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Committee on Enforced Disappearances**Concluding observations on the report submitted by Japan under article 29 (1) of the Convention***

1. The Committee on Enforced Disappearances considered the report submitted by Japan under article 29 (1) of the Convention (CED/C/JPN/1) at its 257th and 258th meetings (see CED/C/SR.257 and 258), held on 5 and 6 November 2018. It adopted the present concluding observations at its 271st meeting, held on 14 November 2018.

A. Introduction

2. The Committee welcomes the submission of the report by Japan under article 29, paragraph 1, of the Convention, which was prepared in accordance with the reporting guidelines, and the information contained therein. The Committee appreciates the constructive dialogue held with the high-level delegation.

3. The Committee also thanks the State party for its written replies (CED/C/JPN/Q/1/Add.1) to the list of issues (CED/C/JPN/Q/1).

B. Positive aspects

4. The Committee commends the State party for having ratified almost all of the United Nations core human rights instruments, as well as the Rome Statute of the International Criminal Court.

5. The Committee welcomes the fact that the State party has recognised the competence of the Committee, under article 32 of the Convention, in respect of inter-State communications.

6. The Committee also commends the State party on the measures adopted in areas related to the Convention, including:

(a) Adoption of the Action Plan to Combat Trafficking in Persons in 2014 and establishment of a Council for the Promotion of Measures to Combat Trafficking in Persons;

(b) Amendment of the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography and the Protection of Children, in 2014.

7. The Committee also notes with satisfaction that the State party has extended an open invitation to all special procedures mandate holders of the Human Rights Council.

* Adopted by the Committee at its fifteenth session (5-16 November 2018).

C. Principal subjects of concern and recommendations

8. The Committee considers that, at the time of adoption of the present concluding observations, the legislation in force in the State party to prevent and punish enforced disappearances was not in compliance with certain obligations incumbent on the States that have ratified the Convention. The Committee encourages the State party to implement its recommendations, which have been made in a constructive and helpful spirit, with the aim of ensuring that the existing legal framework, and the way it is implemented by State party's authorities, is fully consistent with the rights and obligations contained in the Convention.

Individual communications

9. While noting the statement of the delegation that Japan is undertaking a comprehensive study on the viability of accepting individual complaints mechanisms in the Treaty Body system, the Committee remains concerned that the State party has not yet recognized the competence of the Committee to receive and consider individual communications under article 31 of the Convention (art. 31).

10. The Committee encourages the State party to recognize as soon as possible the Committee's competence to receive and consider individual communications under article 31 of the Convention, with a view to strengthening the framework for protection against enforced disappearances provided for in the Convention.

Definition and criminalization of enforced disappearance (arts. 1–7)

Prohibition of enforced disappearance

11. The Committee notes with concern that domestic law does not specifically provide for the non-derogability of the prohibition of enforced disappearance under any exceptional circumstances (art. 1).

12. The Committee recommends that the State party take the legislative measures necessary to incorporate into domestic law an absolute prohibition of enforced disappearance, in line with article 1 (2) of the Convention.

The offence of enforced disappearance

13. The Committee is concerned that national legislation does not specifically criminalise enforced disappearance as an autonomous offence in accordance with article 2 of the Convention. The Committee considers that the different criminal offences in the Japanese criminal code are not sufficient to encompass all the constituent elements and modalities of the crime of enforced disappearance, as defined in article 2 of the Convention, and thus comply with the obligation arising from article 4, which is closely related to other treaty obligations concerning legislation, such as those in articles 6, 7 and 8. As a rule, the Committee considers that reference to a range of existing offences is not enough to meet this obligation as the offence of enforced disappearance is not a series of different crimes, but rather a complex and single offence, committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State through several criminal modalities, that violates various rights. The Committee is further concerned that national legislation does not specifically criminalize enforced disappearance as a crime against humanity in accordance with the standards provided for under article 5 of the Convention (arts. 2 and 4-8).

14. The Committee recommends that the State party adopt the legislative measures necessary to ensure that, as soon as possible, enforced disappearance is incorporated into domestic law as an autonomous offence, in accordance with the definition contained in article 2 of the Convention, and as a crime against humanity, in accordance with the standards provided for under article 5 of the Convention.

Appropriate penalties and mitigating and aggravating circumstances

15. The Committee is concerned that the penalties imposed for crimes invoked to deal with enforced disappearance vary greatly, ranging from 3 months to life imprisonment, and do not adequately provide consistent penalties that take into account the extreme seriousness of the crime of enforced disappearance. It is further concerned that national legislation does not provide for mitigating and aggravating circumstances applicable to acts of enforced disappearance listed in article 7 (2) (a) of the Convention (art. 7).

16. The Committee recommends that the State party, when criminalizing enforced disappearance in national legislation, establishes:

(a) **Penalties for the crime of enforced disappearance that take due account of the extreme seriousness of the offence in accordance with article 7 of the Convention, while avoiding the imposition of the death penalty;**

(b) **Specific mitigating and aggravating circumstances provided for in article 7, paragraph 2, of the Convention, for the crime of enforced disappearance, ensuring that mitigating circumstances will in no case lead to a lack of appropriate punishment.**

Criminal responsibility of superiors and due obedience

17. The Committee is concerned that national legislation does not expressly provide for holding criminally responsible any person who orders or solicits an enforced disappearance, nor it expressly incorporates the criminal responsibility of superiors as set out in article 6 (1) (b) of the Convention. The Committee regrets the lack of clear and sufficient information with regard to the legislation that guarantees that persons who refuse to obey orders or instructions that prescribe, authorise or encourage enforced disappearance will not be punished. (arts. 6 and 23).

18. The Committee recommends that the State party take the legislative measures necessary to ensure that criminal legislation holds responsible any person described in article 6 (1) (b) of the Convention.

Criminal responsibility and judicial cooperation in relation to enforced disappearance (arts. 8–15)

Statute of limitations

19. The Committee notes with appreciation that article 253 of the Code of Criminal Procedure provides that the statute of limitations to bring criminal proceedings commence from the moment when the crime ceases. However, the Committee is concerned that the statute of limitation that would apply to the crime of enforced disappearance ranges from 5 to 20 years, which is extremely short. It is further concerned that national legislation does not guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation, given that, according to the declaration made by the delegation, the statute of limitations “for damages in tort shall be extinguished when 20 years have elapsed from the time of the act” (art. 8).

20. The Committee invites the State party to provide that, once criminalized, the offence of enforced disappearance is not subject to any statute of limitations or, if it is, it recommends that the State party ensure, in line with article 8 of the Convention, that:

(a) **The term of limitations for criminal proceedings brought forward in respect of enforced disappearances is of long duration and that it is proportionate to the extreme seriousness of the offence;**

(b) **The right of victims of enforced disappearance to an effective remedy is guaranteed during the term of limitation.**

Jurisdiction over offences of enforced disappearance

21. The Committee takes note that article 4.2 of the Penal Code establishes the State’s competence to exercise jurisdiction over the offence of enforced disappearance regardless of the nationality of the perpetrator or victim and even when it is committed outside the territory

of Japan. However, the Committee notes with concern that article 4.2 only applies to crimes governed by a treaty (art. 9).

22. The Committee recommends that the State party adopt necessary measures with a view to ensuring that the exercise of jurisdiction by the courts over the offence of enforced disappearance is fully guaranteed, in accordance with the obligations arising from article 9 of the Convention and, in particular the principle of *aut dedere aut judicare* set out in that article. In this regard, the State party should ensure that no conditions which are not provided for in the Convention affect the exercise of jurisdiction by the Japanese courts, in conformity with article 9 of the Convention.

Reporting and investigating cases of enforced disappearance

23. The Committee notes the information provided by the State party that no complaints have been raised with regard to cases of enforced disappearance. However, the Committee remains concerned that national legislation does not guarantee the right of any individual to report an alleged enforced disappearance to the competent authorities, irrespective of his/her relationship to the disappeared person. It is further concerned at obstacles that could hinder the prompt, effective and impartial investigation of alleged cases of enforced disappearances. These include: the competence of military authorities under national law to investigate persons accused of enforced disappearance; the fact that the decision to investigate an offence is subject to the discretion of the relevant police officer; restrictions in national legislation to access all the documentation and other information relevant to an investigation when it is official confidential information and in cases where such information may harm national interests. The Committee is further concerned about the lack of sufficient information on the relevant national legislation that guarantees the access of the authorities investigating an enforced disappearance to all places of detention or any other place where there are grounds to believe that a disappeared person may be present; the lack of a dedicated budget and personnel to investigate cases of enforced disappearance; the lack of specific training to start and conduct investigations on cases of enforced disappearances for the authorities in charge of investigating these cases (arts. 11 and 12).

24. The Committee recommends that the State party take all necessary legislative or other measures to:

(a) **Guarantee the right of any person to report an alleged enforced disappearance to the competent authorities, irrespective of his/her relationship to the disappeared person and that appeal mechanisms are available to the complainant in case the competent authorities refuse to investigate his/her case;**

(b) **Ensure that, where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, it undertakes a thorough and impartial investigation without delay, even if there has been no formal complaint;**

(c) **Ensure that all cases of enforced disappearances remain expressly outside military jurisdiction and can only be investigated by ordinary courts;**

(d) **Guarantee that the authorities in charge of an investigation into an enforced disappearance have access to all information and documentation relevant to their investigation;**

(e) **Guarantee that the competent authorities and institutions have access to any place of deprivation of liberty where there are reasonable grounds to believe that a person subjected to enforced disappearance may be present, irrespective of the nature of the place of deprivation of liberty;**

(f) **Provide adequate financial and human resources for the authorities in charge of investigating enforced disappearances;**

(g) **Provide specific training on how to start and conduct investigations on cases of enforced disappearances for the authorities in charge of investigating these cases.**

The situation of the so-called “comfort women” victims of enforced disappearance

25. Recalling articles 8, 12 and 24 of the Convention, the Committee wishes to emphasize the continuous nature of the crime of enforced disappearance and to reaffirm the rights of victims to justice, reparation and to know the truth about the circumstances of an enforced disappearance, the progress and results of the investigation and the fate of the disappeared person, regardless of when the enforced disappearance was committed. In this respect, the Committee is concerned about the lack of statistical information on the number of so-called “comfort women” who may have been subjected to enforced disappearance, and about the absence of investigations, prosecutions and convictions of perpetrators of these cases. It is further concerned at reports of the removal of children born to these women and the refusal of the State to investigate such cases. The Committee remains concerned at reports of the concealment or failure by the State party to disclose related facts and materials on the issue of the so-called “comfort women”. It is further concerned at the lack of adequate reparations to the victims in accordance with article 24 (5) of the Convention and regrets the State party’s position that the issue “is resolved finally and irreversibly”. This perpetuates impunity and denies victims their right to know the truth and to obtain justice, reparation and guarantees of non-repetition (art. 1, 8, 12, 24 and 25).

26. The Committee recalls the continuous nature of the offence of enforced disappearance and recommends the State party to:

(a) **Generate accurate statistics on the number of the so-called “comfort women” who may have been subjected to enforced disappearance to conduct investigations and guarantee the rights to the truth and reparation;**

(b) **Ensure that all cases of so-called “comfort women” who may have been subjected to enforced disappearance, including the removal of children born to these women, are investigated thoroughly and impartially without delay, regardless of the time that has elapsed since they took place and even if there has been no formal complaint;**

(c) **Ensure that the alleged perpetrators are prosecuted and, if found guilty, punished in accordance with the gravity of their acts;**

(d) **Take the necessary measures to search for and identify any children born to “comfort women” who may have been victims of wrongful removal, enforced disappearance and/or identity substitution and that they are returned to their families of origin, in conformity with article 25, paragraph 2, of the Convention;**

(e) **Ensure the disclosure of any information related to facts and materials;**

(f) **Ensure that all victims receive adequate reparation in accordance with article 24 (4) and (5) of the Convention and that it takes account of gender issues;**

(g) **Guarantee the right to truth.**

Judicial cooperation in criminal matters

27. The Committee is concerned at the limitations and conditions in national legislation in relation to requests for judicial assistance or cooperation in the terms established by articles 14 and 15 of the Convention. In particular, bearing in mind that the crime of enforced disappearance is not codified in national legislation, it is concerned that under national legislation, assistance shall not be provided when the act constituting the offense for which assistance is requested would not constitute a crime under Japanese laws when the crime is committed in Japan (arts. 14 and 15).

28. The Committee recommends that the State party should ensure that it provides the necessary judicial assistance to the authorities of other States parties that may request it in connection with investigations into possible cases of enforced disappearance. The Committee also encourages the State party to ensure that its authorities afford the greatest measure of assistance possible when they receive requests under article 15 of the Convention.

Measures to prevent enforced disappearances (arts. 16–23)

Expulsion, return, surrender and extradition mechanisms

29. The Committee is concerned about the obstacles to extradition that exist in respect of the crime of enforced disappearance. These include: a) enforced disappearance is not an extraditable offence in extradition treaties with States that are not a party to the Convention, given that the State party does not impose the obligation set out in article 13 (2) of the Convention; b) the requirement of the principle of dual criminality in extradition treaties, bearing in mind that enforced disappearance is not codified as an autonomous crime in the Japanese Criminal Code; c) the requirement of the principle of reciprocity in the absence of an extradition treaty. The Committee regrets the lack of information on the criteria and/or procedures applied to assess and verify the risk of a person to be subjected to enforced disappearance in the country of destination before it proceeds to an expulsion, return or extradition (arts. 13 and 16).

30. **The Committee recommends that the State party take all necessary measures to:**

(a) **Remove any obstacles to extradition that exist in national legislation, in conformity with article 13 (2), (3) (4) and (5) of the Convention;**

(b) **Ensure that there are clear and specific criteria and procedures in place to assess and verify the risk of a person to be subjected to enforced disappearance in the country of destination before it proceeds to an expulsion, return or extradition, and that, if there is such risk, the person concerned is not expelled, extradited or returned.**

Fundamental legal safeguards

31. The Committee is deeply concerned about the conditions and restrictions in national legislation to the rights guaranteed under article 17 (2) (d) of the Convention in places of deprivation of liberty and at reports of non-observance of these rights. These include: the restriction of communication of the person deprived of liberty with any person of his/her choice, and in the case of foreigners, with consular authorities, from the very outset of the deprivation of liberty; the restriction of visits by a lawyer to certain days and times and in certain circumstances; the restriction of visits by family or any other person of their choice; the attendance of prison staff and recordings during visits; the restriction, prohibition and examination of correspondence, including from a defence lawyer; the prohibition of visits, communication and correspondence when these are in a language other than Japanese and the person deprived of liberty cannot bear the financial cost of translation or interpretation. The Committee is further concerned at the lack of measures in place to guarantee the independence and competence of the mechanisms authorised to visit places of deprivation of liberty and their unrestricted access to all places of deprivation of liberty (art. 17).

32. **The Committee recommends that the State party guarantee:**

(a) **That all persons deprived of liberty in all places of deprivation of liberty have access to a lawyer from the outset of deprivation of liberty and can communicate without delay with and be visited by their relatives, counsel or any person of their choosing and, in the case of foreigners, with their consular authorities;**

(b) **The independence of the mechanisms authorised to visit places of deprivation of liberty, including through the establishment of objective criteria for the selection of its members, and their unrestricted access to all places of deprivation of liberty and the provision of training on the Convention.**

Remedies concerning the lawfulness of a detention

33. The Committee is concerned at the lack of remedies available in line with article 17 (2) (f) of the Convention to challenge the lawfulness of a deprivation of liberty, including of persons in medical institutions and immigration detention facilities. The Committee takes note of the existence of the Habeas Corpus Act to challenge the lawfulness of a detention. However, it is concerned at the obstacles in the use of this remedy contained in the Habeas Corpus Rules, in particular Rule 4, and at the fact that a Habeas Corpus request can only be made by the person deprived of liberty and his/her counsel (arts. 17 and 22).

34. **The Committee recommends the State party to adopt the necessary measures to establish that the right to apply for habeas corpus may not be restricted under any circumstances, and to guarantee that any person with a legitimate interest may initiate the procedure, irrespective of the place of deprivation of liberty.**

Registers of persons deprived of liberty

35. The Committee takes note of the existence of a number of registers of persons deprived of liberty. However, it notes with concern that these registers do not contain all the information referred to in article 17 (3) of the Convention and regrets the lack of sufficient information on measures to ensure that all records of persons deprived of liberty are completed, updated immediately and monitored. The Committee notes with concern that national legislation does not guarantee access to the information listed in article 18 (1) of the Convention, given that the provision of this information is dependent on the person deprived of liberty. The Committee regrets not having received sufficient information on how national legislation addresses all the items described in article 22 (b) and (c) of the Convention, namely the “failure to record a deprivation of liberty”, the “refusal to provide information” and the provision of “inaccurate information” (arts. 17, 18, 20 and 22).

36. **The Committee recommends that the State party take all necessary measures to ensure that:**

(a) **All cases of deprivation of liberty, without exception, are entered in official registers and/or up-to-date records, including, at a minimum, the information required under article 17 (3) of the Convention;**

(b) **Registers or records of persons deprived of liberty are filled out and updated promptly and accurately and are subject to periodic checks and, in the event of irregularities, the officials responsible are duly sanctioned;**

(c) **Any person with a legitimate interest has prompt and easy access to the information referred to in article 18 (1) of the Convention;**

(d) **The prevention and imposition of sanctions to the conduct described in article 22 b) and c) of the Convention.**

Training on the Convention

37. The Committee takes note that training on human rights is provided to some State agents. However, it is concerned that such training may not include specific training on enforced disappearance (art. 23).

38. **The Committee recommends that the State party continue its efforts to provide human rights training for State officials and, in particular, that it ensure that all law enforcement and security personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of persons deprived of their liberty, including judges, prosecutors and other officials responsible for the administration of justice, receive specific and regular training on the provisions of the Convention, in accordance with article 23 (1) thereof.**

Measures to provide reparation and to protect children against enforced disappearance (arts. 24 and 25)

Definition of victim and right to obtain reparation and prompt, fair and adequate compensation

39. The Committee is concerned that the definition of “victim” set out in article 290-2 of the Code of Criminal Procedure does not include all the persons referred to in article 24 (1) of the Convention and regrets the delegation’s assertion that Japan does “not have any intent to revise the definition of victim in criminal proceedings”. It is further concerned that national legislation does not provide for a system of full reparation under the responsibility of the State that includes all the measures of reparation provided for in article 24 (5) of the Convention. The Committee regrets the lack of information on the type of compensation and reparation awarded by the State to victims of enforced disappearance in cases where death

has not occurred and the lack of information on the existence of, or steps undertaken to establish, mechanisms to ensure the right to know the truth on the circumstances of the enforced disappearance, and the fate of the disappeared person and how these mechanisms ensure the right of victims to be informed on the progress and results of investigations and participate in their proceedings (art. 24).

40. The Committee recommends that the State party take the necessary measures to:

(a) Establish, in national legislation, a definition of “victim” that is consistent with article 24 (1) of the Convention, in order to ensure that any individual who has suffered harm as the direct result of an enforced disappearance can exercise the rights set forth in this article;

(b) Establish a comprehensive system of reparation that takes into account the personal situation of the victims, such as their sex, sexual orientation, gender identity, age, ethnic origin, social status and disability, and is fully in line with the provisions of article 24 (4) and (5) of the Convention, is under the responsibility of the State and is applicable even if no criminal proceedings have been initiated;

(c) Ensure that all victims of enforced disappearance can exercise their right to know the truth and to obtain justice, reparation and guarantees of non-repetition.

Legal situation of disappeared persons and their relatives

41. The Committee is concerned that civil law requires that the disappeared person be presumed to have died even if his or her fate has not been clarified, and that a period as long as seven years needs to have elapsed since the disappearance in order to regularize the situation of the his/her family members in fields such as social welfare, financial matters, family law and property rights. It is further concerned that during these seven years, payments for the disappeared person’s pension and insurance still need to be made (art. 24).

42. The Committee recommends that the State party adopt the legislative measures necessary to ensure that the legal situation of disappeared persons whose fate or whereabouts have not been clarified and that of their relatives is regularized in accordance with article 24 (6) of the Convention, in fields such as social welfare, financial matters family law and property rights, without the need to declare that the disappeared person is presumed dead. In this connection, the Committee encourages the State party to provide, by law, for the issuance of declarations of absence by reason of enforced disappearance.

Legislation concerning the wrongful removal of children

43. The Committee notes with concern that national legislation does not adequately address and specifically criminalize the actions relating to the wrongful removal of children referred to in article 25 (1) of the Convention. The Committee regrets not having received sufficient information on the procedures in place to review and, if necessary, annul the adoption of children that originated from an act of enforced disappearance and to guarantee the right of disappeared children to have their true identity re-established (art. 25).

44. The Committee recommends that the State party:

(a) Review its criminal legislation with a view to incorporating as specific offences the acts described in article 25, paragraph 1, of the Convention and to provide appropriate penalties that take into account the extreme seriousness of the offences;

(b) Establish specific procedures for reviewing and, where appropriate, annulling any adoption, placement or guardianship that originated in an enforced disappearance.

D. Dissemination and follow-up

45. The Committee wishes to recall the obligations undertaken by States when ratifying the Convention and, in this connection, urges the State party to ensure that all the measures

it adopts, irrespective of their nature or the authority from which they emanate, are in full accordance with the obligations it assumed when ratifying the Convention and other relevant international instruments. The Committee particularly urges the State party to ensure the effective investigation of all enforced disappearances and the full satisfaction of the rights of victims as set forth in the Convention.

46. The Committee also wishes to emphasize the particularly cruel effect of enforced disappearances on the human rights of women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisals as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations, including identity substitution. In this context, the Committee places special emphasis on the need for the State party to ensure that gender perspectives and child-sensitive approaches are used in implementing the rights and obligations set out in the Convention.

47. The State party is encouraged to widely disseminate the Convention, its report submitted under article 29, paragraph 1, of the Convention, the written replies to the list of issues drawn up by the Committee and the present concluding observations, in order to raise awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the State party and the general public. The Committee also encourages the State party to promote the participation of civil society, in particular organizations of relatives of victims, in the actions taken in line with the present concluding observations.

48. In accordance with the Committee's rules of procedure, by 16 November 2019 at the latest, the State party should provide relevant information on its implementation of the Committee's recommendations as contained in paragraphs 12 (prohibition of enforced disappearance), 14 (the offence of enforced disappearance) and 32 (fundamental legal safeguards).

49. Under article 29, paragraph 4, of the Convention, the Committee requests the State party to submit, no later than 16 November 2024, specific and updated information on the implementation of all its recommendations and any other new information on the fulfilment of the obligations contained in the Convention, in a document prepared in accordance with paragraph 39 of the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention (CED/C/2). The Committee encourages the State party to promote and facilitate the participation of civil society, in particular organizations of relatives of victims, in the preparation of this information.
