

Japan Federation of Bar Associations Opinions on Recommendations for which Japan should Provide Information within One Year under the Concluding Observations on the First Report Submitted by Japan under Article 29 (1) of the International Convention for the Protection of All Persons from Enforced Disappearance (CED/C/JPN/CO/1), Focusing on Fundamental Legal Safeguards (Paragraph 32 of the Concluding Observations)

October 16, 2019

Japan Federation of Bar Associations

## I. Gist of Opinions

The Japan Federation of Bar Associations (JFBA) gives its opinions on the recommendations for which Japan has been required by the Committee on Enforced Disappearances to provide information within one year under the “Concluding Observations on the First Report Submitted by Japan under Article 29 (1) of the International Convention for the Protection of All Persons from Enforced Disappearance (CED/C/JPN/CO/1),” focusing on fundamental legal safeguards against the deprivation of liberty (paragraph 32) as follows:

1. The Government should reform the system to allow all persons who have been deprived of liberty and detained in prisons, jails, detention facilities, juvenile training schools, juvenile classification homes, immigration detention facilities, etc. (such persons hereinafter referred to as “Persons Deprived of Liberty”; such places hereinafter referred to as “Penal Institutions, etc.”) to have access to a lawyer under systematic protection, including the right to appoint state-funded counsel from the outset of deprivation of liberty, and to communicate without delay with and be visited by their relatives.
2. The Government should establish objective criteria for the selection of members of respective Visiting Committees which have already been deployed in Penal Institutions, etc., and should grant them the authority to unrestricted access to all places within such Institutions, and should provide them with opportunities for training on the International Convention for the Protection of All Persons from Enforced Disappearance (hereinafter referred to as “Enforced Disappearance Convention”), and should reform the system so that it can guarantee the independence of Visiting

Committees.

3. The Government should make notification of the destinations of transfer or deportation if immigration detainees have been transferred or deported, and where a family member or their lawyer makes inquiries about the detainee's transfer or deportation. The Government should also give them opportunities to have access to a lawyer before deportation, and should provide them with opportunities to communicate with their family members as long as there is no objective and specific threat of hindering the deportation execution.
4. The Government should make notification of the stage of procedures promptly where, during the examination for landing, objection, expulsion and deportation procedures by immigration inspectors and special inquiry officers for foreign nationals who try to enter Japan, a family member or their lawyer makes inquiries related to these matters, and should also permit visits promptly upon request.
5. The Government should 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.
6. The Government should stipulate in legislation that those who are persons deprived of liberty and hospitalized in a psychiatric hospital (hereinafter referred to as "Inpatients") are guaranteed their right to freely correspond with and meet with their family members, lawyers and other persons chosen by them, and should ensure the unrestricted operation of the system.

Furthermore, where Inpatients are foreign nationals, the Government should stipulate in legislation that they are guaranteed their right to contact the consulates of the countries of their nationality.

## II. Reasons for Opinions

1. The term "enforced disappearance" is defined in Article 2 of the Enforced Disappearance Convention as follows:

"For the purposes of this Convention, "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of

liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”

“Enforced disappearance” namely includes the deprivation of liberty through arrest or the like by the State, followed by concealment of the fate or whereabouts of the disappeared person.

2. In paragraph 32 of the “Concluding Observations on the First Report Submitted by Japan under Article 29 (1) of the International Convention for the Protection of All Persons from Enforced Disappearance (CED/C/JPN/CO/1),” the Committee on Enforced Disappearances recommends as follows:

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

- (a) That all persons deprived of liberty in all places of deprivation of liberty have access to a lawyer from the outset of deprivation of liberty and can communicate without delay with and be visited by their relatives, counsel or any person of their choosing and, in the case of foreigners, with their consular authorities;
- (b) The independence of the authorized mechanisms for visiting places of deprivation of liberty, including through the establishment of objective criteria for the selection of members and their unrestricted access to all places of deprivation of liberty and the provision of training on the Convention.”

With regard to these recommendations, we present our opinions as mentioned in the Gist of Opinions above, as the following problems exist in the fields of “criminal proceedings,” “immigration” and “psychiatric hospitals.”

3. Problems Involving Criminal Proceedings

- (1) Problems Related to Interviews, etc.

In Japan, there is no law that obligates police officers and prosecutors to notify an arrested person’s relatives of the fact of an arrest while the person’s detention is pending. As a result, in some cases, an arrested person’s fate or whereabouts can be unknown immediately after the arrest. Police officers occasionally contact an arrested person’s relatives after an arrest, however, even in this case, such contact is often made after a suspect has been placed in a detention facility. As described above, no contact is made to suspect’s relatives immediately after an arrest, and what is more, there are actual circumstances where a suspect’s fate or whereabouts are kept unknown to their relatives for several hours until the suspect is detained in lock-up, even after he/she is taken to a police station.

When a suspect or defendant is detained, interviews between a suspect or defendant

and the one who is not the counsel are widely prohibited (Article 81 of the Code of Criminal Procedure)<sup>1</sup>. It is considered that the prohibitive measure upon interviews is permitted in cases where there are substantial and sufficient grounds for suspecting that a suspect or defendant is likely to flee or conceal evidence of their crime; however, in Japan, when a prosecutor requests that the court should impose the prohibitive measure upon interviews due to substantial and sufficient grounds for suspecting that a suspect is likely to flee or conceal evidence of their crime, the prohibitive measure upon interviews tends to be imposed as requested. Thus, as a matter of fact, interviews and correspondence between a suspect or defendant and those other than counsel are widely restricted.

As a result, restrictions are imposed on interviews as well as exchanges of documents and other items. The prohibition of interviews is abused, which should be considered as an inconsistency with the object of Article 17 of the Enforced Disappearance Convention.

Letters that a suspect or defendant intends to send or receive, even to or from counsel, are routinely censored based on the Act on Penal Detention Facilities and the Treatment of Inmates and Detainees (hereinafter referred to as “Penal Detainees Treatment Act”) (and in a judgment case dated March 1, 2019 by the Akita District Court, an attorney attempted to send a letter to an inmate who had been sentenced who was the client, stipulating that the letter was about a lawsuit seeking compensation from the state against the penal institution in which the inmate, who had been sentenced, was serving a sentence, but the head of the penal institution censored the lawyer’s letter, and the censorship was found it illegal). In a similar way, with regarding to cases involving the censorship of letters, there are many lawsuits filed seeking compensation from the state.

The system of a counsel’s visits to a detainee awaiting a judicial decision (suspects, defendants, juveniles) at Penal Institutions, etc., during nights and on holidays are conducted in accordance with an agreement between the Ministry of Justice and the

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<sup>1</sup> The number of orders prohibiting of interviews with those other than counsel (under Article 81 of the Code of Criminal Procedure) remained at approximately the same level until 1994; however, the number began to increase in 1995 and surpassed 50,000 in 2003. From 2005 onward, the number showed a tendency to decrease until 2011, but the number has leveled off again and was 36,614 in 2017. The rate of orders prohibiting of interviews (rate of the number of interview prohibition orders to the number of persons for whom the request for detention was approved) began to increase in 1995, then showed a tendency to decrease from 2003 to 2011, but the rate tended to rise thereafter and was 37.6% in 2017 (White Paper on Attorneys 2018).

JFBA. When a detainee awaiting a judicial decision is detained in a substitute prison, visits are permitted during the daytime on weekdays as well as at night and on holidays; on the other hand, when a detainee awaiting a judicial decision is being detained in a prison, jail, etc., visits on Saturdays, Sundays and public holidays and at night, other than during the daytime on weekdays, are only permitted on limited occasions.

Counsel's visits to inmates who have been sentenced to prisons, etc., are basically permitted only during the daytime on weekdays.

If Persons Deprived of Liberty cannot speak Japanese fluently, and there is no interpreter at the facilities where they are being detained, all facilities impose a rule in which conversations in languages other than Japanese are prohibited during visits. Accordingly, except in cases where interpreters are provided by the facility, they are not allowed to meet with visitors and speak their native tongues unless they appoint interpreters at their own expense, and thus as a matter of fact, they have difficulty in receiving visits from their family members or friends at the facilities. Furthermore, it has been determined that if an inmate intends to send or receive letters to or from those other than counsel, they will not be allowed to send or receive them unless they bear the translation fees by themselves and attach translations to them. Thus, as a matter of fact, there are obstacles to sending or receiving letters to or from those other than counsel.

## (2) Operation of Transfer Destination Disclosure System

In Japan, it has been determined that where a detainee awaiting a judicial decision who is detained in a jail becomes an inmate after determination of their sentences, and the inmate is transferred from a jail to a prison, the transfer destinations of the inmate will not be disclosed to the inmate's family members or counsel, except through inquiries by bar associations under Article 23-2 of the Attorney Act. However, when inquiries through bar associations are made under Article 23-2 of the Attorney Act, the procedure itself costs, and the family members of the sentenced inmate must request that a lawyer implement this procedure, and it may prove impossible to know the whereabouts of the sentenced inmate after the transfer or until replies to inquiries by bar associations under Article 23-2 of the Attorney Act are obtained (which normally takes a few weeks to one month), and other such matters exist.

## (3) Access to Counsel

There are frequent cases where suspects are subject to illegal physical restraint or

deprived of the liberty of movement, without warrants issued by judges, (the judgment case dated December 13, 2007 by the Fukuoka High Court, the judgment case dated July 22, 2009 by the Tokyo District Court, the judgment case dated October 29, 2015 by the Kobe District Court, and the case described in 25 on page 76 of the Journal of Police Science (*Keisatsugaku Ronshu*) Vol. 19, Issue 11).

On January 22, 2013, a following case occurred: when a policeman asked a person to go voluntarily to the police station, the suspect was detained there for about eight hours. Meanwhile, when the suspect tried to go home, a police officer stood in front of the door to prevent the suspect from doing so. Also, when the suspect went to the restroom, he/she was accompanied by the officer. The case thus involved continuous monitoring of the suspect's movements. With regarding to this case, the Osaka Bar Association acknowledged on November 8, 2018 that the detention of the suspect during a voluntary investigation essentially placed the suspect in a situation that could be deemed to be equivalent to an arrest and was illegal, and recommended that if in the course of an interrogation of the suspect during a voluntary investigation, a suspect expresses their intention of leaving, they must be allowed to leave immediately, and that they must not be detained beyond the scope permitted for the purpose of investigation with the suspect's consent<sup>2</sup>.

In these cases, that is, suspects are subject to illegal physical restraint or their freedom of behavior is extremely restricted, notification of the right to appoint counsel is not obligatory as a suspect has not been arrested, and, they cannot receive sufficient support by counsel, in fact. In some cases, for the purpose of derogation of obligation to make visual and audio recordings of interrogations after an arrest, an arrest under warrants is deliberately avoided and interrogations are conducted on a voluntary basis, and after the preparation of records of statements, arrest warrants are executed. In these cases, as a suspect has not been arrested, interrogations are conducted under circumstances where notification of the right to appoint counsel is not obligatory and this represents serious problems residing in criminal proceedings.

In Japan, notification of the right to appoint counsel is not obligatory at the time of an arrest (cf. Article 203, paragraph 1 of the Code of Criminal Procedure), and in actual practice, notification of the right to appoint counsel is not made until a suspect

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<sup>2</sup> Recommendation dated November 8, 2018 by the Osaka Bar Association  
[https://www.osakaben.or.jp/01-aboutus/committee/room/jinken/03/2018\\_1108.pdf](https://www.osakaben.or.jp/01-aboutus/committee/room/jinken/03/2018_1108.pdf)

has been given an opportunity to provide an explanation about their circumstances for the arrest until after an arrest. In addition, in Japan, interrogations by investigative authorities are not suspended due to counsel not having been appointed.

Furthermore, in Japan, there is no court-appointed attorney system for the period right after an arrest until determination of detention. According to the law, after arrest procedures are made, police officers should conduct procedures for taking transcripts, and after referral to a prosecutor, prosecutors should conduct the same (Article 203, paragraph 1, Article 204, paragraph 1 and Article 205, paragraph 1 of the Code of Criminal Procedure), and such procedures are different from interrogations; however, the procedures for taking transcripts are conducted for many hours and substantially used an interrogation in actual practice. In order to substantially establish the right to receive support from counsel right after an arrest, in addition to the mere notification of the right to appoint counsel, the notified suspect must be able to actually have access to and receive advice from a lawyer, and to appoint and ask counsel to attend at the procedures for taking transcripts and interrogations.

In Japan, each local bar association takes the initiative in establishing and operating a system of duty attorneys (*toban bengoshi*) in order to substantially establish an arrested person's rights to receive support from counsel. The details of duty attorney system is following: once dispatching lawyer to an arrested person free of charge at the expense of each bar association (this system receives no support from public funding).

For arrested people to receive advice from duty attorneys right after an arrest, they need to receive information and an explanation about the duty attorney system from the police immediately after the arrest. Without information being provided as described above, they will not know about the existence of duty attorneys or its details, and they cannot use the duty attorney system. However, although the Code of Criminal Procedure stipulates that "it is necessary to inform a suspect of the fact that the suspect may request appointment of counsel, designation an attorney, legal professional corporation or bar association, as well as where to submit the request" (Article 203, paragraph 3 and Article 204, paragraph 3 of the Code of Criminal Procedure), the Code does not stipulate the arrested person's right to receive an explanation about the duty attorney system from the police. On July 7, 2016, the JFBA held consultations with the National Police Agency and asked for notification of the duty attorney system, however, the National Police Agency replied that they are not

legally obligated to give an explanation about the existence of the duty attorney system. Around the same time, each local bar association also held similar consultations with prefectural police, and the prefectural police gave nearly an identical reply as was given by the National Police Agency. As a result, there are many cases where an arrested person cannot receive an explanation about the duty attorney system right after an arrest.

As mentioned above, in Japan, there is no court-appointed attorney system for the period right after an arrest until determination of detention, and there is no provision that obligates the police to provide explanation and notification to an arrested person about the duty attorney system, which functions as access to a lawyer right after an arrest, and thus there are some arrested persons who do not have access to a lawyer immediately after an arrest.

#### (4) Problems Involving Visiting Committees

In Japan, in conjunction with the enactment of the Penal Detainees Treatment Act, from 2006 onward, Visiting Committees were established at respective facilities including prisons, jails and detention facilities. In 2014, the Juvenile Training School Act and the enactment of the Act on Juvenile Classification Home was revised and Visiting Committees were established at juvenile training schools and juvenile classification homes.

Objective criteria of appointment of members of each such Visiting Committee are not stipulated in any Act. (With regard to prisons, Article 8, paragraph 2 of the Penal Detainees Treatment Act merely stipulates that “the Minister of Justice is to appoint Committee members who are deemed to have a good character and a high level of insight, along with an interest in improving the administration of penal institutions,” and with regarding to detention facilities, Article 21, paragraph 1 of said Act stipulates that “the Public Safety Commission is to appoint Committee members who are deemed to be of good character and who have a high level of insight, along with an interest in improving the administration of detention facilities.”)

With regarding to the Penal Institution Visiting Committees, the Visiting Committees for juvenile penal institutions and the Immigration Detention Facility Visiting Committees, there is an established practice of appointing lawyers recommended by each local bar association as such members.

About the Detention Facility Visiting Committees, in most areas, the system is operated by appointing, as members, lawyers recommended by local bar associations,

but in some areas, such recommendations by a bar association are not accepted. Regarding the independence of said Committees, the Committee Against Torture and the Human Rights Committee have repeatedly pointed out and sought improvements.

Article 9 of the Penal Detainees Treatment Act stipulates, for example, that the Penal Institution Visiting Committees may cause the heads of penal institutions to provide Committees with information regarding the state of administration of institutions, and may ask for assistance in conducting members' interviews with detainees, and that documents submitted by detainees to said Committees shall not be examined.

With regarding to the Detention Facility Visiting Committees, similar authority is guaranteed under Article 22 of said Act.

However, although it is possible to interpret as both Visiting Committees having been granted authority to unrestricted access to all places within such institutions and facilities, this is not expressly stipulated in the relevant provisions, and the authority of both Visiting Committees may be limited depending on the degree of assistance provided by the institution and facility authorities.

In addition, both Visiting Committees' members are part-time workers, and in many cases, the number of such members are only four to five. These small numbers of members visit more than one place, and conduct interviews with many detainees, and are otherwise forced to shoulder an excessive burden.

In some institutions and facilities, for detainees to submit proposals or opinion sheets to either of both Visiting Committees, they must go through complicated procedures: first receiving an application sheet from the staff and then receiving a request slip. Moreover, due to the above procedures, the fact that a specific detainee will make proposal, etc., is known to the institution and facility side beforehand, and such problems as threatening the detainee who has the intention of making a proposal are seen.

In many Committees, the annual number of days for meetings is limited beforehand, and where meetings are held more frequently than the limit, daily allowances may not be paid for such additional meetings. Despite these circumstances, many Committees hold meetings on days without daily allowances other than previously arranged meetings, or conduct interviews with detainees, review proposals and opinions, and engage in other activities. It is not desirable for Committee activities to rely on voluntary activities, and it is necessary to guarantee enough budget for holding

necessary meetings for such activities.

There is currently no opportunity for Committee members to receive training on the Enforced Disappearance Convention and other treaties.

#### 4. Problems Involving Immigration

##### (1) Problems During Detention

In some immigration detention facilities, a detainee may call outside from a pay phone placed within a detention facility during certain hours, however, the detainee must bear extremely high charges for using such a pay phone. People outside the facilities cannot make phone calls to a detainee held in any such facilities. A detainee also does not have access to the Internet. At present, detainees cannot hold meetings, etc., using videoconference or conference call systems. There is no indication that these points will be improved. As mentioned above, it is extremely difficult for detainee's family members and their attorney to contact them.

With regards to the times and dates of visits, even attorneys are sometimes directed to finish visits by 5:00 p.m. on weekdays, and visits on Saturdays, Sundays or public holidays are not permitted without prior reservation. Probably for the preparation for execution of deportation, etc., times and dates during which visits are not allowed to be conducted are unilaterally designated and posted on bulletin boards within immigration facilities. As stated above, much greater restrictions are imposed than those imposed on interviews at police stations.

##### (2) Problems Involving Transfer to Other Immigration Detention Facilities

When a detainee is transferred to other immigration detention facilities, they receive notification, for example, a few days prior to the transfer. However, family members and their attorney receive no notification and can grasp the fact only after receiving a telephone call or other form of contact from the detainees.

After the transfer, even where a family member or their attorney applies for visits at the previous immigration detention facilities, they are notified of the fact that the detainee is no longer being detained there, and the fate and whereabouts are not informed.

As a result of the above, the fate and whereabouts of a detainee becomes unknown to the detainee's family member and attorney.

##### (3) Problems Involving Execution of Deportation

At the time of the execution of deportation, where a deportee wishes to contact a family member or their attorney, their wishes are not fulfilled in many cases, and the

right to respect family life and, in the case of a deportee who seeks to stop deportation, or deportee who seeks a trial after the dismissal of their application for refugee status or relevant requests for administrative review, his/her right to a trial is violated.

#### (4) Problems During Procedure for Landing

When it is considered that landing requirements upon arrival in Japan were not fulfilled, even though a lawyer contacts immigration who received a report from a family member, etc., who was waiting at the airport for the deportee, the whereabouts of the deportee is sometimes not informed, and the fate of the foreigner become unknown.

There is a case where an attorney was notified of the fact itself that the foreigner was being detained, but visitation was rejected by informing that an interview was then being conducted in connection with the objection procedure for non-compliance with landing requirements, and when the attorney thereafter made contact again, visits were rejected again by informing at time that the foreigner had decided to return home and the relevant procedures were being conducted.

#### (5) Problems Involving Immigration Detention Facilities Visiting Committees

Pursuant to the provision of Article 61-7-2 of the Immigration Control and Refugee Recognition Act amended in 2009, in order to contribute to the appropriate administration of the immigration detention centers and detention houses as well as departure waiting facilities, Immigration Detention Facilities Visiting Committees were established in July 2010 as third-party organizations to conduct visits, etc., and provide opinions. However, there are only two Immigration Detention Facilities Visiting Committees established, one in the east and one in the west, and facilities over which the Committees have jurisdiction are scattered over a wide range. As a result, in paragraph 9(c) of the “Concluding Observations on the Second Periodic Report of Japan under Article 19(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/JPN/2)” (2017), the Committee Against Torture pointed out problems that “the lack of resources and authority of the Immigration Detention Facilities Visiting Committee to effectively discharge its mandate, as well as the appointment of its members by the Ministry of Justice and the Immigration Bureau.”

### 5. Problems Involving Psychiatric Hospitals<sup>3</sup>

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<sup>3</sup> Here, general psychiatric hospitals are described, but similar problems may occur under the Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of

### (1) Status of Restrictions on Correspondence and Visits

There is a provision that sending and receiving letters between the person hospitalized and the outside is not restricted,<sup>4</sup> however, in some cases, the sending and receiving of letters is restricted in the judgment by hospitals themselves based on a provision under which the sending or receiving of letters may be practically restricted<sup>5</sup>. Moreover, it is said that phone calls and visits to the person hospitalized may be restricted “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,”<sup>6</sup> and in fact, such restrictions are not uncommon.

In addition, during hospitalization, depending on Inpatients’ actual conditions, it is possible to place a patient in isolation and impose physical restraint,<sup>7</sup> but the state of being under isolation or physical restraint substantially prevents the person hospitalized from having correspondence and visits (for example, Inpatients who are under physical restraint are restricted from writing a letter itself), which results in such person hospitalized facing further restrictions on corresponding and meeting with persons chosen by them at their own discretion. Requirements for isolation and physical restraint are inherently strict,<sup>8</sup> but in practice, the system is loosely operated and there are a number of cases where such restrictions are imposed. In fact, the

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Insanity, as the provisions of said Act are similar to those concerning the treatment under the Act on Mental Health and Welfare for the Mentally Disabled (“Mental Health and Welfare Act”), which is shown here.

<sup>4</sup> Article 36, paragraph 2 of the Mental Health and Welfare Act and “Restrictions on Behavior Specified by the Minister of Health, Labour and Welfare Under the Provisions of Article 36, Paragraph 2 of the Mental Health and Welfare Act and the Provision of Said Paragraph” (Public Notice of the Ministry of Health and Welfare No. 128 of April 8, 1987)

<sup>5</sup> Provision of II-2-(1) of the “Standards Set by the Minister of Health, Labour and Welfare Under the Provisions of Article 37, Paragraph 1 of the Mental Health and Welfare Act and the Provision of Said Paragraph” (Public Notice of the Ministry of Health and Welfare No. 130 of April 8, 1987), which stipulates 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 and other related persons, 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.”

<sup>6</sup> II-1-(3) of the “Standards Set by the Minister of Health, Labour and Welfare Under Article 37, Paragraph 1 of the Mental Health and Welfare Act and the Provision of Said Paragraph” (Public Notice of the Ministry of Health and Welfare No. 130 of April 8, 1987)

<sup>7</sup> “Restrictions on Behavior Specified by the Minister of Health, Labour and Welfare Under Article 36, Paragraph 3 of the Mental Health and Welfare Act and the Provision of Said Paragraph” (Public Notice of the Ministry of Health and Welfare No. 129 of April 8, 1987)

<sup>8</sup> “Standards Set by the Minister of Health, Labour and Welfare Under Article 37, Paragraph 1 of the Mental Health and Welfare Act and the Provision of Said Paragraph” (Public Notice of the Ministry of Health and Welfare No. 130 of April 8, 1987)

annual number of patients who were subject to isolation at psychiatric hospitals in fiscal year 2018 was 12,364, and the number of patients who were subject to physical restraint was 11,362<sup>9</sup>. And, with regard to the duration of physical restraint in acute wards of psychiatric hospitals in Japan, the mean value is 142 hours and the median value is 82 hours, which are ten times more than in Europe and the United States. In chronic psychiatric wards, much longer physical restraint is said to be imposed, which leads to longer durations of restrictions on correspondence and visits.<sup>10</sup> As stated above, due to restrictions on correspondence and visits, in some cases, there is difficulty in meeting with lawyers, and due to this, the person hospitalized also have difficulty in submitting requests to the Psychiatric Review Board for leaving the hospital and improving treatment. It has previously been pointed out that the percentage of the persons hospitalized who carry out such request procedures is extremely low, and in order to improve these circumstances, it is certainly not desirable to restrict correspondence and visits.

## (2) In the Case of Foreign National Inpatients

The staffs of administrative organization related to human rights protection are specified as persons for whom restrictions cannot be imposed on phone calls or visits<sup>11</sup>, however, consulate personnel are not specified as such persons under any law or regulation, and in cases where the person hospitalized is a foreign national, visits from consulate personnel of their home country may be restricted. However, in the case of a foreign national Inpatient, it is necessary to secure opportunities to obtain relief in connection with their rights through communication in their native tongue and acquire accurate information.

Accordingly, it should be stipulated under the law that contact with consulates of their home country is guaranteed.

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<sup>9</sup> “Mental Health and Welfare Data” by the Department of Mental Health Policy, National Institute of Mental Health, (National Research and Development Agency) “National Center of Neurology and Psychiatry”

(<https://www.ncnp.go.jp/nimh/seisaku/common/images/head-ti02.png>)

<sup>10</sup> Toshie Noda et al. “Influence of patient characteristics on duration of isolation/restraint in acute psychiatric settings in Japan.” *Psychiatria et Neurologia Japonica* Vol. 116, Issue 10 (2014). 805-812 (<https://journal.jspn.or.jp/jspn/openpdf/1160100805.pdf>)

Toshie Noda “Introduction of Intervention Technique to Prevent Use of Seclusion/Physical Restraint ‘Six Core Strategies’ - and Use of Data -”

(<http://www.e-rapport.jp/team/action/sample/sample09/01.html>)

<sup>11</sup> “Restrictions on Behavior Specified by the Minister of Health, Labour and Welfare Under Article 36, Paragraph 2 of the Mental Health and Welfare Act and the Provision of Said Paragraph” (Public Notice of the Ministry of Health and Welfare No. 128 of April 8, 1987)