

Japan Federation of Bar Associations Report
on the First Review of Japan under Article 29 (1) of the
International Convention for the Protection of All Persons
from Enforced Disappearance

July 12, 2018

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I. Introduction

This is the first review of Japan on the International Convention for the Protection of All Persons from Enforced Disappearance (hereinafter simply referred to as “Convention”). As it is obvious from past reviews under other human rights conventions, the State party tends to provide reports similar to it submitted in the first review for the second review and thereafter. Therefore, this first review will be especially important and the Japan Federation of Bar Associations (hereinafter referred to as “JFBA”) would like to request a careful review.

Further, the Government Report is obviously a mere list of texts of laws, and no reference is made to the practices of laws and systems in many parts. Here again, the JFBA would appreciate a detailed review looking into the details of such laws and systems, not being satisfied by a mere indication of the texts.

II. Issue of Abduction by North Korea

The government of Japan currently recognizes 17 Japanese citizens as victims of abduction by the Democratic People’s Republic of Korea (hereinafter referred to as “North Korea”), and the Government Report also states that the government “has identified that 17 Japanese citizens were abducted by North Korea between the 1970s and 1980s,”¹ however, does not clearly mention that there are many other Japanese citizens suspected of having been abducted by North Korea. In Japan, there are many cases of persons who have disappeared and who were possibly abducted by North Korea in addition to the aforesaid 17 citizens identified by the government, and the National Police Agency refers to “883 missing persons with respect to whom the possibility of abductions by North Korea cannot be ruled out.”²

The JFBA has accepted and investigated many cases of petition for human rights relief from the families of Japanese citizens suspected of having been abducted by North Korea. After investigating each case of petition involving human rights relief, the JFBA have compiled an investigation report and submitted a request to the Japanese government, asking the Japanese government to undertake sincere diplomatic efforts to rescue the

¹ The Government of Japan: “The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” (July 22, 2016), I Introduction; Paragraph 3
<http://www.mofa.go.jp/mofaj/files/000178427.pdf> (Japanese)

² Website of the National Police Agency
<http://www.npa.go.jp/bureau/security/abduct/list.html> (Japanese)

victims and provide support to the families of the victims involving the suspected cases of abduction by North Korea.

Efforts by the JFBA regarding the issues of the victims and suspected victims of abduction by North Korea include the following:

- 1 On March 27, 2000, the JFBA compiled a report identifying that it was highly probable that the 11 persons (of 8 cases in total) who disappeared from November 1977 through August 1978 had been abducted to North Korea, and requested the Japanese government and the Ministry of Foreign Affairs to take measures such as resuming intergovernmental negotiations for the protection of victims highly suspected of having been abducted by North Korea and strongly demanding confirmation of the whereabouts and return of the abductees. The JFBA also requested the Japanese government provide its full assistance to the families where they were compelled to file a petition for human rights relief to the United Nations or other international organizations with respect to this case³.
- 2 On September 17, 2002, at the first Japan-North Korea summit meeting, Kim Jong Il, General Secretary of North Korea, admitted and apologized for the abduction of Japanese citizens to Prime Minister, Junichiro Koizumi, and revealed the whereabouts of 14 citizens including 11 citizens of 8 cases suspected of abduction cases and that eight of those victims had already died.

On that occasion, the JFBA issued the comment of the President of the JFBA as of September 19, 2002 and requested the Japanese government [1] conduct a thorough investigation of the acts of abduction by North Korea as criminal offenses, elucidate the entire incidents of the cases, and call for appropriate punishments; [2] thoroughly reveal the truth with respect to the victims who had already died, including the background and cause of their death; [3] promptly realize a meeting of the survivors with their relatives and their return; and [4] strive to realize appropriate compensation for all damages incurred⁴.

- 3 On March 29, 2005, in relation to cases of petition for human rights relief for 16 citizens suspected of having been abducted by North Korea, the JFBA requested the Prime

³ The JFBA: “Cases of Petition for Human Rights Redress Regarding Suspected Abduction by North Korea (Request)” (March 27, 2000)

https://www.nichibenren.or.jp/activity/document/complaint/year/2000/2000_5.html (Japanese)

⁴ The JFBA: “President’s Comment on the Cases of Japanese Citizens Abducted by North Korea” (September 19, 2002)

https://www.nichibenren.or.jp/activity/document/statement/year/2002/2002_12.html (Japanese)

Minister and the Minister of Foreign Affairs to urge that North Korea confirm the whereabouts of the 16 citizens and return them to Japan and to fully cooperate with the petition for human rights relief filed by the families of the victims to international organizations, as well as asked the Commissioner General of the National Police Agency to direct the relevant Metropolitan and prefectural police departments to immediately conduct investigations about those 16 citizens to reveal the truth⁵.

- 4 On March 23, 2012, a petition for human rights relief with respect to eight persons suspected of having been abducted by North Korea was newly filed with the JFBA by their relatives against the Japanese government (Shinzo Abe, Prime Minister & Chief of the Headquarters for the Abduction Issue, and Keiji Furuya, Minister in charge of Abductions Issue) and the National Police Agency (Tsuyoshi Yoneda, Commissioner General of the National Police Agency).

The JFBA investigated the above-mentioned case of petition for human rights relief, and compiled an investigation report on August 23, 2013⁶.

In the investigation report, the JFBA recognized that the disappearance of the above-mentioned eight citizens were possibly abducted by North Korea, and on September 3 of the same year, it filed a request in the name of the President of the JFBA to the Prime Minister & Chief of the Headquarters for the Abduction Issue and the Minister for the Abduction Issue to undertake efforts to investigate the truth by requesting provision of information, etc., and, once the whereabouts of the above-mentioned eight citizens were confirmed, to take measures such as demanding their return as an issue of intergovernmental negotiations and make efforts to enable entire families to unite as soon as possible. Further, on September 9 of the same year, it made a request in the name of the President of the JFBA to the Commissioner General of the National Police Agency to direct the relevant Metropolitan and prefectural police departments to immediately conduct investigations and reveal the truth⁷.

In addition, other facts exist as follows:

⁵ The JFBA: “Case of Petition for Human Rights Redress for the Issue of Suspected Abduction by Democratic People’s Republic of Korea (Request)” (March 29, 2005)

https://www.nichibenren.or.jp/activity/document/complaint/year/2005/2005_4.html (Japanese)

⁶ The JFBA: “Investigation Report on the Case of Petition for Human Rights Redress with Respect to Victims of Abduction” (August 23, 2013)

https://www.nichibenren.or.jp/library/ja/opinion/hr_case/data/2013/complaint_130903.pdf (Japanese)

⁷ The JFBA: “Case of Petition for Human Rights Redress Relating to Victims of Abduction (Request)” (September 3 and September 9, 2013)

<https://www.nichibenren.or.jp/activity/document/complaint/year/2013/130903.html> (Japanese)

5 On December 27, 2012, the family of a suspected victim of North Korean abduction filed a petition with the Working Group on Enforced or Involuntary Disappearances of the Human Rights Council.

6 The families of the government-recognized victims of North Korean abduction whose safety is unknown and the families of suspected victims of North Korean abduction filed a petition with the International Criminal Court on January 24, 2018⁸, however, on April 4 of the same year, the International Criminal Court rejected the said petition on the grounds that the Court could only handle cases which occurred in or after 2007, in which Japan joined.

III. Issue of “Comfort Women” for the Japanese Army⁹

1 Recommendations sought by the JFBA

(1) The State party should ensure that public officials and leaders will desist from making thoughtless remarks regarding responsibility of the Government of Japan for violations committed against “comfort women.”

(2) The State party should humbly face the Concluding Observations of the Committee on the Elimination of Discrimination against Women in which the Committee regrets that the announcement of the bilateral agreement with the Republic of Korea in December 2015 “did not fully adopt a victim-centered approach” and urges to recognize “the right of the victims to a remedy, and accordingly provide full and effective redress and reparation, including compensation, satisfaction, official apologies and rehabilitative services,” and work on this issue faithfully with consideration given to the feelings of the victims.

2 Descriptions in the Government Report

No particular description is included.

⁸ Website of UA Zensen:

https://uazensen.jp/wp-content/uploads/2018/01/2018.01.24_%E6%8B%89%E8%87%B4%E5%95%8F%E9%A1%8C%E8%A7%A3%E6%B1%BA%E3%81%AB%E5%90%91%E3%81%91%E3%81%9F-ICC-%E5%9B%BD%E9%9A%9B%E5%88%91%E4%BA%8B%E8%A3%81%E5%88%A4%E6%89%80%E3%81%B8%E3%81%AE%E7%94%B3%E3%81%97%E7%AB%8B%E3%81%A6%E3%82%92%E5%BC%B7%E3%81%8F%E6%94%AF%E6%8C%81%E3%81%99%E3%82%8B.pdf (Japanese)

⁹ The JFBA: “Japan Federation of Bar Associations Report on Response to the tenth and eleventh Report of the Japanese Government of the International Convention on Elimination of All Forms of Racial Discrimination” (March 15, 2018)

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/Racial_discrimination_ja_10.11.pdf (Japanese)

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/Racial_discrimination_en_10.11.pdf (English)

3 Facts

- (1) The Committee on the Elimination of Discrimination against Women pointed out in its Concluding Observations on the Combined Seventh and Eighth Periodic Reports of Japan in 2016 that it “regrets” that “recently, there has been an increase in the number of statements from public officials and leaders regarding the State party’s responsibility for violations committed against ‘comfort women.’”

However, such statements by public officials and leaders have been repeatedly made. For instance, a spokesperson for the Republic of Korea’s (hereinafter referred to as “ROK”) Ministry of Foreign Affairs in a press conference on June 29, 2017 demanded that the statement by the Consul General of Japan in Atlanta that “the comfort women were not taken by force and were not sex slaves”¹⁰ be retracted and that Japan take recurrence prevention measures¹¹.

In November 2017, the incumbent mayor of Osaka expressed an opinion about “comfort women” that “they were (not sex slaves but) public prostitutes in the battlefields” corresponding to municipalization of the Japanese Military’s “comfort women” statue by its sister city, San Francisco¹².

- (2) The State party has repeatedly received suggestions from the human rights treaty bodies such as Human Rights Committee that measures in support of “comfort women” are inadequate and repeatedly received recommendations to protect the honor of the victims and ensure full recovery of damages.

The State party argues that the Asian Women’s Fund (hereinafter referred to as “Fund”) has made dedicated efforts by having carried out atonement projects in the Philippines, the ROK, Taiwan, the Netherlands and Indonesia. However, the Fund’s projects were not financed by government funds but by private donations, so it lacked the formality of state compensation for victims. Therefore, in the ROK

¹⁰ According to the Reporter Newspapers (e-edition) of the state of Georgia, USA, the Consul-General of Japan in Atlanta urged the City Council of Brookhaven, GA, to back off its decision to accept installation of a statue of a girl symbolizing “comfort women” in the park making remarks during an interview at that time. The Newspaper reported as of the 23rd that the Consul-General had said that “the comfort women were paid prostitutes,” however, the government of Japan protested that he “had not said ‘prostitutes.’” Further, the Newspaper posted a correction that it “was (Reporter) paraphrasing” in an article dated on the 27th, while it newly pointed out that “the Consul-General denied the women were sexually enslaved.”

¹¹ The Jiji Dot Com News: “Consul-General of Atlanta Should Back Off Comment = Urges Korea Regarding “Denial of Taking of Comfort Women” (June 29, 2017)
<http://archive.fo/pUBGW> (Japanese)

¹² The Asahi Shimbun (e-edition): “Osaka Mayer to End Sister City Relationship: ‘Relationship of Trust Destroyed’” (November 24, 2017)
<http://www.asahi.com/articles/ASKCS3DVMKCSPTIL00S.html> (Japanese)

and Taiwan where atonement projects were carried out, the majority of the people identified as “comfort women” refused the projects of the Fund. In Indonesia, atonement project was not carried out for individuals. China, East Timor, etc., were not included as recipients of atonement projects and the Fund was dissolved in March 2007. The amount of compensation itself was inadequate under the atonement project¹³.

Therefore, the UN human rights treaty bodies have repeatedly recommended the Government of Japan admit its legal responsibility and take state-led legislative and administrative measures separately from the Fund.

Further, the JFBA has also repeatedly requested the Government of Japan take recommendations by human rights treaty bodies solemnly and fulfill its legal obligations by admitting its legal responsibility and apologize as promptly as possible, creating victim relief legislation, taking measures to reinstate their dignity, providing monetary compensation and establishing an investigative body, etc., to reveal the truth¹⁴.

On December 28, 2015, the Japan-ROK Foreign Ministers’ Meeting was held in Seoul where an agreement was reached announcing that the issue of “comfort

¹³ The JFBA: “Report of the Japan Federation of Bar Associations in response to the Comments by the Government of Japan concerning the conclusions and recommendations of the Committee against Torture (CAT/C/JPN/CO/2) (Alternative Report)” (July 16, 2015)

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/alternative_report_ja2015.pdf (Japanese)

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/alternative_report_en2015.pdf (English)

¹⁴ The JFBA: “Japan Federation of Bar Associations Report on Response to the Second Report of the Japanese Government under Paragraph 1 of Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (February 25, 2013)

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/alternative_report_ja2013.pdf (Japanese)

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/alternative_report_en2013.pdf (English)

The JFBA: “Japan Federation of Bar Associations Report on Response to the Seventh, Eighth and Ninth Report of the Japanese Government of the International Convention on Elimination of All Forms of Racial Discrimination” (March 19, 2014)

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/Racial_discrimination_ja_7.8.9.pdf (Japanese)

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/Racial_discrimination_en.7.8.9.pdf (English)

Forecited “Report of the Japan Federation of Bar Associations in response to the Comments by the Government of Japan concerning the conclusions and recommendations of the Committee against Torture (CAT/C/JPN/CO/2) (Alternative Report)”

women” was resolved finally and irreversibly¹⁵.

In this agreement, the Government of Japan stated that “the issue of comfort women, with an involvement of the Japanese military authorities at that time, was a grave affront to the honor and dignity of large numbers of women” and “expresses ... most sincere apologies and remorse.” Further the Government of Japan promised that it would contribute funds to the foundation established by the Government of the ROK for the purpose of providing support for the former “comfort women” through budgetary measures of the Government of Japan. And then, the governments of Japan and the ROK announced that they “confirm that this issue is resolved finally and irreversibly.”

Based on this agreement, the Government of the ROK established the “Reconciliation and Healing Foundation” for the purpose of supporting former “comfort women” in July 2016, and in August of the same year, the Government of Japan contributed 1 billion yen to this Foundation through its budgetary measures and a certain amount of money was paid to some of the former “comfort women” and their bereaved families.

4 Reasons for seeking recommendations

- (1) The JFBA has been previously requesting not to make remarks which impair the dignity of former “comfort women”.

However, public officials and leaders are still making such remarks as aforesaid.

Therefore, the State party must ensure that public officials and leaders will refrain from making thoughtless remarks regarding responsibility of the Government of Japan for violations committed against “comfort women.”

- (2) Concerning the above Japan-ROK Agreement, there are arguments for and against in both countries, and criticism persists that it does not reflect the will of the victims in light of previous recommendations of the human rights treaty bodies. With respect to this point, the Committee on the Elimination of Discrimination against Women indicated in its Concluding Observations on the Combined Seventh and Eighth Periodic Reports of Japan made in 2016 that it “regrets” that “the announcement of the bilateral agreement with the Republic of Korea, which asserts that the ‘comfort women’ issue ‘is resolved finally and

¹⁵ Website of the Ministry of Foreign Affairs
http://www.mofa.go.jp/mofaj/a_o/na/kr/page4_001667.html (Japanese)
https://www.mofa.go.jp/a_o/na/kr/page4e_000365.html (English)

irreversibly' did not fully adopt a victim-centered approach," and urged to recognize "the right of the victims to a remedy, and accordingly provide full and effective redress and reparation, including compensation, satisfaction, official apologies and rehabilitative services," etc.

The JFBA also requests the State party to accept such recommendations in good faith and realize them as priority issues¹⁶.

Accordingly, the State party should address this issue sincerely considering the feelings of the victims, based on the recommendations by the international community towards resolving this issue.

IV. Individual Communications Procedures (List of Issues, para. 2; Art. 31)

As described in the Government Report, in April 2010, the Division for Implementation of Human Rights Treaties was established by the Japanese government in the Ministry of Foreign Affairs and started to make preparation for the introduction of the individual communications procedures¹⁷. According to the Ministry of Foreign Affairs, the preparatory work required for the introduction of the individual communications procedures, such as studying cases of the individual communications, has already been completed by the Division for Implementation of Human Rights Treaties. However, no progress has been made although more than eight years have passed since then.

All that is needed to introduce the individual communications procedures is merely for the Cabinet to make the optional declaration under Article 31 of the Convention, which could be immediately realized once the Japanese government decides to do so.

V. National Human Rights Institution (List of Issues, para. 3)

In 1998, the Human Rights Committee clearly recommended for the first time that the Japanese government should establish a national human rights institution (CCPR/C/79/Add.102). In 2002, the Japanese government submitted the Human Rights Protection Bill to the Diet, however, the Bill covered only discrimination and ill treatment for special redress and the aspect of human rights violation redress by the public authority

¹⁶ The JFBA: "President's Comment on the Concluding Observations of the Committee on the Elimination of Discrimination against Women" (March 16, 2016)

https://www.nichibenren.or.jp/activity/document/statement/year/2016/160316_2.html (Japanese)

¹⁷ Forecited: "The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)" Paragraph 165

was not fully considered, and there was rather a danger of violating the freedom of expression. Therefore, the JFBA opposed the Bill¹⁸, and as public opinion was also against it, the Bill was dropped.

However, the necessity and urgency to establish a national human rights institution independent of the government based on the Paris Principles remain unchanged, and the treaty bodies, etc., continued to make recommendations to the State party to establish such an institution. In 2008, in response to the recommendation made by the First Universal Periodic Review (UPR) of the Human Rights Council, the Japanese government represented that “Accept to follow up.”

The Ministry of Justice consulted with the JFBA as well, and in 2012 under the administration of the Democratic Party of Japan, the Draft Bill on the Establishment of a Human Rights Commission¹⁹ was submitted to the Diet. The Bill overcame issues that the Human Rights Protection Bill had, and the Committee was formed as a committee of “being independent from the government in accordance with the Paris Principles” under Article 3 of the National Government Organization Act. Therefore, the Bill could be evaluated despite shortcomings²⁰.

However, the Bill was scrapped due to the dissolution of the House of Representative at the end of the same year.

The Human Rights Council and other treaty bodies have continued to make recommendations to the Japanese government to establish a committee since then, and it is appreciated that the Japanese government has been making a positive response to such recommendations that it “accepts to follow up” up until now, however, no specific schedule

¹⁸ Resolution of the JFBA’s General Meeting: “Resolution Calling for Full Implementation of International Human Rights Norms in Japan -Toward Immediate Establishment of Human Rights Safeguards including Establishment of Individual Complaint Procedures and an Act on the Elimination of Discrimination against Persons with Disabilities-” (May 30, 2008)

https://www.nichibenren.or.jp/activity/document/assembly_resolution/year/2008/2008_1.html
(Japanese)

<https://www.nichibenren.or.jp/en/document/statements/20080530.html> (English)

¹⁹ Website of the Ministry of Justice

http://www.moj.go.jp/JINKEN/jinken03_00148.html (Japanese)

²⁰ The JFBA: “President’s Statement on the ‘Draft Bill on the Establishment of a Human Rights Commission’ Approved by the Cabinet” (September 19, 2012)

<https://www.nichibenren.or.jp/activity/document/statement/year/2012/120919.html> (Japanese)

<https://www.nichibenren.or.jp/en/document/statements/120919.html> (English)

The JFBA: “Opinion Calling for the Establishment of a National Human Rights Institution” (February 20, 2014)

https://www.nichibenren.or.jp/activity/document/opinion/year/2014/140220_5.html (Japanese)

<https://www.nichibenren.or.jp/en/document/opinionpapers/20140220.html> (English Summary)

has been indicated.

The JFBA would like that more specific recommendations will be made to the State party, asking within what time span it intends to establish a national human rights institution.

VI. State of Emergency Restrictions in the Context of draft constitutional proposals (Art. 1)

In Japan, the Liberal Democratic Party, which is the current ruling party, published its draft constitutional proposals in 2012, which includes a state of emergency provisions. It provides that, in case of any armed attack from the outside, confusion of public order by a civil strife, large-scale disaster caused by an earthquake, etc., and other states of emergency stipulated by the laws, if the Prime Minister issues a declaration of a state of emergency, the Cabinet may enact cabinet orders which have the same force as laws and the Prime Minister may give essential instructions to the heads of local governments and obligate citizens to obey are also included. Further, the Liberal Democratic Party announced “four items of constitutional amendment” at its party convention in March 2018, include the state of emergency item provides that, at the time of “a great earthquake or any other abnormal and large-scale disaster,” “the Cabinet may enact cabinet orders to protect the life, body and property of the citizens”²¹.

Neither of these two proposals includes either a provision to comply with Article 1 of the Convention which provides that no exceptional circumstances may be invoked as a justification for enforced disappearance or a provision to comply with Article 4 of the International Covenant on Civil and Political Rights (hereinafter referred to as “ICCPR”).

In Japan, in the wake of the Great Kanto Earthquake in 1923, there were incidents in which a large number of Chinese and Koreans were massacred²² and anarchists and socialists were killed by the military police and the civilian police force while a part (Articles 9 and 14) of Martial Law (Dajokan Fukoku No. 36 of 1882) (the Law centralizing the authorization to the military at the time of the war or incident) was enforced as an emergency imperial edict (Article 8 of the Constitution of the Empire of Japan 1889). In light of this historical experience, no state of emergency clause was purposely included in the current Constitution after World War II on the grounds that measures taken at the sole

²¹ The Sankei Shimbun: “Full Text of the Preliminary Draft of the Provisions of the ‘Four Items of Constitutional Amendment’” (March 25, 2018)

<https://www.sankei.com/politics/news/180325/pl1803250054-n1.html> (Japanese)

²² The JFBA: “Case of Petition for the Great Kanto Earthquake Human Rights Redress - Recommendation and Investigation Report” (July 2003)

discretion of the government in an emergency situation must be prevented to the extent possible to thoroughly realize a democratic government and fully protect the rights of the people.

Considering that there is a risk that, even though such effect is temporary, those provisions could lead to human rights violations by suspending constitutional establishment, the JFBA opposes amendment of the Constitution to create a state of emergency clause from the standpoint of seeking adherence to the constitutionalism and respecting the basic principles of the Constitution of Japan including popular sovereignty, respect of fundamental human rights, permanent pacifism, etc.²³

VII. Conditions under Which Orders of Deprivation of Liberty May Be Given (Art. 17)

1 Recommendations sought by the JFBA

- (1) The State party should improve practices so that no suspect will be deprived of the freedom of movement without warrant.
- (2) The State party must ensure the rights of inmates, both sentenced and unsentenced, to confidentially consult with counsel in line with international human rights standards²⁴.
- (3) The State party should ensure the rights of inmates, both sentenced and unsentenced, to confidentially exchange letters with counsel without censor in line with international human rights standards²⁵.
- (4) The State party should not prohibit counsel from bringing electronic devices into an interview room and using such devices when holding an interview with inmates

²³ The JFBA: “Opinion Opposing to Creation of a State of Emergency Clause (Emergency Authorization) in the Constitution of Japan” (February 17, 2017)

https://www.nichibenren.or.jp/library/ja/opinion/report/data/2017/opinion_170217_03.pdf (Japanese)

https://www.nichibenren.or.jp/en/document/opinionpapers/20170217_3.html (English Summary)

²⁴ The JFBA: “Report on the 6th Periodic Report of the Government of Japan based on Article 40(b) of the International Covenant on Civil and Political Rights -Proposed Recommendations and their Background Circumstances that should be Included in the Concluding Observations to be Prepared by the Human Rights Committee-” (March 19, 2014) p. 96

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/Alt_Rep_JPRep6_ICPR_ja140612.pdf (Japanese)

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/Alt_Rep_JPRep6_ICPR140612.pdf (English)

²⁵ Forecited: “Report on the 6th Periodic Report of the Government of Japan based on Article 40(b) of the International Covenant on Civil and Political Rights-Proposed Recommendations and their Background Circumstances that should be Included in the Concluding Observations to be Prepared by the Human Rights Committee-” p. 96

in penal institutions, etc.²⁶

- (5) The State party should widely allow inmates on death row to have contact with the outside (by meetings or correspondence), when they need to make such contact for realization of their own human rights or protection of their rights, and such contact with the outside will not cause harm to the discipline and order of the penal institutions. Also, it should ensure strict confidentiality of the meetings as well as exchange of letters between inmates on death row and their counsel, including their prospective counsel, regardless of whether they are for civil or criminal cases²⁷.

2 Descriptions in the Government Report/Matters of concern

- (1) According to the Government Report, Article 31 of the Constitution provides that “no person shall be deprived of life or liberty except according to procedure established by law.” Furthermore, Article 33 of the Constitution provides that “no person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged,” and Article 34 of the Constitution provides that “no person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel”²⁸. Further, according to Articles 199, 207, and 210 of the Code of Criminal Procedure, an arrest or detention that deprives a person of liberty shall be conducted upon warrant issued by a judge except for the arrest of a flagrant offender. According to Article 199 of the said Code, “a suspect shall be arrested only when there exists sufficient probable cause to suspect that an offense has been committed by the suspect and when there is necessity for arrest.” According to Article 60 of the said Code, the detention of a suspect shall be conducted only when there is probable cause to suspect that he/she has committed a crime and when the suspect has no fixed residence, may conceal or destroy evidence, or may flee. As

²⁶ Forecited: “Report on the 6th Periodic Report of the Government of Japan based on Article 40(b) of the International Covenant on Civil and Political Rights -Proposed Recommendations and their Background Circumstances that should be Included in the Concluding Observations to be Prepared by the Human Rights Committee-” p. 96

²⁷ Forecited: “Report on the 6th Periodic Report of the Government of Japan based on Article 40(b) of the International Covenant on Civil and Political Rights -Proposed Recommendations and their Background Circumstances that should be Included in the Concluding Observations to be Prepared by the Human Rights Committee-” p. 57

²⁸ Forecited: “The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 57

pointed out above²⁹, the Government Report states that conditions for deprivation of liberty are stipulated.

- (2) According to Articles 203 and 204 of the Code of Criminal Procedure, an arrested suspect shall be immediately informed of the essential facts of the suspected crime and the fact that the suspect may appoint defense counsel, and then give the suspect an opportunity for explanation. In addition, according to Article 39 of the said Code, the accused or the suspect have the right to have an interview with counsel³⁰.
- (3) The Government Report states that, detainees are guaranteed rights to have contact with the outside world through correspondence between detainees and their counsel³¹.
- (4) While the Government Report states that Article 39 of the Code of Criminal Procedure guarantees the right of the accused or the suspect to have an interview with counsel³², it does not mention whether it is allowed to bring in and use electronic devices when the counsel conducts an interview with a detainee in penal institutions.
- (5) The Government Report states that detainees are guaranteed rights to make or receive contact with the outside world through visits or correspondence between detainees and their counsel³³. However, it does not mention whether it is allowed for a person requesting retrial and his/her counsel for such retrial to conduct an interview or exchange letters with each other in penal institutions.

3 Facts

- (1) The Government Report indicates that “no person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense

²⁹ Forecited: “The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 58

³⁰ Forecited: “The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 59

³¹ Forecited: “The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 81

³² Forecited: The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 59

³³ Forecited: The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 81

with which the person is charged,”³⁴and that “an arrest or detention that deprives a person of liberty shall be conducted upon warrant issued by a judge except for the arrest of a flagrant offender”³⁵.

Further, the Government Report indicates that an arrested suspect shall be immediately informed of the essential facts of the suspected crime and the fact that the suspect may appoint defense counsel and then give the suspect an opportunity for explanation and the accused or the suspect have the right to have an interview with counsel. However, there exist the following actual circumstances:

[1] Cases of illegal physical restraint without warrant issued by a judge frequently arise. Shown below are cases in which a suspect was taken into custody or deprived of freedom of movement despite the absence of a warrant authorizing physical restraint of the suspect having been issued:

A Decision of Tokyo District Court, August 13, 1981, Hanrei Jiho No. 972, p. 136

This is a case in which a suspect who voluntarily accompanied was housed in a hotel with six investigators for two days before arrest with consent and a vehicle driven by an investigator was used for transportation between the hotel and the police station, and it was recognized that the suspect was placed in a situation which should be deemed virtually the same as arrest.

B Judgment of Fukuoka High Court, December 13, 2007

The act of a police officer who prevented a suspect from leaving for 40 minutes despite his will to leave after the end of an investigation and ancillary procedures upon voluntary appearance was determined to be illegal.

C Judgment of Tokyo District Court, July 22, 2009

When police officers questioned a suspect who was driving a vehicle and examined his belongings, although the suspect clearly stated to them his intention to reject such examination and repeatedly suggested his wish

³⁴ Forecited: The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 57

³⁵ Forecited: The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 58

to be promptly released, the police officers surrounded the vehicle in which the suspect rode with police vehicles and police officers and relentlessly asked to accept the belongings examination.

Further, police officers continued with acts such as flashing light in the face of the suspect and inside of his vehicle many times by flashing on and off flashlights, continuously knocking with short intervals on the windows of the vehicle in which the suspect rode, etc., for about two and half hours. Despite that the suspect said to the police officers, “now I will go, will you get out of my way, please,” the police officers approached the vehicle in which the suspect rode and prevented the vehicle from moving.

Such acts of keeping the suspect for as long as three and half hours by surrounding his vehicle with patrol vehicles so that it is virtually impossible to move against the will of the suspect, who repeatedly insisted his wish to leave were determined to be circumvention of the principle of warrant and illegal.

D Judgment of Kobe District Court, October 29, 2015

Police officers did not allow a suspect to go home against his wish and the suspect underwent interrogation for two days being housed in the interrogation room. During that period, the suspect was forced to sleep in an unnatural position just using a blanket and two chairs in the interrogation room. The compartment in which the interrogation room where the suspect was housed was auto-locked, and while the suspect was asleep, police officer was on guard sitting in a chair in the hallway outside the interrogation room, so the suspect was supposed to have been in a situation where he could not get out of the compartment in which the interrogation room is located.

Moreover, the police officers housed the suspect at a hotel for another two days following the aforesaid two days, and interrogated him for a long period of time from morning until night. During these four days, the police officers always accompanied the suspect whenever he went to the smoking area or the restroom inside the police station as well as when he went out of the police station, and did not allow the suspect to move except by police vehicle, prevented the suspect from fleeing and restricted the suspect’s freedom of action at all times.

Later, the former suspect filed a claim against the national Government seeking compensation, and it was determined that the interrogation in the interrogation room being housed for two nights and the interrogation which continued for four nights and five days while being housed were illegal interrogations in violation of the proviso to Article 197(1) of the Code of Criminal Procedure.

E Case under Keisatsugaku ronshu (The Journal of Police Science) Vol. 19, No. 11, p. 76, 25

In the case in which a police officer found a suspect late at night, had him housed in the protection room after he had voluntarily accompanied the police officer, and arrested him with a warrant at 11:00 a.m., it was recognized that the suspect had been virtually arrested when they had had him housed in the protection room around 2:00 a.m. (case of dismissal of request for detention).

[2] There is an inappropriate case in which the suspect's freedom of action is significantly restricted without warrant issued by a court (case of Supreme Court, February 29, 1984; Saiko Saibansho Keiji hanreishu (Supreme Court Reports (criminal cases) Vol. 38, No. 3, p. 479).

Early in the morning, the police officers asked the suspect to voluntarily go to the police station from his home. As the suspect submitted a report asking for accommodations at some inn, they had him lodge at an accommodation arranged by the police for four nights, and on the first night, four or five investigating officers also stayed at the same accommodation, of which one lodged in the room next to the suspect's. After that, they changed the accommodation, and although investigators did not stay at the same place, they remained on a stakeout in the surrounding area, and the suspect was transported between the accommodation and the police station by a police vehicle together with an investigator in the same car and underwent interrogation for a long period of time from morning until night for 5 consecutive days.

In this case, the Supreme Court determined that it did not exceed the limits of investigation on a non-compulsory basis.

However, there was a case in which freedom of movement was virtually restricted for a long period of time without a warrant being issued by a court.

(2) Cases violating the rights of an accused/suspect to conduct an interview with counsel frequently arise³⁶.

[1] According to the Sixth Periodic Report of the Government of Japan based on Article 40-1(b) of the ICCPR (CCPR/C/JPN/6), the Japanese Government states that the suspect is “notified of the right to appoint legal counsel when they record his/her statements.” However, the notification occurs after the suspect is officially arrested and completes a set of activities, including being taken in to the police station, physical examination, collection of photos and fingerprints and booking. Some suspects are not notified until he/she has completed interrogation under effective physical restraint with the pretext of voluntary appearance, etc., which may last more than 10 hours. There are many reported cases in which confessions have been extracted before the “suspect’s explanations” are recorded. Any suspect should be notified of his/her right to appoint legal counsel when he/she is effectively physically restrained, not when the statements being given by the suspect are being recorded. The rights of the arrested to receive support of legal counsel are violated.

There are many cases in which a request by counsel to see a suspect was simply rejected on the grounds that the “interrogation was continuing” or was left unmet for many hours until the interrogation session was completed. Some counsels have said that public prosecutor’s assistant officer denied their requests by saying “no interview rooms are available in the prosecutors’ buildings.”

Violations of the unsentenced detainee’s rights to have confidential communication with a counsel have been reported. As for practices in penal institutions and substitute prisons that infringe upon the detainee’s rights to have confidential communication with counsel, counsel members have

³⁶ The JFBA: “Report on the 6th Periodic Report of the Government of Japan based on Article 40 (b) of the International Covenant on Civil and Political Rights -Matters and their Background Circumstances that should be Included in the List of Issues to be Prepared by the Country Report Task Force-” (May 9, 2013) p. 82

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/Alt_Rep_JPRep6_ICPR_ja.pdf (Japanese)

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/Alt_Rep_JPRep6_ICPR.pdf (English)

and forecited: “ Report on the 6th Periodic Report of the Government of Japan based on Article 40(b) of the International Covenant on Civil and Political Rights -Proposed Recommendations and their Background Circumstances that should be Included in the Concluding Observations to be Prepared by the Human Rights Committee-” p. 94

submitted complaints as follows:

- [2] The following are examples showing the current circumstances where practices that infringe the rights to conduct interviews and communications between a suspect/accused and counsel are frequently repeated.
 - A There is a case in which a former attendant of a juvenile filed a suit against the Japanese government for not allowing an interview to be continued, claiming that, when the attendant attempted to conduct an interview on the court premises, a judge barred the request and did not allow the attendant to conduct an interview with the juvenile, and when the attendant requested to have an interview with the juvenile on the court premises, the judge forced them to have a witness present at the meeting (date of filing a lawsuit: April 14, 2017).
 - B Cases have been reported in which police officers relentlessly interrogate detainees to force them to reveal details concerning their interviews with counsel at substitute prisons.
- (3) Cases are reported in which exchanges of letters between suspects/accused and counsel are disturbed³⁷.

Cases where exchanges of letters between suspects/accused are interfered with occur with regular frequency even now. Some examples are explained as follows:

- [1] Case of a lawsuit claiming that police personnel interfered with an interview by masking a letter without consent which the suspect intended to send to his counsel, etc., (date of filing a lawsuit: June 6, 2016). This case is pending in the second instance, however, the court of the first instance admitted the plaintiff's claim partly, and it was determined that the act of masking by the police personnel is illegal under the State Redress Act.
- [2] Case of a lawsuit claiming that a detention officer interfered with an interview by not allowing delivery of a suspect's letter addressed to counsel (date of filing a lawsuit: April 24, 2017).
- [3] Case of a lawsuit claiming that the rights of interviews and communications was violated as a detention officer of the police station rejected and prevented

³⁷ Forecited: "Report on the 6th Periodic Report of the Government of Japan based on Article 40(b) of the International Covenant on Civil and Political Rights -Proposed Recommendations and their Background Circumstances that should be Included in the Concluding Observations to be Prepared by the Human Rights Committee-" p. 95

the counsel from receiving (i) a letter of apology addressed to the victim, (ii) a letter of resignation addressed to the employer, and (iii) requests in relation to house-moving from the suspect on the grounds that they were addressed to a third party (date of filing a lawsuit: March 10, 2017).

- (4) Cases are reported where the rights of interviews and communications is violated when counsel attempted to bring electronic devices into interview rooms as part of their defense activities³⁸.

As part of the efforts to defend the suspect's rights, counsel occasionally record instances of physical abuse or torture suffered by detainees and immediately have them reproduce the experiences of the detainees who have been subjected to coercive interrogations in a closed-door setting so as to record the same. Detention centers, however, uniformly and completely prohibit taping or videotaping detainees within interview rooms using cameras and/or electromagnetic devices. Some wardens of detention centers have recently filed demands seeking disciplinary measures against counsels who have made tape or video recordings with the bar associations to which they belong.

In January 2011³⁹ and July 2012,⁴⁰ the JFBA disclosed statements urging detention centers to stop their acts of violation against the Covenants. However, the detention center authorities have refused to accept such recommendations, and continue to violate the rights to conduct interviews and communications. Some counsels complain that officers would stand outside the interview room to watch them and the detainees and that they immediately intruded into the room when they saw them trying to take out a mobile phone. Other counsels complained that detention center officers had told them that they would not let them leave if they did not delete the images of detainees stored in their mobile phones. They had been obliged to delete them, they said. Some examples are shown below:

³⁸ Forecited: "Report on the 6th Periodic Report of the Government of Japan based on Article 40(b) of the International Covenant on Civil and Political Rights -Proposed Recommendations and their Background Circumstances that should be Included in the Concluding Observations to be Prepared by the Human Rights Committee-" p. 95

³⁹ The JFBA: "Opinion on photographing (incl. video recording) and audio recording in the interview rooms" (January 20, 2011)

https://www.nichibenren.or.jp/activity/document/opinion/year/2011/110120_3.html (Japanese)

⁴⁰ The JFBA/The Kanto Bar Association/The Tokyo Bar Association/The Dai-ichi Tokyo Bar Association/The Daini Tokyo Bar Association: "Proposal concerning photographing, etc., in the interview rooms" (July 31, 2012)

<https://www.nichibenren.or.jp/activity/document/opinion/year/2012/20120731.html> (Japanese)

- [1] Case in which the counsel is not allowed to enter the interview room when he has a mobile phone, video camera, etc.
 - [2] Case of a lawsuit claiming that an interview was interfered with as the counsel was denied entry to a detention center on the grounds that he had a digital camera at the time of a visit, even though such camera had no communication function (date of filing a lawsuit: September 19, 2013)
 - [3] Case of a lawsuit claiming that an interview was interfered with as the counsel was forced by a detention center officer to stop an interview when he was playing a DVD storing recorded audio data which was expected to be requested by the prosecutor, using a notebook computer carried by the counsel in an interview room of a detention center (date of filing a lawsuit: July 23, 2015)
 - [4] Case of a lawsuit claiming that an interview was temporarily halted by a detention officer when the counsel was interviewing the suspect using a map function of a smartphone in the interview room (date of filing a lawsuit: May 23, 2016)
 - [5] Case of a lawsuit claiming that an interview was interfered with when the counsel attempted to interview a detainee at a detention center but the detainee was not informed of the fact on the grounds that the counsel carried a mobile phone (date of filing a lawsuit: June 15, 2016)
- (5) Cases are reported where the rights of those requesting retrial to interview and communicate with counsel are violated⁴¹. The actual circumstances and some examples are shown below:

Legally, there is no limitation on the number of outside persons with whom a detainee is allowed to have contact, and thus any person should be able to contact with a detainee as long as requirements of laws are met.

However, in reality, a detainee is not allowed to have contact with more than five outside persons except for his/her relatives and counsel, and such practices are common for every penal institution. After the enforcement of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees (hereinafter referred

⁴¹ Forecited: “Report on the 6th Periodic Report of the Government of Japan based on Article 40(b) of the International Covenant on Civil and Political Rights -Proposed Recommendations and their Background Circumstances that should be Included in the Concluding Observations to be Prepared by the Human Rights Committee-” p. 56

to as “Penal Detention Facilities Act”) in 2007, the operational practices of such contacts with the outside world had initially become more relaxed than before, however, afterwards operational practices became strict. Moreover, it has become widely seen that, in the event that it becomes impossible to have contact with a person for certain reasons for which permission was once given, no permission will be given to have contact with another person even if application is filed anew for such other person.

Further, it is very rare that contact with the outside world is permitted at the discretion of the warden of a facility.

Besides, even an interview with counsel requesting retrial is made in the presence of staff of the facility in principle, and even letters exchanged with counsel are inspected in principle.

In a case where the counsel filed for a suit for claim on national compensation on the grounds that staff of the facility was present at an interview with the counsel requesting retrial, the court judged that such presence was illegal, upholding the request of the counsel, and such judgment was maintained by the Supreme Court as well (finalized by the judgment dated December 10, 2013). Consequently, some report that interviews with counsel requesting retrial are now conducted without the presence of staff, while others report that staff continues to be present as before.

Moreover, in a case from the time when it was common to have detention center personnel present even at interviews with the counsel for retrial or prospective counsel for retrial, the Hiroshima District Court judged on January 30, 2013 that it was illegal that staff had been present at a meeting to discuss a request for retrial between counsel and an inmate on death row, awarding damages, and this judgment was maintained by the Supreme Court as well (finalized by the judgment dated November 18, 2014).

Further, another lawsuit is reported, which was filed claiming that the rights of interviews and communications was violated by limiting the interview time and prohibiting the use of an IC recorder as well as requesting the presence of staff on the grounds that, upon a meeting related to a retrial request with an inmate on death row, the counsel (i) brought an IC recorder to the interview, (ii) brought a psychiatrist with him and (iii) attempted to have the psychiatrist attend the interview (date of filing a lawsuit: March 5, 2015).

And still another lawsuit is reported, in which counsel who had attempted to

conduct an interview with an inmate on death row for the purpose of discussing matters for retrial request was forced to accept the presence of staff at the interview, and therefore the counsel obtained a provisional injunction decision from the court (a decision to the effect that the presence of staff must not be required for the meeting between the counsel and the inmate on death row for the purpose of discussing matters for retrial request during the period until the decision of the first trial of the current injunction suit) and then requested an interview with the inmate on death row for the purpose of discussing matters for retrial request after, however, the warden of a detention center did not allow an interview without the presence of staff, and the counsel claimed that such act of the warden interfered with the interview (date of lawsuit: June 27, 2017).

With respect to a meeting between counsel and an inmate on death row for the purpose of requesting retrial, it is reported from the counsel in charge of such cases that the operational practices of detention centers have been gradually relaxed and the presence of staff is no longer required since the aforesaid decision of the Supreme Court dated December 10, 2013 was finalized. However, at some detention centers, it is reported that such presence of staff is still required for some inmates on death row and their rights to conduct interviews and communications is still violated in some cases.

VIII. Rights to Obtain Information on a Person Deprived of Liberty (Art. 18)

1 Recommendations sought by the JFBA

The State party should guarantee the rights of relatives of any person deprived of liberty and their representatives or attorneys to know the whereabouts of such person deprived of liberty (when the person is transferred to another detention facility, this shall include such destination and the authorities in charge of such transfer).

The State party should establish a medical record disclosure system to disclose medical records to persons deprived of liberty (or their bereaved families in the case of their death) and their representatives or attorneys.

2 Descriptions in the Government Report

The Government Report states that “in principle, the Immigration Bureau does not willingly provide information concerning a foreign national lawfully deprived of liberty and detained by the Immigration Bureau even to persons with legitimate interest, to protect personal information of the detainee. However, a detainee is permitted to send

and receive letters and use a telephone except for cases where it is deemed that there is a risk of hindering security measures, and it is possible for the detainee himself/herself to contact any person to whom the detainee wishes to notify only the information referred to in Article 18, paragraph 1 (except for subparagraphs (e) and (g)) of the Convention”⁴².

However, it does not mention the handling of cases where a detainee cannot notify his/her relatives, etc., for health reasons, etc.

In the Government Report, no specific descriptions are included regarding access to medical records of persons deprived of liberty.

3 Facts

(1) Rights to know whereabouts of persons deprived of liberty

The right to know information on the whereabouts of persons deprived of liberty and detained by the Immigration Bureau is not provided for by laws even for the relatives of such persons deprived of liberty and their representatives or attorneys. Further, in the event that an inmate is transferred to another penal institution, the laws do not provide for the rights of such inmate’s relatives and their representatives or attorneys to know the penal institution to which such inmate has been transferred.

The Act on the Protection of Personal Information Held by Administrative Organs (hereinafter referred to as “Administrative Organs Personal Information Protection Act”) provides for a person’s right to request disclosure of the Retained Personal Information of the person concerned, and in cases where he/she is a minor or an adult ward, the right to request disclosure is guaranteed to his/her statutory representative as an exception (Article 12 of the Administrative Organs Personal Information Protection Act).

Accordingly, in the case where a person deprived of liberty is a minor or a person under adult guardianship, his/her statutory representative is able to request disclosure of the Retained Personal Information including the whereabouts of the person deprived of liberty, however, except for such cases, the rights of relatives, etc., to request disclosure of Retained Personal Information is not allowed.

Therefore, although it is possible for a person deprived of liberty to notify

⁴² Forecited: “The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 97

his/her relatives, etc., of the facility at which he/she is detained, in the case where such person deprived of liberty does not notify the relatives, etc., for health reasons, etc., the opportunity to know the whereabouts of a person deprived of liberty is not guaranteed to the relatives, etc.

(2) Access to medical records

An inmate does not know what kind of medical care he/she will receive. An official directive of the Minister of Justice provides that medical treatment information shall be provided to inmates⁴³, but in reality, such provision is extremely inadequate. Moreover, Article 45 of the Administrative Organs Personal Information Protection Act excludes “Retained Personal Information pertaining to a judgment in a criminal case or juvenile case, a disposition executed by a public prosecutor, public prosecutor’s assistant officer, or judicial police official, execution of a punishment or protective measure, post-incarceration rehabilitation services, or pardon” from the application of Article 12 of the Act. Accordingly, even if an inmate, etc., requests disclosure of his/her medical treatment information based on the Administrative Organs Personal Information Protection Act, it will be refused on grounds of Article 45. In addition, disclosure of medical treatment records will not be approved in the official directive, either, and such disclosure of medical treatment records will be limited to cases of evidence preservation procedures, etc. Further, medical treatment records are not disclosed in response to an investigation of petition for human rights redress by the human rights protection committee of a bar association, either⁴⁴. Medical treatment records are not disclosed even to a relative of an inmate.

In the event that an inmate or a foreign national detained by the Immigration Bureau has died, the cause and date of such death is notified to his/her bereaved family⁴⁵. However, the medical treatment records are not disclosed to bereaved families in principle, and even if postmortem inspection is performed, the results

⁴³ Ministry of Justice: “Official Directive Concerning Handling of Medical Treatment Records and Provision of Medical Treatment Information of Detainees” (Ministry of Justice Official Order (Corrective/Medical) No. 816 dated February 14, 2007) Article 13

<http://www.moj.go.jp/content/001174864.pdf> (Japanese)

⁴⁴ The JFBA: “Proposal for Radical Reform of Medical Care at Penal Institutions” (August 22, 2013) p. 14

https://www.nichibenren.or.jp/library/ja/opinion/report/data/2013/opinion_130822.pdf (Japanese)

⁴⁵ Penal Detention Facilities Act, Article 176; Ordinance for Treatment of Inmates and Detainees, Article 42, paragraph 2

are not generally reported to the bereaved family.

As a result of new legislation in 2012⁴⁶, an autopsy is performed now also in cases of suspicious death for which no autopsy used to be performed. However, the autopsy report is submitted only to the police and not disclosed to the bereaved family. Therefore, even if a notice is given by the penal institution or the Immigration Bureau, it is highly probable that the specific cause of death of an inmate or a foreign national will not be clarified.

Under the Penal Detention Facilities Act, a system was established under which the Penal Institution Visiting Committee visits penal institutions and gives their opinion to the head of such penal institutions. As a result, there are cases in which the cause of death was revealed as fatalities in penal institutions.

However, it is left to the independent decision of the Penal Institution Visiting Committee whether the Committee acts or not, and the legal system is not sufficiently capable of examining the cause of death of inmates fairly and appropriately in a transparent manner⁴⁷.

4 Reasons for seeking recommendations

Therefore, the State party should establish a system in order to guarantee the rights of relatives of a person deprived of liberty and their representatives or attorneys to know the whereabouts of such person deprived of liberty (in the case where the person is transferred to another detention facility, this shall include such destination and the authorities in charge of such transfer), considering who shall be entitled to request disclosure, and how the institutions should react in response to such request for disclosure.

Further, the State party should create a medical treatment record disclosure system to disclose medical treatment records to persons deprived of liberty (or their bereaved families in the case of their death) and their representatives or attorneys⁴⁸.

IX. Protection of Personal Information (Art. 19)

1 Recommendations sought by the JFBA

The database of DNA profile records concerning the suspects and DNA profile

⁴⁶ Act concerning the Cause of Death or Identity Investigation of Bodies Treated by the Police

⁴⁷ The JFBA: "Proposal concerning Establishment of System for Postmortem Examination and Autopsy for the Purpose of Promoting Cause of Death Investigation" (April 19, 2013), p. 17

https://www.nichibenren.or.jp/library/ja/opinion/report/data/2013/opinion_130419.pdf (Japanese)

⁴⁸ Forecited: "Proposal for Radical Reform of Medical Care at Penal Institutions"

records concerning the materials left at the scene currently operated by the National Police Agency should be constructed and operated by laws, not by the regulations of National Public Safety Commission.

2 Descriptions in the Government Report

The Government Report describes as follows:

- (1) Necessary procedures concerning DNA profile records are established in the Regulation concerning Collection and Use of DNA Profile Records and are properly implemented in accordance with the Administrative Organs Personal Information Protection Act⁴⁹.
- (2) In accordance with Articles 5 and 6 of the Regulation concerning Collection and Use of DNA Profile Records, comparison of the DNA profile records concerning the suspect with the DNA profile records concerning the materials left at the scene and the sorting and storage thereof are conducted⁵⁰.
- (3) Article 6 of the Regulation concerning Collection and Use of DNA Profile Records provides that necessary and appropriate measures shall be taken for the prevention of the leakage, loss, or damage of information when storing the DNA profile records concerning the suspect and the DNA profile records concerning the materials left at the scene⁵¹.
- (4) In accordance with Article 6 of the Regulation concerning Collection and Use of DNA Profile Records, a database has been prepared containing DNA profile records concerning suspects and the DNA profile records concerning the materials left at the scene⁵².

3 Facts

Collection, storage and use of DNA profile records concerning suspects and the materials left at the scene and construction of their database, etc., are implemented based

⁴⁹ Forecited: “The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 103

⁵⁰ Forecited: “The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 104

⁵¹ Forecited: “The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 105

⁵² Forecited: “The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 106

on the Regulation concerning Collection and Use of DNA Profile Records, which is made by the National Public Safety Commission, but there is no law related to this Regulation.

The JFBA disclosed the “Opinion concerning the DNA Profile Database System of the National Police Agency”⁵³ on December 21, 2007 and demanded that the DNA profile information database system shall be constructed and operated not by regulations but by laws so that the privacy rights and control rights of own information will not be violated, and that the laws so established shall provide for articles related to collection, scope of registration, storage, use, deletion, quality assurance and the supervisory and relief bodies, however, this has not been realized up to today.

4 Reasons for seeking recommendations

As stated in the abovementioned Opinion, DNA information is referred to as “ultimate privacy,” containing all the genetic information of an individual, and is subject to such protection of the privacy rights and control rights of own information as guaranteed under Article 13 of the Constitution. Therefore, even if construction of a DNA profile information database is permitted, democratic control is indispensable to protection of privacy rights and control rights of own information from the risk of arbitrary or unlimited collection and use of DNA profile information by the state.

Consequently, the database of DNA profile records concerning suspects the materials left at the scene currently operated by the National Police Agency should be constructed and operated by laws not by the regulations of the National Public Safety Commission.

X. Training of Law Enforcement Personnel, Medical Personnel, Public Officials and Other Persons (Art. 23)

1 Recommendations sought by the JFBA

The State party should disclose the specific details of the training provided to prosecutors, police personnel, immigration bureau personnel and correction personnel, and provide such training as specified under Article 23 of the Convention to public officials and other persons.

2 Descriptions in the Government Report

⁵³ The JFBA: “Opinion on the National Police Agency's DNA Database System” (December 21, 2007)
https://www.nichibenren.or.jp/library/ja/opinion/report/data/071221_000.pdf (Japanese)
<https://www.nichibenren.or.jp/en/document/opinionpapers/20071221.html> (English)

The Government Report states with respect to staff training programs for immigration inspectors and immigration control officers that “In order to enhance awareness about human rights [...], the Immigration Bureau conducts trainings on international law and relevant human rights treaties several times a year”⁵⁴.

For the staff of a penal institution, juvenile training school, juvenile classification home, and women’s guidance home, it states that “lectures on the human rights of inmates are provided in various programs at the Training Institute for Correctional Personnel from the perspective of respect for the human rights of inmates in line with relevant human rights treaties and with the Standard Minimum Rules for the Treatment of Prisoners established by the United Nations and other international guidelines”⁵⁵ and as for the police personnel, it states that “education on the Constitution, Penal Code, Code of Criminal Procedure (domestic laws that ensure the implementation of the Convention), and international trends in human rights, etc., is provided for the purpose of ensuring proper execution of duties with due consideration given to human rights”⁵⁶.

Further, as for doctors designated for mental health welfare who make a decision on compulsory hospitalization, it states that “[they] are required to attend the training every five years after becoming qualified”⁵⁷.

However, the Government Report makes no mention of specific details of the aforesaid training.

3 Facts

The following circumstances are revealed based on information obtained from the Ministries as of March 25, 2018:

First, as for prosecutors, police personnel, immigration bureau personnel and correction personnel, training programs including those on international human rights treaties are provided at a certain frequency, however, the specific details of these

⁵⁴ Forecited: “The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 133

⁵⁵ Forecited: “The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 136

⁵⁶ Forecited: “The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 137

⁵⁷ Forecited: “The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 139

programs are not clear, and no handouts are disclosed.

Further, as for judges, training programs on international human rights treaties are conducted by university professors, etc., at a certain frequency. However, training specified under Article 23 of the Convention such as those on the importance of prevention and investigations of enforced disappearance are not provided.

Moreover, training on international human rights treaties by experts are provided also to doctors designated for mental health at certain frequency, however, it is not reported that training specified under Article 23 of the Convention such as those on the importance of prevention and investigations of enforced disappearance are provided.

4 Reasons for seeking recommendations

Some of the training programs for judges and doctors designated for mental health are provided with the cooperation of bar associations and researchers in international human rights laws and the some contents are highly commendable. However, overall, the training specified under Article 23 of the Convention is not provided and some points are left to be improved.

As for training programs for prosecutors, police personnel, immigration bureau personnel and correction personnel, no information on their specific details was available. Moreover, the training programs for prosecutors are entirely performed by officials of the Ministry of Justice, and training by external experts is not provided at all.

Therefore, the State party should disclose the specific details of the training provided to prosecutors, police personnel, immigration bureau personnel and correction personnel, and provide the training as specified under Article 23 of the Convention to public officials, etc.

XI. Conventional Obligations for Truth Finding, etc. (Art. 24)

1 Recommendations sought by the JFBA

- (1) The State party should, with respect to the massacre of Korean/Chinese people which followed immediately after the Great Kanto Earthquake, admit its responsibility and apologize to the victims of the massacre by the military and their bereaved families as well as to the victims of massacres by vigilantes prompted by the acts of the state such as transmitting false information and their bereaved families.
- (2) The State party should investigate all the details and truths of the massacre of

Korean/Chinese people and clarify the cause of the massacre.

- (3) The State party should promote education concerning the history and cultures to promote understanding of other ethnic groups in its public education and make efforts to overcome the racially discriminatory ideas.

2 Descriptions in the Government Report

No particular description is included.

3 Facts⁵⁸

The Great Kanto Earthquake which occurred on September 1, 1923 caused the most serious damage in the history of earthquake disasters in Japan, resulting in the death toll of over 100,000 in the Tokyo metropolitan area. Many Korean and Chinese people were massacred by the army in the post-quake chaos.

Further, many Korean and Chinese people were massacred also by private vigilantes. Although such massacres by vigilantes were conducted by private persons, it is pointed out as a back ground factor that the government (the then Police Affairs Bureau of the Home Ministry) spread such erroneous information that Koreans were setting fire, holding and throwing explosives, or putting poison into wells, etc., across the nation. It is said that the several thousands of Koreans and Chinese were massacred by the army and private vigilantes.

On August 25, 2003, the JFBA submitted to the Prime Minister a recommendation to the effect that the state should perform fact-finding activities and admit its responsibility for the massacre and apologize to the victims and their bereaved families, however, the Japanese government has not taken any actions since then.

4 Reasons for seeking recommendations

Nowadays, there is a growing trend in Japan to deny or trivialize the fact of the massacre of Korean and Chinese people at the time of the Great Kanto Earthquake⁵⁹.

As for books and on the Internet, there is an abundance of information denying the fact of the massacre of Koreans and Chinese at the time of the Great Kanto Earthquake.

Further, there has been a trend also in textbooks used in school education to deny or trivialize the fact of the massacre.

⁵⁸ Forecited: “Case of Petition for the Great Kanto Earthquake Human Rights Redress - Recommendation and Investigation Report”

⁵⁹ For example, “Great Kanto Earthquake: Truth of ‘Korean Massacre’” by Miyoko Kudo (The Sankei Shimbun Publication) published in 2009 and “There was no ‘Korean Massacre’ in the Great Kanto Earthquake!” by Yasuo Kato (WAC) published in 2014 advocates their view to deny the massacre of Koreans, insisting, for example, that it was justifiable defense against Korean riots.

For instance, in 2013, the word “massacre” was eliminated from the supplementary textbooks for Japanese history published by the Tokyo Metropolitan Board of Education and the Yokohama City Board of Education⁶⁰.

Further, a movement of trivialization of the massacre by public figures has continued, for example, while past Governors of Tokyo had sent eulogies at the occasion of the annual memorial ceremony for Koreans held on September 1 every year since 1973, the incumbent Governor of Tokyo, Yuriko Koike, decided that she would no longer send it from 2017⁶¹.

Therefore, the State party should, with respect to the massacre of Korean/Chinese people which followed immediately after the Great Kanto Earthquake, admit its responsibility and apologize to the victims of the massacre by the military and their bereaved families as well as to the victims of massacres by vigilantes prompted by the acts of the state such as transmitting false information, and their bereaved families. The State party should also perform fact-finding activities and clarify the cause of the massacre of Korean/Chinese people. And, as for public education, the State party should promote education concerning the history and cultures to promote understanding of other ethnic groups and make efforts to overcome the racially discriminatory ideas.

XII. Issues Related to the Immigration Bureau

1. Prohibition of Deportation (Art. 16)

⁶⁰ For instance, the Tokyo Metropolitan Board of Education altered the former description in Japanese history textbooks for high schools (supplementary textbook) “From Edo to Tokyo,” issued by the Board on its own right, and eliminated the expression, “Koreans were massacred at the time of the Great Kanto Earthquake.” In the past, there was a description in this textbook with respect to the “Memorial Monument for Korean Victims of the Great Kanto Earthquake” that “it is written on this monument that a number of Koreans were massacred during the chaos in the wake of the Great Kanto Earthquake (of 1923).” However, in its FY2013 version, it was changed to the description that “it is written on this monument that ‘precious lives of Koreans were lost’ during the chaos in the wake of the Great Kanto Earthquake.”

Further, also in the supplementary textbook “History of Yokohama” published by the Yokohama City Board of Education, the description in the FY2012 version that “the army, police [...] and vigilantes, etc., persecuted and massacred Koreans and also killed Chinese” was altered to “Some vigilantes resorted to acts of killing Koreans and Chinese” as from the FY2013 version.

In short, the word “massacre” was altered to “killing,” descriptions concerning the state authorization such as the army and the police were deleted, and such killing was described merely as acts of private vigilantes.

Moreover, as from the FY2013 version, the textbook does not contain a photograph of the “Memorial Monument of Korean Victims of the Great Kanto Earthquake” inscribed with “Erected by a citizen who witnessed the incident as a boy” on the back side, which was erected by a Japanese citizen who had seen massacred Koreans with his own eyes.

⁶¹ After the decision by the Governor of Tokyo to discontinue sending an address, the Mayor of Sumida Ward, in which the memorial monument is located, also decided to discontinue sending a memorial address.

(1) Recommendations sought by the JFBA

The State party should amend the laws so that an examination based on the provision of Article 16 of the Convention will be performed when determining whether or not a permission to stay shall be granted both in the refugee recognition procedures and the deportation procedures and that handling procedures will be clarified for cases that are deemed to fall under the said provision.

Both in such examination and the examination of deportation destinations under Article 53(3)(ii) of the Immigration Control and Refugee Recognition Act (hereinafter referred to as “ICRRA”), it should ensure the protection of due process of law, such as a right to appoint an agent, legal aid for appointment of an agent, a right to submit evidence, disclosure of evidence etc., as well as independence of the examination body.

(2) Matters of concern and recommendations of the Treaty Body

[1] According to the ICCPR, Concluding Observations on the Sixth Periodic Report of Japan, paragraph 19: “the Committee is [...] concerned that, despite the amendment to the Immigration Control and Refugee Recognition Act, the principle of non-refoulement is not implemented effectively in practice.”

[2] According to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “CAT”), in the Concluding Observations on the Second Periodic Report of Japan, paragraph 9 (e) (matters of concern) : “The lack of effective implementation of article 53(3) of the Immigration Control Act, which prohibits the removal of a person to any country where he or she may be subject to torture, as proscribed in article 3 of the Convention (CAT)” and in recommendations (a): “ontinue its efforts to bring all legislation and practices relating to the detention and deportation of immigrants or asylum seekers in line with the absolute principle of non-refoulement under article 3 of the Convention (CAT).”

(3) Descriptions in the Government Report

The Government Report points out that Article 53 of the ICRRA provides that a deportation destination of a foreign national subject to deportation shall not include any country considered to be “another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced

disappearance” as referred to in Article 16, paragraph 1 of the Convention⁶².

(4) Facts

[1] Lack of a protection system

Article 53⁶³ of the ICRRA is not a provision concerning determination on whether or not to grant a permission to stay, but provides for the criteria of deportation destinations in cases where it is determined not to grant a permission to stay.

Determination on whether or not to grant a permission to stay is made according to Article 61-2-2(2) of the ICRRA when the foreign national is an asylum seeker, and otherwise according to Article 50 of the ICRRA. Neither provision requires an examination of whether there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance in the country of origin.

At the same time, in cases where it is determined not to grant a permission to stay in Japan and there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance in the country of origin, no measures are guaranteed to support such foreign nationals to obtain an entry permit to another country and they are not permitted to act freely for that purpose.

⁶² Forecited: “The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraphs 50, 51, 53

⁶³ Article 53 (Deportation Destinations)

- (1) Any person subject to deportation shall be deported to a country of which he/she is a national or citizen.
- (2) If the person cannot be deported to such country as set forth in the preceding paragraph, such person shall be deported to any of the following countries pursuant to his/her wishes:
 - (i) A country in which he/she had been residing immediately prior to his/her entry into Japan.
 - (ii) A country in which he/she once resided before his/her entry to Japan.
 - (iii) A country containing the port or airport where he/she boarded the vessel or aircraft departing for Japan.
 - (iv) A country where his/her place of birth is located.
 - (v) A country which contained his/her birthplace at the time of his/her birth.
 - (vi) Any country other than those prescribed in the preceding items.
- (3) The countries set forth in the preceding two paragraphs shall not include any of the following countries:
 - (i) The territories of countries prescribed in the Refugee Convention, Article 33, paragraph (1) (except for cases in which the Ministry of Justice finds it significantly detrimental to the interests and public security of Japan);
 - (ii) Countries prescribed in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3, paragraph (1); or
 - (iii) Countries prescribed in the International Convention for the Protection of All Persons from Enforced Disappearances, Article 16, paragraph (1).

[2] Lack of the rights to file a petition

Article 53 of the ICRRA does not provide for a right to make an allegation that there are substantial grounds for believing that such foreign national would be in danger of being subjected to enforced disappearance in the country of origin. Implementation of such examination is up to the Immigration Bureau, which is the determining authority.

[3] Lack of the protection of due process of law

With respect to the examination of deportation destinations by the Immigration Bureau under Article 53 of the ICRRA, there is neither a system to make allegations through a representative, a system of legal aid to appoint an agent, a system for the foreign national or his/her agent to produce evidence, a system for personnel of the Immigration Bureau who conduct examinations to question the foreign national, nor a system for the authorities to disclose materials based on which they make determination.

[4] Non-independence of the examiner

Examination of deportation destinations is conducted by the Immigration Bureau personnel who has the authorization to decide on deportation.

[5] Lack of information

The Immigration Bureau personnel who examine deportation destinations do not collect and use information on whether there is a tendency of serious, obvious or gross human rights violation or violation of international humanitarian laws on those destinations.

[6] Operational malfunction

In the actual examination records, the country of nationality is specified as the desired destination of deportation in most cases even in cases of asylum seekers. When asking those people to that effect, most of them say, "I never said that," "I would never desire to be deported to my home country, since I'm applying for refugee status because I cannot return there," or "I desired another county, but they said no," and so on. It is suspected that the authorities do not explain about Article 53 of the ICRRA to those people before asking them such a question and that such records are made by leading questions.

It is assumed that Article 53(3)(iii) has not been applied to any case since the amendment of the law until today as no information on such case is available.

[7] Issues of the special permission to stay-System

In addition to the examination as under Article 53(3) of the ICRRA, there is a system of special permission to residence (Article 61-2-2 of the ICRRA) that functions as a complementary form of protection to the application system for refugee recognition.

However, the determination criteria for it are not provided by laws and regulations. Consequently, in that case an examination of compliance with Article 3 of the CAT is not required.

In the event that an asylum seeker enters an appeal against denial of recognition of refugee status, a refugee examination counselor who is a member of the advisory committee will express his/her opinion before determination of the Minister of Justice.

However, there are many cases in which the Minister of Justice did not respect such opinion despite that the refugee examination counselor voluntarily expressed an opinion to request a special permission to stay.

(5) Reasons for seeking recommendations⁶⁴

As described above, guarantee of Article 16(1) of the Convention by Article 53 of the ICRRA has no effect.

Further, the special permission to stay under the refugee recognition system does not guarantee Article 16(1) of the Convention.

2. Immigration Detention Facilities Visiting Committee (Art. 17)

(1) Recommendations sought by the JFBA

[1] The State party should establish a body which is independent from the Immigration Bureau without delay to perform secondary examinations of complaints regarding treatment at immigration detention facilities and treatment at the time of deportation.

[2] Until above [1] is realized, the State party should take the following measures for the time being:

A Affiliations of the members of the Immigration Detention Facilities Visiting Committee and their appointment criteria should be disclosed.

B Measures should be taken to provide human and physical resources to

⁶⁴ Forecited: “Japan Federation of Bar Associations Report on Response to the Second Report of the Japanese Government under Paragraph 1 of Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” p. 21 - p. 23

enhance the activities of the Immigration Detention Facilities Visiting Committee. More specifically, the Committee should be located at each regional immigration bureau, not only one in the east and the other in the west. Further, remuneration for the service of the members should be enhanced.

C The work responsibilities of the Immigration Detention Facilities Visiting Committee shall not be limited to monitor the treatment of detainees, but extended to broad matters relating to the review of the operation of the detention facilities.

D The law should be amended so that the duties of the Immigration Detention Facilities Visiting Committee will include the determination on appropriateness of use of physical force at the time of deportation.

(2) Recommendations of the Treaty Body

Recommendation (d) under paragraph 9 of Concluding Observations on the Second Periodic Report of Japan under the CAT: “Strengthen the independence, authority and effectiveness of the Immigration Detention Facilities Visiting Committee, inter alia, by providing appropriate resources and authority to ensure effective monitoring of detention centers and allowing them to receive and review complaints from immigrants or asylum seekers in detention.”

(3) Descriptions in the Government Report

The Government Report states that the Immigration Detention Facilities Visiting Committee is “composed of third-party experts such as academic experts, legal experts, medical experts, and NGO staff, conducts visits to the immigration detention centers or departure waiting facilities and interviews detainees. The committee also gives opinions to directors of the immigration detention center based on the opinions and suggestions of detainees collected from the suggestion boxes placed at the immigration detention centers or at the departure waiting facilities. Through these activities, the committee ensures the transparency of the treatment of persons subject to immigration control and promotes the improvement of the administration of the immigration detention facilities”⁶⁵.

(4) Facts

⁶⁵ Forecited: “The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 66

[1] The Immigration Detention Facilities Visiting Committee is located in two places - one in eastern Japan and the other in western Japan (Article 59-3 of the ministerial Ordinance for Enforcement of the Immigration Control and Refugee Recognition Act) – and the regions covered are extensive.

The Committee members serve on a part-time basis (Article 61-7-3(4) of the ICRRA) and their remuneration is low.

Moreover, the Committee members visit each detention facility only once a year, usually, and the time spent is only for a few hours.

[2] The criteria for appointment of the Visiting Committee members are provided for under Article 61-7-3(2) stating that “the Minister of Justice is to appoint Committee members possessing high levels of integrity, insight and enthusiasm for the improvement of the administration of Immigration Detention Facilities,” and no specific criteria are disclosed.

[3] A visit of each detention facility by the Committee members is notified in advance, and the schedule is determined by each detention facility. During the visit, the members merely receive explanation from a responsible person and listen to opinions from only some detainees.

Detainees interviewed by the Committee members are selected by the detention facility from among the detainees who desire to conduct an interview. Upon such selection, the detention facility hears the outline of what the detainees would like to tell the Committee members.

[4] At some detention facilities, the facilities personnel collect the documents dropped in the opinion box by detainees addressed to the Committee members.

Moreover, when such document dropped in the opinion box is written in a foreign language, text will become available to the authorities since the detention facility will translate the documents.

[5] In most cases, the Immigration Detention Facilities Visiting Committee states opinions to the detention facilities only once a year. Such opinions are not legally binding. The response from the detention facilities which receive the suggestions are often merely that they “will consider.” No actual improvements are implemented in many cases.

[6] The purpose of the Immigration Detention Facilities Visiting Committee is stipulated as “in order to contribute to the appropriate administration of the Immigration Detention Facilities” (Article 61-7-2(2) of the ICRRA), and

accordingly, the Immigration Detention Facilities Visiting Committee may state opinions on release of detainees.

However, the Immigration Bureau personnel in charge of the Secretariat explain to the Committee members that the work responsibilities of the Immigration Detention Facilities Visiting Committee are limited to matters relating to treatment of detainees during the detention.

On March 2, 2010, an incident occurred, in which a detainee died in the process of deportation. However, it is legally not within the scope of duties of the Immigration Detention Facilities Visiting Committee to determine whether use of physical force was appropriate or not at the time of deportation.

(5) Reasons for seeking recommendations⁶⁶

The detention facilities covered by one Immigration Detention Facilities Visiting Committees is extremely extensive, the remuneration of the Committee members is not adequate, and the scope of their authority exercised at the time of visits is limited. With respect to the fact that the regulatory authority of the Immigration Detention Facilities Visiting Committee does not extend to execution of deportation, amendment of the law is desirable. Moreover, the Immigration Bureau attempts to restrict the scope of the authority of the Immigration Detention Facilities Visiting Committee given by law.

The Visits by the Immigration Detention Facilities Visiting Committees and the system for detainees to report the Immigration Detention Facilities Visiting Committee are not sufficiently effective. Further, the effectiveness of opinions stated by the Immigration Detention Facilities Visiting Committee to detention facilities is not sufficient.

3. Unnecessary Detention (Art. 21)

(1) Recommendations sought by the JFBA

The State party shall carry out detention to the minimum extent necessary to ensure deportation, and shall not detain any person unless there are circumstances under which such detention is required, such as there is a threat of escape, etc.

Restriction should be imposed upon the period of detention after issuance of a written deportation order.

⁶⁶ Forecited: “Japan Federation of Bar Associations Report on Response to the Second Report of the Japanese Government under Paragraph 1 of Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” p. 45 - p. 47

(2) Matters of Concern/Recommendations of the Treaty Bodies

- [1] Matter of concern under paragraph 19 of the Concluding Observations on the Sixth Periodic Report of Japan under the ICCPR: “[the Committee is further] concerned [...] at the prolonged periods of administrative detention without adequate giving of reasons and without independent review of the detention decision,” recommendation (c) “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.”
- [2] Matter of concern (a) under paragraph 9 of the Concluding Observations on the Second Periodic Report of Japan under the CAT: “The use of lengthy, and in some cases, indefinite detention for asylum seekers under a deportation order according to the Immigration Control and Refugee Recognition Act as well as the lack of independent review of such detention decision, ” matter of concern (b): “the restrictive use of alternatives to detention for asylum seekers,” recommendation (b): “ensure that the detention of asylum seekers is only used as a last resort, and when necessary, for as short a period as possible, and introduce a maximum period of detention pending deportation,” recommendation (c): “further utilize alternatives to detention as provided for in the Immigration Control and Refugee Recognition Act.”

(3) Descriptions in the Government Report

The Government Report states that “In Japan, a foreign national subject to the deportation procedures is taken into custody during the procedure, in principle. However, when the necessity arises to release a person detained pursuant to a written detention order or a written deportation order from custody, taking into consideration the circumstances such as the need for humanitarian consideration, such person may be accorded provisional release upon ex officio or request. In this way, the procedure is applied flexibly, taking into account the perspective of human rights protection,”⁶⁷ and also states that, “In cases where a foreign national subject to deportation is detained because it is difficult to deport him/her from Japan immediately, if there are any objective circumstances that make it difficult to deport him/her for a long period of time, he/she may be released with such conditions as may be deemed necessary,

⁶⁷ Forecited: “The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 116

such as restrictions on the place of residence and area of movement and the obligation of appearing at a summons.”⁶⁸

(4) Facts

[1] In reality, people are detained even when there is no risk of fleeing.

At the Higashi-Nihon Immigration Center, which is the largest detention facility, 240 (70.1%) out of a total of 344 detainees were asylum seekers as of the end of January 2018⁶⁹.

[2] The detention period after the issuance of a deportation order exceeds six months in general, and it is not uncommon that they are detained for one year or longer. Some of them have been detained for three years or longer.

Shown below is the detention period of the total of 344 detainees at the Higashi-Nihon Immigration Center as of the end of January 2018⁷⁰.

From 1 day to less than 3 months	95
From 3 months to less than 6 months	49
From 6 months to less than 1 year	96
From 1 year to less than 1.5 years	81
From 1.5 years to less than 2 years	13
From 2 years to less than 2.5 years	8
From 2.5 years to less than 3 years	0
3 years or longer	2

Moreover, at some detention facilities, it has become a common practice to continue detention for another week on the grounds of procedural necessity on the part of the detention facility even after release is decided. There is no actual example of release based on Article 52(6) of the ICRRA in cases where it is difficult to immediately deport a person.

[3] The detention period has become longer since 2017. At the Higashi-Nihon Immigration Center, the number of detainees detained for one year or longer was 11 around September 2016, however, it increased to 104 as of the end of

⁶⁸ Forecited: “The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 117

⁶⁹ Website of the Japan Association for Refugees, an approved nonprofit corporation
<https://www.refugee.or.jp/jar/report/policy/2018/05/09-0000.shtml>

⁷⁰ Forecited website of the Japan Association for Refugees, an approved nonprofit corporation

January 2018⁷¹.

- [4] There are increasing cases in which those who would have conventionally been accorded provisional release are detained as a result of revocation of such release permission or non-permission of extension of such permission.

Those who are accorded provisional release are prohibited from working although they are not covered under social security, as well as from moving outside the prefecture or relocation of designated domicile without permission, and violation would result in revocation of the provisional release.

(5) Reasons for seeking recommendations⁷²

- [1] The practices of detaining a person when there is no risk of fleeing and of continuing detention fall under arbitrary detention.
- [2] The detention period after issuance of a deportation order is relatively long in general and significantly long in some cases, which is against the principle of proportionality.
- [3] Restriction on freedom imposed on those accorded provisional release is extremely large that strict enforcement will infringe their individual dignity and even threaten their survival.

4. Guarantee of Right to Receive Support by Counsel (Art. 17)

(1) Recommendations sought by the JFBA

In the deportation process, the following should be ensured by the State party: the rights to designate the agent; legal assistance for the designation of the agent at government expense; the method and opportunity to present argument and evidence.

(2) Recommendations of the Treaty Body

Recommendation (b) under paragraph 19 of the of the Concluding Observations on the Sixth Periodic Report of Japan under the ICCPR: “Ensure that all persons applying for international protection are given access to fair procedures for determination and for protection against refoulement.”

(3) Descriptions in the Government Report

⁷¹ Forecited website of the Japan Association for Refugees, an approved nonprofit corporation

⁷² The JFBA: “Opinion Calling for Improvement of the Detention System at Immigration Control” (September 18, 2014)

https://www.nichibenren.or.jp/library/ja/opinion/report/data/2014/opinion_140918_2.pdf (Japanese)

https://www.nichibenren.or.jp/en/document/opinionpapers/20140918_2.html (English Summary)

and the forecited: “Japan Federation of Bar Associations Report on Response to the Second Report of the Japanese Government under Paragraph 1 of Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”

The Government Report states that “Persons who are detained in detention facilities (detaining foreign nationals only) managed and administered by the Immigration Bureau for a violation of the Immigration Control Act may contact their counsel, doctor, or family (by telephone, visits, or by receiving or sending letters).”⁷³

Further, it states that “In September 2010, the Immigration Bureau of the Ministry of Justice and the Japan Federation of Bar Associations reached an agreement to set up a joint meeting to discuss various issues concerning immigration control administration. It was also agreed that bar associations would give legal advice to the detainees in the immigration detention centers for free. Based on this agreement, bar associations provide free legal consultation services. Thus, efforts are made to further facilitate access by detainees to counsel or legal support.”⁷⁴

(4) Facts

[1] Since the three-step process of deportation procedures is completed within two months, there are not many cases in which the detainee can gain access, have an interview, engage and discuss with counsel during such period.

Moreover, it sometimes occurs that a person detained is not informed of the schedule until the day on which the hearing is conducted, and opportunities for appointment of an agent and produce evidence are not guaranteed.

[2] The Comprehensive Legal Support Act limits the scope of those covered by the civil legal aid system to Japanese nationals and foreign nationals who have a domicile and are lawfully residing in Japan, and foreign nationals without a status of residence, such as asylum seekers, are excluded from the coverage of the government-sponsored legal aid⁷⁵.

[3] Detention facilities prohibit counsel from photographing and recording audio at their interviews with detainees, and also prohibit visits on Saturdays, Sundays and public holidays and after 5:00 p.m. in principle. Many detention facilities require an application for visits before 3:00 p.m.

Detainees are required to pay for phone calls and are not allowed to make

⁷³ Forecited: “The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 64

⁷⁴ Forecited: “The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 65

⁷⁵ Comprehensive Legal Support Act, Article 30(1)(ii)

calls during nighttime hours, and they may not use a mobile phone or the Internet. Further, phone calls cannot be made from relatives and counsel to the detainees.

[4] There is a case in which a detainee was relocated from the Nagoya Regional Immigration Bureau to the Higashi-Nihon Immigration Center in Ibaraki Prefecture (travel distance of 400km or more) during the course of a court trial concerning a deportation order, and another case in which a detainee was relocated from the Tokyo Regional Immigration Bureau to the Omura Immigration Center located in Nagasaki Prefecture (travel distance of 1200km or more) also during the course of a trial, and consequently, meetings between the counsel and the plaintiffs were disrupted.

(5) Reasons for seeking recommendations

The guarantee of detainees' access to counsel is not effective.

Moreover, detention facilities relocate detainees to another facility at an arbitrary manner and obstruct meetings with their counsel⁷⁶.

The civil legal aid system under the Comprehensive Legal Support Act should be modified to cover all persons in Japan so that even those who do not have Japanese nationality can receive aid regardless of their residence status or whether or not they have a fixed domicile in Japan⁷⁷.

At least the procedures for application for recognition of refugee status (including objection procedures), and the administrative procedures relating to the deportation procedures and the resident status revocation procedures should be added to the scope covered by the civil legal aid under the Comprehensive Legal Support Act⁷⁸.

5. Guarantee of Rights to Access Trials (Art.16)

(1) Recommendations sought by the JFBA

The State party should avoid an immediate deportation of those who refuse to be deported to their home country without providing means and time to contact the outside and engage counsel after issuance of a deportation order.

⁷⁶ Forecited: "Japan Federation of Bar Associations Report on Response to the Second Report of the Japanese Government under Paragraph 1 of Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" p. 24 – p.26

⁷⁷ The JFBA: "Opinion to Request Coverage of Non-regular Foreign Residents, Asylum Seekers, etc., by the Civil Legal Aid System" (December 19, 2014) Purport of Opinion, paragraph 1
https://www.nichibenren.or.jp/library/ja/opinion/report/data/2014/opinion_141219_2.pdf (Japanese)

⁷⁸ Forecited: "Opinion to Request Coverage of Non-regular Foreign Residents, Asylum Seekers, etc., by the Civil Legal Aid System" Purport of Opinion, paragraph 2

(2) Recommendations of the Treaty Body

Recommendation (b) under paragraph 19 of the Concluding Observations of on the Sixth Periodic Report of Japan under the ICCPR: “Ensure that all persons applying for international protection [...] have access to an independent appeal mechanism with suspensive effect against negative decisions.”

(3) Descriptions in the Government Report

The Government Report states that “Pursuant to the provisions of Article 46 of the Administrative Case Litigation Act, the information about the filing of an action shall be given (provided) in writing when any recognition, judgment, decision, and issuance of a written deportation order are notified during the above-mentioned procedure under the three-step examination process, thus consideration is given to ensure the right to trial⁷⁹.”

(4) Facts

The Immigration Bureau deports dozens of people to the same original country at once by a charter airplane several times a year, and those who are deported include those who are immediately deported after notification of the decision of denial of refugee status. As a result, they are not able to engage counsel to file an action for revocation of such decision or a petition for stay of execution.

For instance, at the occasion of deportation of Vietnamese people on February 8, 2018, 16 people out of the 47 deportees were deported within 24 hours from notification of the decision of denial of refugee status.

Deportation by charter flight was conducted for destinations such as Sri Lanka, the Philippines, Thailand, etc.

(5) Reasons for seeking recommendations

Execution of a deportation order immediately after notification of the decision of denial of refugee status violates the rights to access trials.

Further, when deporting a number of people at once by charter flight to an original country, the Immigration Bureau does not consider whether there is a tendency of gross, flagrant or mass human rights infringement or violation of international humanitarian laws in such original country⁸⁰.

⁷⁹ Forecited: “The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 55

⁸⁰ Forecited: “Opinion Calling for Improvement of the Detention System at Immigration Control”

6. Disclosure of Information to Persons with a Legitimate Interest (Art. 18)

(1) Recommendations sought by the JFBA

The State party should inform the relatives and the attorney counsel of a detainee when such detainee is relocated to another detention facility, deported or hospitalized.

(2) Recommendations of the Treaty Body

Recommendation (a) under paragraph 19 of the Concluding Observations on the Sixth Periodic Report of Japan under the ICCPR: “Take all appropriate measures to guarantee that immigrants are not subject to ill-treatment during their deportation.”

(3) Descriptions in the Government Report

No particular description is included.

(4) Facts

[1] In the case where a foreign national comes to Japan and is denied landing by the Immigration Bureau at the airport, the foreign national will be deprived of freedom of movement. However, the Immigration Bureau will not provide the relatives and the attorney counsel of such foreign national with such fact of deprivation of freedom, date and place, and information on the responsible authorities at all.

[2] Also, in the case where a detainee detained at an immigration detention facility is relocated to another detention facility, no information on such relocation including the destination is provided to the relatives and the attorney counsel.

[3] There are several cases in which a detainee was relocated to a medical institution for hospitalization, the Higashi-Nihon Immigration Center refused to provide his/her relatives and attorney counsel with the fact of hospitalization, the destination hospital and information concerning the condition of disease, etc.

(5) Reasons for seeking recommendations

The practice of the Immigration Bureau to refuse provision of information on a detainee to his/her relatives and attorney counsel violates Article 18 of the Convention.

7. Nondisclosure of Reasons for Detention (Art. 20)

(1) Recommendations sought by the JFBA

The State party should establish examination criteria, publish the same, and disclose the reasons for decisions on individual cases of provisional release.

(2) Recommendations of the Treaty Body

Recommendation under paragraph 14 of the Concluding Observations on the First

Review of Japan under the CAT: “[the State party should] make public information concerning the requirement for detention after the issuance of a written deportation order.”

(3) Descriptions in the Government Report

The Government Report states that “Under the Act on the Protection of Personal Information Held by Administrative Organs, restrictions on the use and provision of information are imposed. In cases where, for example, the individual concerned is seeking refugee status, he/she may not desire to provide his/her information. In addition, from the perspective of the protection of the individual concerned and considering that the provision of information involves risk of unreasonably violating his/her rights or the rights of a third party, the necessity to restrict the right to use and provide information may arise exceptionally due to the nature of the Act⁸¹.”

(4) Facts

[1] No reasons are provided upon disposition for non-permission of provisional release or non-permission of extension of provisional release against detainees. As for disposition of revocation of provisional release, only the condition which is allegedly violated is indicated, but not the recognized fact of violation.

Even if the detainee himself requests disclosure based on the Administrative Organs Personal Information Protection Act, most records will not be disclosed. The government does not disclose the record containing the reason for disposition even at litigation proceedings for the revocation of disposition.

[2] The Japanese government refuses to disclose the criteria used by the Immigration Bureau for provisional release.

[3] Since the criteria for permission for provisional release are unknown, detainees are afraid that their detention will be prolonged if they file a complaint about their treatment or disposition of non-permission of provisional release. Non-disclosure of the criteria for permission of provisional release has a chilling effect on motivation for complaints about treatment during detention, etc.

[4] There was a case in which, when some hundreds of supporters of a detainee sent a written request for his release by facsimile to the Immigration Bureau, the personnel of the Immigration Bureau threatened him saying: “Stop the

⁸¹ Forecited: “The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 109

supporters from engaging in support activities,” “The visiting hours will be restricted because of this,” “You will be isolated and your free time will also be cancelled,” and “This looks negative to us. Do you think provisional release will be granted even after doing such a thing occurs?”

(5) Reasons for seeking recommendations

It is against the guarantee of due process that the Immigration Bureau conceals the criteria for permission of provisional release and does not disclose the reasons for individual dispositions. This also works as unjust oppression of detainees⁸².

8. Disclosure of Records of Detainees to Authorized Bodies (Art. 17)

(1) Recommendations sought by the JFBA

The State party should disclose the records held by the detention facility to the court in a suit against the State concerning abuse or violence suffered by a detainee during detention.

(2) Matters of concern of the Treaty Body

Matter of concern under paragraph 23 of the Concluding Observations on the First Review of Japan under the CAT “The Committee is concerned over reports of difficulties faced by victims of abuse in obtaining redress and adequate compensation. The Committee is also concerned over restrictions on the rights to compensation, such as statutory limitations and reciprocity rules for immigrants.”

(3) Descriptions in the Government Report

No particular description is included.

(4) Facts

In a lawsuit claiming compensation, alleging excessive violence against detainees by personnel of a foreign national detention facility, the Ministry of Justice refused to submit a copy of video images held by the detention facility of the situation at the time of the incident and also refused that such video be retaken by the court.

In the evidence preservation procedures conducted by the court in March 2018 for a lawsuit filed by a detainee at the Osaka Regional Immigration Bureau for compensation, claiming that he had fractured his right shoulder from violence of personnel in a solitary cell in July 2017, the Immigration Bureau refused to submit a

⁸² Forecited: “Opinion Calling for Improvement of the Detention System at Immigration Control” and forecited: “Japan Federation of Bar Associations Report on Response to the Second Report of the Japanese Government under Paragraph 1 of Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment”

video which had filmed the incident and also refused that such video be retaken by the court. Instead, the Immigration Bureau requested submission of a part of such video as still images.

The court retook a video, however, the Immigration Bureau further objected to the video being kept in the trial record. The Immigration Bureau submitted a video with mosaic processing concealing the faces, etc., of the personnel and this video was included in the trial record.

(5) Reasons for seeking recommendations

In a lawsuit claiming compensation, alleging an excessive violence against detainees or unreasonable treatment by personnel of a foreign national detention facility, the Ministry of Justice has not submitted to the court a copy of video images held by the detention facility of the situation at the time of the incident, but the Ministry of Justice should submit the same⁸³.

XIII. Matters Related to the Mental Health and Welfare Act (Act on Mental Health and Welfare for the Mentally Disabled)⁸⁴

1. Issue of Persons Deprived of Liberty Communicating with Outside (Art. 17(2)(d))

(1) Recommendations sought by the JFBA

The State party should guarantee that a person deprived of liberty and hospitalized at a mental hospital will have the liberty to communicate with and be visited by his/her family, counsel or any other person selected by himself/herself.

Further, an explicit provision should be stipulated to guarantee that, when such person deprived of liberty is a foreign national, he/she will be allowed to communicate with the consulate of his/her country.

(2) Descriptions in the Government Report

With respect to the means of communication when a person is deprived of liberty,

⁸³ Forecited “Japan Federation of Bar Associations Report on Response to the Second Report of the Japanese Government under Paragraph 1 of Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” states on page 50, “since the last round of examinations, there have been no steps taken to ensure that all victims of acts of torture or ill-treatment can exercise fully their right to redress.”

The specific opinion to request disclosure of video images was not included in the past opinions of the JFBA, however, it is included in light of the fact that Article 17 of the Convention requires disclosure of records of detainees including that of their health to competent bodies as well as the recent non-cooperation by the Immigration Bureau in the preservation of evidence.

⁸⁴ Cases of hospitalization for medical care and protection, which is involuntary hospitalization with consent of family members, etc., are excluded from the consideration as it does not conform to the definition and concept of enforced disappearance.

it states that “In accordance with the restrictions on behavior specified by the Minister of Health, Labour and Welfare under the provisions of Article 36, paragraph 2 of the Act on Mental Health and Welfare for the Mentally Disabled and in accordance with the standards set by the Minister of Health, Labour and Welfare under the provisions of Article 37, paragraph 1 of the said Act, a person hospitalized under the said Act shall have the liberty to communicate with and be visited by others, in principle. However, certain restrictions may apply in a reasonable manner to a reasonable extent in cases where there are reasonable grounds to do so, such as that the medical condition is likely to deteriorate or for other medical or protective reasons; provided, however, that even in such cases, no restriction shall apply to the communication with or visits by the staff of prefectural governments, Legal Affairs Bureaus, District Legal Affairs Bureaus, or any other administrative organs relevant to human rights protection, or by the lawyer representing such person. Foreign nationals shall also have the liberty of communication and visits except for cases where there is a medical reason for such to be restricted⁸⁵.”

There are no descriptions of cases in which a person hospitalized at a mental hospital and deprived of liberty is a foreign national.

(3) Facts

[1] Sending and receiving of letters is not supposed to be restricted⁸⁶, however, on the other hand, based on the provision that “in cases where determining from the medical condition of the patient, letters from family members, etc., are likely to prevent the therapeutic effects on such patient, efforts shall be made to stay in contact with family members, etc., in advance and use such a method as having them refrain from sending letters or address such letters to the doctor in charge and having such doctor communicate with the patient according to the medical conditions of the patient, etc.,”⁸⁷ there are cases in which sending and receiving of letters is restricted based on the hospital’s own judgment.

⁸⁵ Forecited: “The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 92

⁸⁶ “Article 36(2) of the Act on Mental Health and Welfare for the Mentally Disabled and Restriction of Behavior Stipulated by the Minister of Health, Labour and Welfare Based on the Provision Thereof” (Ministerial Notification No. 128 of the Ministry of Health, Labour and Welfare of April 8, 1987)

⁸⁷ “Article 37(1) of the Act on Mental Health and Welfare for the Mentally Disabled and Restriction of Behavior Stipulated by the Minister of Health, Labour and Welfare Based on the Provision Thereof” (Ministerial Notification No. 130 of the Ministry of Health, Labour and Welfare of April 8, 1987)

Moreover, as described in the Government Report, “in cases where there are reasonable grounds to do so, such as that the medical condition is likely to deteriorate or for other medical or protective reasons,” telephone calls with and visits to hospitalized patients deprived of liberty may be restricted, and it is not uncommon that such restrictions are imposed.

Furthermore, it is possible during hospitalization to place a patient into isolation (referring to restriction of behavior which blocks a patient from other patients by putting him/her alone in a room from which the patient cannot get out on his/her own will and lasts for over 12 hours) or impose physical restraint (referring to restriction of behavior which suppresses a patient’s movement by restraining the body of the patient by clothing or padded belts) according to the actual state of the patient deprived of liberty⁸⁸. The requirements for isolation are that “judging from the symptoms of the patient, it is highly possible that the patient himself/herself or surrounding persons would be exposed to danger and it is highly difficult to avoid such danger by a method other than isolation” and the requirements for physical restraint are that [1] the patient’s behavior would have significantly negative effects on the progress in conditions of his/her disease or prognosis, such as relationship with other patients would be significantly damaged; [2] there is an imminent danger of suicide attempt or inflicting self-injury; [3] an act of violence, significant nuisance or an act to cause damage to property is recognized, which cannot be prevented by any other method; [4] restlessness, hyperkinesia, explosiveness, etc., are noticeable due to acute psychomotor agitation, etc., and it is extremely difficult to provide treatment or protection in a general mental ward; or [5] in cases of a patient with physical complications that are deemed to require isolation for examination and treatment and there is no good alternative method other than isolation⁸⁹.

Such cases of isolation or restraint are steadily increasing, with 9,935 cases of isolation and 10,298 cases of physical restraints among total

⁸⁸ “Article 36(3) of the Act on Mental Health and Welfare for the Mentally Disabled and Restriction of Behavior Stipulated by the Minister of Health, Labour and Welfare Based on the Provision Thereof” (Ministerial Notification No. 129 of the Ministry of Health, Labour and Welfare of April 8, 1987)

⁸⁹ Forecited: Article 37(1) of the Act on Mental Health and Welfare for the Mentally Disabled and Restriction of Behavior Stipulated by the Minister of Health, Labour and Welfare Based on the Provision Thereof”

hospitalization cases according to the 2015 survey⁹⁰, which is approximately a twofold increase over the past 10 years. The percentage is likely to be even higher for those involuntarily hospitalized based on administrative order because of the risk of inflicting self-injury or inflicting harm to others.

[2] While personnel of administrative organs relevant to human rights protection is clearly specified as those to whom no restrictions on communication and visits shall apply⁹¹, there is no law or regulation which clearly specifies consulate staff to that effect.

(4) Reasons for seeking recommendations

[1] Since it is possible to restrict telephone calls with and visits to hospitalized patients deprived of liberty and the requirements for which lack strictness, there is a risk that such restrictions are fraudulently abused by restricting communication with and visits by their family members and other persons selected by themselves.

Further, there is an increasing trend toward isolation and physical restraint, and now about 10,000 cases of isolation and physical restraint occur, respectively, indicating the reality in which these rules are easily applied, even though it should strictly be applied complying with requirements⁹². If isolation or physical restraint is imposed on persons already deprived of liberty, the risk will increase for them to be cut off from the outside world and interviews and exchange of letters with their counsel, etc., which should not be restricted, will be substantially restricted, and communication with and visits by their family members and other persons selected by themselves will be restricted.

[2] Further, as consulate personnel of the home country of foreign nationals deprived of liberty is not listed as those to whom no restrictions on communication and visits shall apply, telephone calls with or visits by such personnel are restricted or at least there is a risk that they may be restricted.

⁹⁰ Mental Health and Welfare Data; Number as of June 30, 2014

⁹¹ Forecited: Article 36(2) of the Act on Mental Health and Welfare for the Mentally Disabled and Restriction of Behavior Stipulated by the Minister of Health, Labour and Welfare Based on the Provision Thereof”

⁹² We pointed out an increase in isolated physical restraints also on page 76 of the forecited “Japan Federation of Bar Associations Report on Response to the Second Report of the Japanese Government under Paragraph 1 of Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment”

2. Issue of Persons Deprived of Liberty Taking Procedures for Review of Lawfulness Before a Court for Examination of Legality (Art. 17(2)(f))

(1) Recommendations sought by the JFBA

The State Party should develop effective procedures to review the lawfulness of deprivation of liberty imposed on persons deprived of liberty and hospitalized in a mental hospital⁹³.

(2) Descriptions in the Government Report

Regarding the means of communication when being deprived of liberty, it states that “the decision of compulsory hospitalizations provided in Article 29 of the Act on Mental Health and Welfare for the Mentally Disabled is subject to the administrative appeal provided in the Administrative Appeal Act. In addition, it is possible to file an action against the prefectural government, etc., for the revocation of such decision in accordance with the Administrative Case Litigation Act”⁹⁴.

Further, with respect to Article 17(2)(f), there is no description concerning the petitions for discharge under Article 38-4 of the Act on Mental Health and Welfare for the Mentally Disabled (hereinafter referred to as “Mental Health and Welfare Act”).

(3) Facts

[1] While the Administrative Appeal Act provides for a right to state an opinion orally (Article 31, paragraph 1, main clause), such right to state an opinion shall be restricted “when it is found difficult to give the petitioner an opportunity to orally state opinions in light of the whereabouts of the petitioner or other circumstances” (Article 31, paragraph 1, proviso).

Even if a petition is filed either under the Administrative Appeal Act or under the Administrative Case Litigation Act, the disposition to deprive of liberty will not be suspended in principle. Further, in order for a stay of execution to be granted, the requirement that it is “urgently necessary for

⁹³ The JFBA pointed out in Chapter 6 of the JFBA’s “Report on the Forth Report of the Japanese Government Submitted under the International Covenant on Civil and Political Rights” that “the Psychiatric Review Board which reviews petitions for discharge, etc., does not fall under ‘a court’ under Article 9, paragraph 4 of the Covenant, and there are no other means to ‘determine without delay whether the detention is lawful or not’ and ‘to order release if such detention is not lawful’.”

https://www.nichibenren.or.jp/activity/international/library/human_rights/liberty_report-4th_jfba.html (Japanese)

⁹⁴ Forecited: “The First Report of the Government of Japan under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance (Enforced Disappearance Convention)” Paragraph 91

avoiding serious damage to be caused by the disposition or through the execution of the disposition or the continuation of procedures” needs to be met⁹⁵.

The average period of trial for an administrative case litigation is supposed to be 14.7 months (2014)⁹⁶.

- [2] The organization to review petitions for discharge under Article 38-4 of the Mental Health and Welfare Act is the Psychiatric Review Board located in each prefecture or ordinance-designated city (Article 12 of the Mental Health and Welfare Act). The members of the Psychiatric Review Board are appointed by the governor of the prefecture or the mayor of the ordinance-designated city as the case may be (Article 13, paragraph 1 of the Mental Health and Welfare Act). In addition, the budget and the secretariat of the Psychiatric Review Board are provided by the prefecture or ordinance-designated city.

Further, currently, the members of the Psychiatric Review Board are comprised of part-time committee members.

- [3] According to the investigation results of the Review Status by the Psychiatric Review Board by Prefecture for 2016⁹⁷, out of a total of 2,777 review cases of petitions for discharge or petitions for improvement of treatment filed by hospitalized patients, 125 cases were determined that the hospitalization or treatment was inappropriate (approx. 4.5%).
- [4] Since a man who had committed a theft was compulsorily hospitalized because he was deemed to be in danger of inflicting self-injury or inflicting harm to others based on a police officer’s report on the grounds of his mental illness, he filed a petition for discharge with the Tokyo prefectural government. However, the Psychiatric Review Board did not grant the petition. Therefore, this man reported the case to the UN Working Group on Arbitrary Detention, and it is reported that the Working Group determined that this man had not

⁹⁵ Article 25 of the Administrative Appeal Act; Article 25 of the Administrative Case Litigation Act

⁹⁶ Supreme Court: “Report on the Verification about Expediting of Trials at the Supreme Court (VI)” (July 10, 2015) p. 19

http://www.courts.go.jp/vcms_lf/hokoku_06_gaiyou.pdf (Japanese)

⁹⁷ Ministry of Health, Labour and Welfare: “2016 Report on Public Health Administration and Services”

https://www.e-stat.go.jp/stat-search/files?page=1&layout=datalist&toukei=00450027&tstat=000001031469&cycle=8&tclass1=000001103516&tclass2=000001103555&tclass3=000001107815&stat_infid=000031635217&second=1&second2=1 (Japanese)

been in danger of inflicting self-injury or inflicting harm to others at the time of arrest and concluded that the compulsory hospitalization without legal grounds “was imposed based on his mental disorder” against the Universal Declaration of Human Rights and “was clearly discriminatory”⁹⁸.

[5] Regarding procedures pursuant to the Habeas Corpus Act, Article 4 of the Habeas Corpus Rule, the requirements for a writ of habeas corpus are significantly limited and in incidents of petitions made by the mentally disabled, the Supreme Court makes decisions in accordance with this (Supreme Court judgment of May 25, 1971, Civil Cases Vol. 25 No. 3 p. 435⁹⁹). In defiance of the Human Rights Committee’s recommendations¹⁰⁰, the Japanese government and the Supreme Court, which established the said rule have made no improvements in this area.¹⁰¹.

[6] Furthermore, as there is no system to guarantee publicly funded legal counsel or legal representation for these procedures, a petition for such procedures cannot be filed effectively and petitioners are left in a circumstance where they cannot take adequate measures in such procedures.

(4) Reasons for seeking recommendations

[1] In order to request a revocation of a decision for compulsory hospitalization, it is possible to file an appeal pursuant to the Administrative Appeal Act and possible to file a lawsuit pursuant to the Administrative Case Litigation Act. However, such appeals under the Administrative Appeal Act are filed not to judicial institutions, but to the Minister of Health, Labour and Welfare, immediately superior to the prefectural governor, etc., who decided the disposition, and does not automatically grant the petitioner in a hospital the right to state opinions orally, it is all but ineffective¹⁰². Moreover, since the

⁹⁸ The Tokyo Shimbun, June 3, 2018 Morning Edition, p. 28 & The Nikkei Shimbun, June 3, 2018 <https://www.nikkei.com/article/DGXMZO31312690T00C18A6CR8000/> (Japanese)

⁹⁹ This decision is on hospitalization for medical care and protection and on compulsory hospitalization.

¹⁰⁰ Concluding Observations of the Human Rights Committee on the forth periodic review of Japan (CCPR/C/79/Add.102), Paragraph 24

¹⁰¹ Forecited: “Report on the Forth Report of the Japanese Government Submitted under the International Covenant on Civil and Political Rights” Chapter 6; forecited: “Japan Federation of Bar Associations Report on Response to the Second Report of the Japanese Government under Paragraph 1 of Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment” p. 70

¹⁰² Forecited: “Japan Federation of Bar Associations Report on Response to the Second Report of the Japanese Government under Paragraph 1 of Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment” p. 73

principle of non-suspension of execution” is upheld and strict requirements are imposed¹⁰³, it lacks effectiveness as a prompt means of release from deprivation of liberty¹⁰⁴.

Furthermore, administrative case litigations are well-thought-out procedures requiring a long trial period, so there is a limit from the perspective of prompt review.

- [2] As for petitions for discharge under Article 38-4 of the Mental Health and Welfare Act, the Psychiatric Review Boards which review the same are not equipped with an organizational structure and effective review system as an institution to promptly and effectively review deprivation of liberty.

In other words, their independence from the prefectural governors who determine compulsory hospitalization is incomplete, which makes the system inappropriate to conduct effective reviews. Moreover, since the Boards consist of part-time members, it is difficult for them to promptly conduct effective reviews¹⁰⁵.

Accordingly, the system of the Psychiatric Review Boards is insufficient to function as an institution to review the lawfulness promptly and effectively.

The case in which a petition for discharge by a man who had been

However, this report uses the expression that “as the right of the petitioner to participate in hearings while in hospital is not recognized, it is all but ineffective.” The problem is how to interpret the proviso of paragraph 1, Article 31 of the 2014 revision of the Administrative Appeal Act. Before the revision, the provision of the main clause of the paragraph existed, however, the proviso did not exist.

¹⁰³ The JFBA: “Outline of Revision Proposal for the Review of the Administrative Case Litigation Act in Five Years” (November 17, 2010) pointed out that a system for provisional stay of execution under relaxed requirements should be established.

https://www.nichibenren.or.jp/library/ja/opinion/report/data/101117_3.pdf (Japanese)

¹⁰⁴ In p. 76 of the forecited “Japan Federation of Bar Associations Report on Response to the Second Report of the Japanese Government under Paragraph 1 of Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” the JFBA pointed out that “it cannot be accepted that the psychiatric review boards are, via judicial control, containing seclusion and restraint or discouraging unreasonable hospitalization.” after pointing out the actual circumstances of malfunction of the psychiatric review boards.

¹⁰⁵ Forecited: “Report on the Forth Report of the Japanese Government Submitted under the International Covenant on Civil and Political Rights ” Chapter 6; the JFBA: “Opinions for Drastic Revision of the Mental Health and Welfare Act” (December 20, 2012)

https://www.nichibenren.or.jp/library/ja/opinion/report/data/2012/opinion_121220_2.pdf (Japanese) ;

forecited: “Report on the 6th Periodic Report of the Government of Japan based on Article 40 (b) of the International Covenant on Civil and Political Rights -Matters and their Background Circumstances that should be Included in the List of Issues to be Prepared by the Country Report Task Force” p. 101 ff;

forecited Japan Federation of Bar Associations Report on Response to the Second Report of the Japanese Government under Paragraph 1 of Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” p. 76

compulsorily hospitalized was not approved by the Psychiatric Review Board, later, the Working Group on Enforced Disappearances of the Human Rights Council decided that the compulsory hospitalization was not necessary indicates that reviews by the Psychiatric Review Boards lack effectiveness. This is also indicated by the fact that the approval percentage of petitions for discharge, etc., filed with the Psychiatric Review Board is only 4.5%.

- [3] Regarding procedures pursuant to the Habeas Corpus Act, the requirements for a writ of habeas corpus are significantly limited and are not an effective means to review lawfulness.
- [4] Furthermore, as there is no system to guarantee publicly funded legal counsel or legal representation for these procedures, those hospitalized in a mental hospital are left in a circumstance where they cannot effectively exercise a petition for review of the lawfulness of such deprivation of liberty¹⁰⁶.

¹⁰⁶ Forecited: Japan Federation of Bar Associations Report on Response to the Second Report of the Japanese Government under Paragraph 1 of Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, p. 76; forecited: “Opinions for Drastic Revision of the Mental Health and Welfare Act”; The JFBA: “Opinions for Improvement of Mental Health and Review of the Medical Care and Supervision Act” (March 18, 2010) I, paragraph 3

https://www.nichibenren.or.jp/library/ja/opinion/report/data/100318_6.pdf (Japanese),

Forecited: “Report on the 6th Periodic Report of the Government of Japan based on Article 40 (b) of the International Covenant on Civil and Political Rights –Matters and their Background Circumstances that should be Included in the List of Issues to be Prepared by the Country Report Task Force” p. 96 ff.