Japanese man that she did not love. (She used the term “imitation marriage” to distinguish her situation from that of a “fake marriage”). Venice later met another Japanese man who became the father of her daughter. She divorced her first husband and lived with the second man. She said her first husband pleaded for her and offered her everything but she declined, saying she had no affection for him. She loved her second partner who was later jailed (for a third time) after being found guilty on a criminal charge related to selling a stolen luxury car.*

*When her child became seriously ill, she was left alone. An undocumented migrant cannot take out health insurance given that its prerequisite is a valid visa. Luckily, a Japanese friend of her second partner offered help. She planned on going back to the Philippines but she was invited to a migration conference and met some NGO workers. A lawyer advised her to appeal her case to the courts on the basis of the possibility that a Japanese citizenship could be granted to her daughter. Later, with the help from a Filipino NGO, the local government provided her with free accommodation at a shelter, pending the decision on her status from the immigration office.*

- Case 4:** An irregular migrant for twenty years who has a child and a Filipina wife:

*Jack first came to Japan as a hosto (male entertainer). He had worked as a bellboy in a hotel in Saudi Arabia but was drawn toward the bubble economy of Japan in the 1990s. Since he “had the looks” then, he made use*

*of this. However, when his visa expired, he overstayed and started working in a factory. A few years later, he met a Filipina and cohabited with her until she became pregnant and delivered their baby. (They later got married after he was detained and obtained his special residence permission.) His girlfriend was also an irregular Filipino migrant. For two decades, they evaded authorities with some degree of invisibility. Their “non-citizenship status” (Chung 2010) did not prevent Jack’s family from integrating with Filipinos and Filipino organizations actively promoting their welfare in the city. In fact, his family availed of the primary education program provided by a local NGO-church partnership that extends support even to children of unmarried and illegal parents.*

*These linkages paid off when Jack was arrested in 2008 by immigration agents posing as Japanese hostesses. Upon interrogation, he refused to reveal his family’s exact address, something that he promised to himself before. He was detained for three months in an immigration detention facility. Soon after, his wife surrendered to the immigration office as well. With the help of a Filipino-Japanese NGO consortium and a legal assistance group, Jack pressed for his family’s case. Later, both were granted temporary visas in view of the fact that their thirteen-year-old daughter had been in Japan since birth. He is now helping the NGO on a voluntary basis when a need arises.*

**Case 5:** A Filipino family in which both parents were jailed and charged for overstaying, and later helped by their eldest daughter:

*Patricia came to Japan eighteen years ago with an entertainer’s visa. She met Sonny who worked as a waiter in the same omise. Sonny pursued her until they became secret lovers. Due to the objection of their shachou to their relationship, they quit their work and eventually overstayed their visas. They started doing odd jobs, moving from one type of 3D work to another. They now have three daughters. Undercover immigration agents apprehended Patricia after a personal quarrel with a Japanese who reported her to the authorities. Later, she was detained for three months.*

*Patricia got assistance from various welfare networks and from a city-based Philippine NGO that provided her with legal advice and other*

*services. Her eldest daughter was her greatest support. By writing letters to her Japanese teachers (she was a Junior high school student at that time) and to some of the officers and members of her school's Parents-Teachers Association (PTA), the family somehow swayed the immigration office. In the end, these people helped Patricia obtain special permission to remain in Japan. Her partner, Sonny, later on surrendered to the authorities. He was detained for about two months in an immigration detention facility. This time, Patricia helped him to get out, and eventually regularized his status by marrying him. Patricia's case is a classic example of a survival strategy that made use of a combination of various networks to press for her case. Together with her husband, she is now an on-call NGO volunteer.*

## **Analysis and Discussion**

### ***State power versus human rights***

In 2009, the Calderon family's six-month legal battle concluded with a decision from Japan's Justice Minister Eisuke Mori, granting thirteen-year-old Noriko a one-year special permit to stay with her aunt and continue her studies. Her Filipino parents, however, who came to Japan in the 1990s on fake passports, were deported (McNeill 2009). The case of the Calderon family was a test of Japan's rigid immigration law, which strictly prohibits unauthorized migrants from entering the country. Earlier in 2008, a slightly similar case challenged Japan's citizenship law. A landmark ruling was delivered by Japan's Supreme Court in favor of ten Japanese-Filipino children (JFC), aged between eight and fourteen, who were born out of wedlock, granting them Japanese citizenship. The high court declared unconstitutional certain provisions in the Japanese Nationality Law, which state that children born of foreign (Filipino) mothers and Japanese fathers out of wedlock can only follow the mother's citizenship. The ruling also explained that these provisions violate Article 14 of the Japanese Constitution which requires "equality under the law" (Balana 2008), paving the way for the amendment of the present nationality law.

The stories above starkly illustrate Japan's "dualistic" response to dealing with irregular migrants given its rigid and strict sense of identity and statehood, pivoting on the issues of citizenship and immigration. The JFC case seems to show a more liberal leaning decision toward respect for human rights which is quite opposite to that of the Calderons. As Steiner (2009) and Joppke (2010) have shown, the debates on citizenship have become "infused with that of human rights." Such arguments touch on the moral obligation of modern liberal democratic states toward migrants, if not aliens in general. Policies that tend to be racist, sexist or exclusionist toward immigrants are regarded as illegitimate and/or run the risk of being branded as violating human rights (Joppke 2010). Thus, the "liberal paradox" turns out to be a good description of a situation in which governments have to contend with the balancing act of conforming to international conventions on the one hand, and maintaining sovereignty and/or state security on the other (Hollifield 2000; Koser 2007). While liberal states are largely prevented by their own national constitutions that favor individuals rights (Ellerman 2010), civil society groups, professionals, and lower levels of government (local/state level) play a significant role in opposing national policies and their implementation (including immigration law) (Leerkes and Broeders 2010). Portes and De Wind (2007, 7) have elaborated on these continuing contradictions:

By and large, the wealthy receiving nations are also democracies where human rights legislation applies to all those within their borders, not just citizens, preventing state attempts to deal summarily with unwelcome newcomers... [States are] prevented by their own laws (constitutions) from effectively controlling or suppressing unwanted immigration (see also Castles 2007).

Case informants shared common stories of undocumented status, evading arrest by the authorities (ranging from eight to twenty years), and being incarcerated at a police station or immigration detention center. One informant (Jack, Case 4) revealed being shouted at by police when he was apprehended and being called names such as *baka* (idiot or stupid) when he refused to answer some questions. The informants agreed that the worst scenario for an irregular migrant caught by authorities is during the interrogation at the police station. They admitted that a *bilog*<sup>8</sup> (irregular Filipino migrant) is

lucky if he/she is arrested by immigration agents rather than by the police. In the Japanese Criminal Procedure Rules (CPR), the police can legally detain an accused for twenty-three days before an indictment is made (without charges or access to a legal counsel). Japanese bar associations and other human rights groups had earlier called for the abolition of this procedure, which is contrary to the United Nations standards (Ibusuki 2009). Ibusuki (2009, 2) further notes:

[The rules] give the police three days before sending the case to the prosecutor's office, and permit the prosecutors to detain the defendant for twenty days before their decision to prosecute based on authorization by the court. For a total of twenty-three days the accused can be legally held in a police detention cell or *dai-yo kangoku* (substitute prison). Although the United Nations Human Right Commission repeatedly criticized this rule and practice, the Japanese government has not changed the law.

Moreover, other respondents noted that although Japanese authorities wanted to speed up the process of the irregular migrants' deportation, some law enforcers handled their cases fairly (on a case-to-case basis). They took into account the fact that the migrants have established themselves in the country for quite some time, brought their families, married nationals, or had children by a Japanese father. Article 50 of Japan's Immigration Control Act (ICA) calls this procedure as granting "special permission of residence" which is to be decided by Japan's MOJ, following a comprehensive appraisal that weighs all the relevant circumstance for each individual case (Immigration Bureau-MOJ 2009). Sampson, Mitchell and Bowring (2011, 12) call these processes as "alternatives to immigration detention," defined as "any legislation, policy or practice that allows for asylum seekers, refugees and migrants to reside in the community with freedom of movement while their migration status is being resolved or awaiting deportation or removal from the country." With this mechanism in place, the state itself has given the migrants a chance to negotiate their status, moving from being illegal migrants to partial citizens. As such, migrants are subtly made to adapt to the dominant host society including integration and/or incorporation (Ball and Piper 2002).



*Negotiating status and partial citizenship*

Describing the “stunted integration” of Filipina domestic workers in their host countries, Parreñas (2001) calls this phenomenon “partial citizenship” in which Filipinas provide care for these countries’ citizens at the expense of their own rights. Kajita (1998, 123) defines incorporation as a way of “accepting foreigners” in the broadest sense, which involves being absorbed and integrated in the host society. Meanwhile, Lacroix (2010) suggests two other definitions of integration: 1) A one-way process of adaptation by newcomers, and 2) a two-way process of adaptation involving changes in values, norms and behavior for both the newcomers and the host society. Lacroix (2010) further explains that incorporation could be a much broader term, which denotes becoming part of a polity, that is, gaining rights and privileges including citizenship. In any case, defining integration and incorporation is dependent on the kind of policy goals and strategic objectives that the state has for migrants. This is, however, a sensitive issue for countries such as Japan.

Japan is a recent country of immigration, particularly illegal migration. The US Trafficking of Persons Report in 2004-2005 describes Japan as a “destination country for a large number of Asian, Latin American, and Eastern European women and children who are trafficked for purposes of sexual exploitation” (Fujimoto 2006, 1). This led the government to immediately reduce the number of issued entertainers’ visa.

Further, with its nascent liberal ideals, Japan has been particularly conscious of its adherence to international obligations and conventions as well as its international image. It is a signatory to most conventions on human rights including the Children’s Rights Convention (CRC), the UN Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), among many others. The country’s adherence to these international agreements has played a significant role in extending selected citizenship rights to some migrants, including children and their mothers or parents (Stasiulis and Bakan 2003; Joppke 2010).



Recently, the notion of citizenship has been incorporated into the discourse on the politics of migration. Most countries in the world follow one of the two principles of citizenship law: The descent-based *jus sanguinis* determined by the parents' nationality, or the territorial *jus soli* determined by the country of birth (Joppke 2010). A few countries such as France and later Germany have modified their rules, mixing these two major legal practices. Japan is following the *bilineal* *jus sanguinis* (Kondo 2001) model to emphasize the present nationality law by birth, which can be acquired from either parent. However, the *jus soli* principle is applied in cases where both parents of the child acquiring citizenship are unknown, thereby making them stateless children. In 2008, the Japanese government passed a bill granting citizenship to children born to foreign women and Japanese men out of wedlock. Given these developments, although policymakers do not admit it, Japan's "reclusive immigration policy" with its contradictions between immigration and citizenship policies has moved away from its earlier inflexible stance to a more considerate form of migration management.

### ***Indispensable role of non-state actors***

The case of Filipino irregulars is just one of the diverse issues surrounding the fragile relationship between the state and individuals. In issues involving power versus rights, it is the state that can readily muster its vast resources to protect its own agenda. Hence, non-state actors have to intervene to advance the interests of disadvantaged individuals, particularly irregular migrants. These organizations also play an indispensable role in various occasions particularly by offering policy recommendations to pertinent institutions, government agencies and/or those in authority.

Furthermore, immigration issue can be an important electoral matter in many parts of the world. In Europe, particularly in France and Germany, this has been one of the popular campaigns by far-right populist parties against the social democrats and the left-block. In Singapore and Malaysia, the campaign against illegal immigrants from neighboring countries is a driving force for some political parties to gain electoral votes. Yet, it is also undeniable that active information drives and countermands-advocacy campaigns of non-

state actors and organizations have resulted in the isolation of these ultra-rightist elements in the government. The shift in the electoral support against anti-immigrant sentiments is clearly evident in Greece, and recently in the electoral fallout for Sarkozy in France.

In the US, President Barack Obama issued his new directives for immigration during his reelection campaign calling for “deferred action” on illegal migration, thereby, offering children of irregular migrants a chance to regularize their status through reprieve from deportation or an issuance of a work permit/employment authorization. The Department of Homeland Security (DHS) admits that the directive is not an amnesty or a new track to citizenship. It is rather a “temporary fix and if there is a change of administration, there is a possibility that the program will be changed or abandoned” (Tancinco 2012, 2). Nevertheless, the case of Jose Librojo who is an undocumented Filipino in the US is a good example of the significant position played by non-state actors in helping disadvantaged irregular migrants. Librojo was about to be deported but thousands signed online petitions and many others called the attention of the President and some supportive Senators who in return sent letters in support of Librojo to the Immigration and Customs Enforcement (ICE) office. The ICE eventually halted his deportation orders. The National Alliance for Filipino Concerns (NAFCON) had been particularly instrumental in paving the way for a change of his status (Rueda 2011).

In Japan, Migrante International and Philippine NGOs (more of ‘self-help groups’) such as the Filipino Migrants Center (FMC) have been very active in providing assistance for irregular immigrants alike. Most of this takes the form of legal advice on immigration and labor issues, as well as on welfare concerns of the irregular immigrants’ children. Additionally, informants above pointed out the significant role played by personnel at an immigration office who understood their cases, and informal connections through Japanese members of PTAs, among others. Japanese advocacy groups and sympathetic individuals alike also offer migrants in distress an avenue to air their grievances against the human rights abuses perpetrated against them or even in the provision of health services and legal assistance.

The migration institutions as applied in the context of irregular migration include a wide array of state agencies, employers, recruitment industries, non-government bodies, and even individual actors who contribute to the welfare of people on the move. This is reflected in the cases above in the same manner as Shipper (2008) describes the role of Japanese NGOs for immigrant rights (serving both regular and irregular migrants) as “associative activism.” Shipper (2008, 11) explains this concept:

Local actors seek to transform inflexible and relatively unresponsive political institutions through coordinated local activities aimed at resolving a particular problem that, while not directly conflicting with prevailing government policies, nonetheless challenges the broader political status quo. I consider activism to be associative when 1) like-minded activists form a range of NGOs to address specific problems and 2) local governments increasingly cooperate with activists and their organizations, forming novel and flexible institutions.

## Conclusion

The temporary status of migrants contributes to their sense of insecurity, which is further heightened by their “unwantedness” from mainstream society. For irregular migrants, being legally recognized is just one step to reduce the stigma of being an outsider. In the eyes of a citizen, a migrant is often a non-citizen (or worse, a potentially dangerous criminal). The case studies presented in this paper show that an insecure irregular migrant will certainly seek recognition, not necessarily from mainstream society but from peers, networks, and most of the time from compatriots to establish links and build contacts. Shipper (2008, 59) clarifies this “recognition-seeking-process:”

Living in a country with no active policies to fully incorporate foreigners into its society, such foreigners in Japan with no political rights inevitably feel vulnerable as outsiders and turn to building closer ties with their co-ethnics and their home countries. As a result, they have created numerous immigrant ethnic associations, groups that provide ethnic identification and

various kinds of support for legal foreigners, although generally not for their illegal compatriots.

Irregular migrants cannot stay “invisible” for long while evading arrest and detention. Eventually, they have to ask somebody on how to go to the hospital when they become ill or on how to send their children to school. Many of them hope that someday they can negotiate their status as “human beings,” though with limited participation in politics. Irregular migrants volunteer to work for non-state organizations working for migrants’ concerns particularly when these organizations also help them appeal their cases to the immigration authorities to obtain special residence permission, and also when their own governments fail to help them (Piper 2004).

In this process, obtaining a “legal status” is only the first step. It must be stressed that these people are not just labor or economic migrants. They are human beings accorded with rights. Human rights advocates say that recipient societies do not merely get workers but instead people (Cornelius 1994; Steiner 2009). As these migrants communicate and socialize with others, they will miss their own families back home. Loneliness drives them to establish a family of their own in their host society, or they bring their own families to live with them.

Scholars have shown the inevitability of foreign workers, including irregular migrants, to settle permanently in Japan. However, Shimada (1994) suggests an alternative which combines closing the door to foreign labor imports and reducing dependence on foreign workers along with becoming more open to “integration” for the remaining migrants. Weiner and Hanami (1998) have projected that Japan would open up and adopt more multicultural policies. Today, a “dual scenario” exists in which a strict national immigration policy is being juxtaposed at the local level with local citizenship integration programs. For instance, cities and prefectural governments initiate activities promoting the multicultural coexistence of Japanese citizens with foreigners under the banner of an “internationalization” policy. Recent developments, however, reveal a contrary picture. In July of 2012, the MOJ implemented the 2009 amended Japanese Immigration Control Act<sup>9</sup> which emphasizes

new “residency management system” targeting “illegal residents” through centralized information gathering. While irregular migrants can be registered under the old alien registration system, they cannot be registered under the new system (MOJ 2012). With this new system, Japanese society is fortified inwardly from undocumented non-citizens.

The immigration case of Japan is somehow unique compared to most other recent countries of destination. The blending of liberal principles, respect for conventions, recognition of non-state entities, and local immigration initiatives, coupled with a higher demand for unskilled workers from Japanese employers, make it impossible for Japan to pursue an ultra-rightist conservative anti-migration policy. While Japan is apparently leaning toward more state power over individual or migrants’ rights, it sees migration as constantly changing rather than a permanent phenomenon. Its government is conscious of the fact that it has to gradually adapt to the growing demand for international interdependence. Rigidity will only lead to more failures, if not unintended outcomes, of these policies. In the final analysis, host countries with declining populations like Japan will have to reconsider their immigration policies. As Portes and De Wind (2007, 7) argue:

Redoubling border enforcement compels migrant laborers to abandon their previous pattern of circular migration, encouraging them instead to settle in the host country and bring their families. Instead of stopping migration, these “get tough” policies end up consolidating migrants’ presence and further entrenching their support networks.

## Notes

<sup>1</sup> 3D is derived from the Japanese expression pertaining to 3K jobs: *Kitsui* (demanding), *kitanai* (dirty), *kiiken* (dangerous) (Koshiro 1998; Weiner 1998).

<sup>2</sup> Tyner (2009) sees temporary migrants as “those persons whose stay overseas for employment-related purposes, and who are expected to return at the end of their work contract.” The papers of Suzuki and Takahata (2007) and Suzuki (2008) argue that historically (old) entertainers who came earlier were highly respected as “professional performers” (musical and boxers-athletic). In addition, Ball and Piper (2002) note that an entertainer’s visa is in fact signified under the “skilled” category.

<sup>3</sup> Aguilar (2011) asserts that using the term “illegal” is inappropriate since it serves to criminalize migrants when their transgressions are supposedly considered “administrative and not criminal in nature.” The term “undocumented” is an ambiguous term such that many of the irregular migrants are documented, possessing passports and/or travel document (Koser 2007).

<sup>4</sup> According to Tyner (2009), irregular migrants are “those not properly documented or without valid residence or work permits, or who are overstaying in a foreign country.”

<sup>5</sup> The names of all case study respondents are withheld with anonymity for privacy and confidentiality reasons vis-à-vis rights of the interviewees.

<sup>6</sup> Wakisaka and Bae (1998) refer to *arubaito* as “student part-timers,” while *paato* is the more appropriate term for “part-time workers.” Recently, *arubaito* or just simply *baito* becomes a common usage to describe these jobs.

<sup>7</sup> Strict immigration rules in Japan had led to a drop in deployment of Filipina entertainers from 80,000 in 2005 to 7,000 in 2007 (Kanlungan 2008).

<sup>8</sup> Many NGOs named irregular Filipino migrants in Japan as *bilog* (circle) denoting “zero” or no status.

<sup>9</sup> Immigration Control and Refugee Recognition Act (ICRRA), or the “Immigration Control Act,” has been amended several times.

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