NGO Report on Arbitrary Detention

(in penal institutions, psychiatric hospitals

and immigration detention facilities)

among the issues included in the List of Issues regarding the 7th Periodic Report of the Government of Japan based on ICCPR (including counterarguments to the response the Government)

Network Against Arbitrary Detention

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Section 1. Introduction

1. Who we are

Compared to other civilized countries, Japan is a society where a person's liberty is constrained based on extremely arbitrary standards, and means to restore liberty are insufficient. Grave situations for personal liberty are emerging not only in one particular area, but across several domains such as penal institutions, psychiatric hospitals and immigration detention facilities.

NAAD is a network of human rights organizations working to improve situations surrounding the human rights of persons deprived of their liberty in Japan. We collaborated in preparing this report in order to argue detention issues in Japan from a

cross-sectoral point of view. Descriptions of each organization are provided in the Appendix 1.

2. Detention in police cells = substitutional detention system ("*daiyo-kangoku*")

The use of police cells for pre-indictment detention in Japan is notoriously known as "*daiyo-kangoku*". Suspects are subjected to 23 days of police interrogation for the charged offense without a pre-indictment bail system. By subdividing the charged offense into several offenses, the detention period can be extended. Carlos Ghosn was arrested by the prosecutor and was detained in a penal institution (not in a police cell), but this case involved the same problem as exists in "*daiyo-kangoku*" in that he was subjected to lengthy interrogation.

3. Death penalty, indefinite imprisonment, and imprisonment for a definite term up to 30 years

The Japanese penal system has penalties of death, indefinite imprisonment, and imprisonment for a definite term up to 30 years (having been raised from 20 years to 30 years in 2004). Although the number of crimes has been decreasing in recent years, penalties have been becoming more severe. Out of 1,800 prisoners sentenced to indefinite imprisonment, the number granted parole each year is less than 10, and the number of prisoners who die in prison is more than that.

4. Approximately 130,000 persons with mental disabilities are hospitalized without consent in psychiatric hospitals

As of June 30, 2019, a total of 129,014 persons with mental disabilities are detained in psychiatric hospitals, mostly in private hospitals, based on the consent of the family (without the person's own consent) or by means of administrative involuntary hospitalization. However, efforts for reintegrating such persons into society are insufficient. The Psychiatric Review Boards established in each prefecture are designated to conduct independent reviews as experts over the treatment of mentally disabled persons to ensure adequate medical care and protection for them, while giving due respect to their human rights. However, the Boards' functions do not include on-site inspections, and the independence of the Board members is questionable. The policy of isolating mentally

disabled persons is causing them fear toward psychiatric treatments, and constituting an obstacle to their access to appropriate medical care.

5. Hunger strikes in protest of indefinite and/or prolonged immigration detention are spreading nationwide, with one even resulting in death from starvation

Foreign nationals who are determined or suspected by the immigration authority to fall under the grounds for deportation under the Immigration Control and Refugee Recognition Act (hereinafter "Immigration Act") are detained in immigration detention facilities. According to the Government's view, such foreign nationals should be detained in principle, and necessity and reasonableness of detention are not required. As there is no limit to the detention period under a written deportation order, there is no "extension" of the detention either, which means that once a detention is initiated, no judicial review is conducted at regular intervals to check the legality of continuation of detention. Although provisional release used to be granted to some extent, it has rarely been granted in recent years. As a result, the number of people detained for more than 6 months has drastically increased, causing a serious situation: Hunger strikes in protest of prolonged detention are occurring in detention facilities on a nationwide scale, even with a case of death from starvation. In response to this situation, inhumane measures are being taken: The authority continues a cycle of granting 1- to 2-week provisional releases to detainees with deteriorating health conditions due to hunger strike and re-detaining them afterwards before again granting provisional release and re-detaining.

6. Our wishes

NAAD sincerely hopes that the Human Rights Committee makes recommendations to the Japanese Government based on the facts, and proposes reforms of the overall detention systems of Japan in according with such principles as prohibition of arbitrary detention and prohibition of inhumane or degrading treatment.

Section 2. Detention in penal institutions

1. Prolonged solitary confinement; arbitrary confinement in protection cells (LOI, para. 17)

Recommendations that we request

State Parties should revise their current systems that allow confinement in protection cells even in cases where the inmates are protesting to the penal institution. State Parties should also thoroughly train staff members of penal institutions in order to ensure that solitary confinement is implemented only as a last resort.

(1) Solitary confinement

To this day, a number of sentenced prisoners who do not meet the requirements for "isolation" stipulated by law are designated as falling under "Class 4", one of the four categories of restriction established not by law but by an Order of the Ministry of Justice. Class 4 restriction can be described as solitary confinement not based on the law, because there are hardly any differences between Class 4 restriction and "isolation" under the law. As of October 10, 2019, the total number of sentenced prisoners who were designated as falling under Class 4 in penal institutions nationwide was 894 (2.1%). On the other hand, as of the same date, the total number of sentenced prisoners who were isolated under the law in penal institutions nationwide was only 4.[1]

The following table shows the periods of solitary confinement of prisoners who have been placed under solitary confinement for more than 10 years.

[1] Response by the Ministry of Justice.

Prisoners in Solitary Confinement for more than 10 years								
Date of Research		Nov. 10,2000	July 10,2001	Oct. 1,2002	Nov. 1,2005	April 10,2008	April 10,2012	April 10,2016
Period of Isolation y=year m=month	1	37y00m	37y08m	38y11m	42y00m	52y03m	49y08m	54y00m
	2	36y07m	37y03m	38y05m	41y06m	43y00m	47y00m	34y03m
	3	35y06m	35y07m	36y07m	39y08m	39y01m	30y06m	32y08m
	4	34y11m	35y05m	29y01m	38y07m	35y10m	30y04m	31y03y
	5	34y09m	27y10m	24y00m	27y01m	26y06m	27y10m	27y10m
	6	27y10m	22y10m	23y07m	26y08m	26y05m	27y04m	24y05m
	7	22y06m	22y04m	22y10m	26y00m	25y06m	23y10m	24y03m
	8	22y02m	21y07m	22y04m	25y05m	23y11m	22y05m	24y00m
	9	21y05m	21y01m	22y02m	25y00m	23y05m	21y11m	23y09m
	10	20y11m	21y00m	21y01m	24y10m	20y05m	20y05m	23y09m
≧30 y	11	20y05m	19y10m	21y00m	23y11m	20y01m	20y01m	19y11m
20y-29y11m	12	20y04m	19y09m	21y00m	23y11m	16y05m	19y11m	19y00m
10y-19y11m	13	19y04m	19y09m	20y10m	23y06m	16y02m	16y07m	16y06m
	14	19y03m	19y07m	20y09m	21y07m	16y00m	15y09m	16y00m
	15	19y01m	19y06m	18y10m	20y03m	15y11m	15y02m	15y01m
	16	18y11m	17y07m	18y06m	19y08m	15y09m	13y03m	14y04m
	17	18y10m	17y03m	16y01m	18y05m	13y01m	12y07m	13y08m
	18	17y00m	15y10m	15y09m	17y01m	12y08m	11y07m	13y07m
	19	16y07m	14y10m	13y10m	16y01m	12y06m	11y02m	12y10m
	20	15y02m	14y07m	13y10m	15y09m	11y11m	10y05m	12y09m
	21	14y05m	12y10m	13y00m	15y03m	11y09m	10y03m	12y07m
	22	14y02m	12y07m	12y02m	15y02m	11y03m		12y05m
	23	13y11m	11y09m	12y01m	14y01m			12y04m
	24	12y02m	11y00m	11y06m	13y07m			12y03m
	25	11y11m	10y10m	11y00m	13y05m			12y01m
	26	11y01m	10y05m	10y06m	13y04m			11y11m
	27	10y04m		10y04m	13y04m			11y08m
	28	10y02m		10y04m	13y01m			11y04m
	29			10y03m	10y06m			11y01m
	30			10y00m	10y00m			10y07m
	31							10y02m
	32							10y01m
NO.of Prisoners		28	26	30	30	22	21	32
These data are based on surveys conducted by Diet member on seven different occasions between 2000 and 2020								

(2) Abusive confinement in protection cells

The Act on Penal Detention Facilities and the Treatment of Inmates and Detainees (hereinafter the "2005 Prison Act") allows for the confinement of inmates in protection cells only when the inmate shouts or makes noise despite a prison officer's order to cease doing so, and when such confinement is "particularly necessary" (Article 79 (1)(ii)).[2]

Above is a picture of the Nepalese man referred to in the text under confinement in a protection cell in a detention facility. Penal institutions have protection cells of similar structure.

However, despite such restrictions, abusive confinement in protection cells has been occurring frequently to this day. Certain inmates have even been confined in protection cells due to their protests against treatment in the facilities.

Take for example a case of a Nepalese man who was arrested at Shinjuku Police Station for embezzlement of lost property in March 2017 for having possessed a credit card in someone else's name which he had picked up on the street. He tried to leave the detention room without obeying a detention staff member's instruction to return his futon to a storage room – an instruction that he did not comprehend because he could not understand Japanese. It turned into an argument (he did not resort to violence against detention officers) and eventually, four detention officers said, "You're making fun of us, aren't you?", and forcibly confined him in a protection cell at approximately 6:52 a.m. for insubordination. In addition, after placing him in a protection cell, about 15 staff members surrounded him and put restraining devices on him (handcuffs affixed to the waist belt,

[2] Article 79 (1) of the 2005 Prison Act: When an inmate falls under any of the following categories, prison officers may confine the inmate in a protection cell by order of the warden of the penal institution:
(i) the inmate is likely to self-harm;
(ii)the inmate falls under any of the following sub-categories (a) through (c), and when such confinement is particularly necessary in order to maintain discipline and order in the penal institution:
(a) the inmate shouts or makes noise against a prison officer's order to cease doing so;
(b) the inmate is likely to inflict injury on others;
(c) the inmate is likely to damage or defile facilities, equipment or any other property belonging to the penal institution.

along with restraining devices around his knees and ankles). He laid in the protection cell restrained by the devices for about two hours. At 9:18 a.m. of the same day, the handcuffs were removed and replaced with handcuffs used for escorting, and he was transferred to the public prosecutor's office. One of the handcuffs was removed during the interrogation at the public prosecutor's office, and he died of traumatic shock caused by muscle crush syndrome.[3]

The above case is merely one example. The Supreme Court has taken a stance that can be seen as condoning abusive confinement in protection cells. In the Supreme Court Judgement of October 25, 2018, Justice Masayuki Ikegami stated the following supplementary opinion:

The requirement of "when such confinement is particularly necessary" is not limited to cases where the mental state of the inmate is extremely unstable. Even if the inmate shouts intentionally as an act of protest and is capable of controlling himself/herself according to circumstances, it is reasonable to understand that confinement in protection cells is permitted if the inmate falls under any of categories (a) to (c) and if such measure is highly necessary in order to maintain discipline and order in the penal institution.

According to this opinion, even inmates who chant protests against their treatment can be confined in a protection cell. Confinement in protection cells is far from being used "only in exceptional cases as a last resort" (Mandela Rules, Rule 45(1)).

2. Obstruction to external communications; persistent obstruction to confidential communications with attorneys (LOI, para. 17)

Recommendations that we request

(i) State Parties should revise their systems so as to prohibit censorship of and interference with the correspondence by letters between attorneys and sentenced prisoners regarding any legal matters.

(ii) The State Party should reform their system so that even sentenced prisoners under confinement in protection cells are allowed to meet their attorneys and to exchange correspondence with their attorneys.

(1) Response by the Japanese government

[3] This case occurred in a police detention facility. The same regulations as those regarding protection cells in penal institutions are stipulated for detention facilities (Article 214 of the 2005 Prison Act).

The following is a response by the Japanese government in this regard:

"As a general rule, no staff member is supposed to be present during a meeting between an inmate and an attorney who has undertaken a case regarding the treatment of the inmate (Articles 112 and 116 of the 2005 Prison Act), and a letter from such attorney shall be examined to the extent necessary to confirm that it is a correspondence sent from an attorney who has undertaken a case regarding the treatment of the inmate (Articles 127 and 135 of the 2005 Prison Act)".[4]

However, in reality, penal institutions have continued the practice of opening and reading the contents of letters in any circumstances as the case detailed in (2) below illustrates. Therefore, the confidentiality of correspondence between attorneys and sentenced prisoners is not guaranteed at all. In addition, if a sentenced prisoner is confined in a protection cell, even an attorney who has undertaken a case regarding the treatment or a defense attorney involved in the criminal case is prohibited from visiting the prisoner and exchanging correspondence.

[4] Article 127 of the 2005 Prison Act (1) When it is deemed necessary for maintaining discipline and order in the penal institution or for the adequate conducting of correctional treatment for a sentenced person, or for any other reasons, wardens of penal institutions may have a designated staff member examine the letters the sentenced person sends and receives.
(2) With regard to the letters set out under the following items, designated staff members are to examine them to the extent necessary for ascertaining that the letters fall under any of the following items; provided, however, concerning the letters set forth in item (iii), this does not apply where there are special circumstances in which it is deemed likely to disrupt discipline and order in the penal institution:
(i) letters a sentenced person receives from a national or local government agency;
(ii) letters a sentenced person sends to a national or local government agency which conducts an inquiry into the measures taken by wardens of penal institutions toward the sentenced person, or any other treatment the sentenced person received;
(iii) letters a sentenced person sends to or receives from an attorney (including a legal professional corporation, hereinafter the same applies in this Subsection) who conducts the duty prescribed in Article 3, paragraph (1) of the Attorney Act with regard to the measures taken by wardens of penal institutions toward the sentenced person, or any other treatment the sentenced person received.

(2) Censorship of letters

An attorney was retained by a sentenced prisoner to file a lawsuit against the state to seek compensation for the treatment the prisoner experienced in the penal institution. The attorney sent a letter about the compensation case to the prisoner, but the envelope was opened and the letter was read by penal institution staff.

As shown in the picture, inside the envelope was a letter wrapped with a cover paper, which said "Do not open: A letter regarding the compensation lawsuit against Akita Prison (this letter falls under Article 127(2)(iii) of the 2005 Prison Act)". It was easily recognizable by glancing inside through the cover's slit that the envelope did not contain any prohibited items. In addition, it could be confirmed from the description on the cover that it was a correspondence from an attorney who had undertaken a case regarding the prisoner's treatment (i.e., a letter which falls under Article 127(2)(iii) of the 2005 Prison Act).

Nonetheless, the staff opened the envelope and read the letter. The prisoner filed a lawsuit against the state seeking compensation, claiming the examination of the letter was illegal. The Akita District Court ruled that the measure taken by the Akita Prison warden to remove the cover paper and to examine the contents of the letter was illegal. However, the Akita Branch of the Sendai High Court, the appellate court, ruled that the examination was legal and approved the penal institution's reading of the letter's contents[5], stating that even if the cover paper stated the letter fell under Article 127(2)(iii) of the 2005 Prison Act, it was nonetheless necessary to confirm the statement was true, and a possibility existed that a letter unrelated to the case would be exchanged. Prior to this case, this Court had issued a similar ruling in which it found that opening and reading a letter was lawful.[6] However, if such a decision is accepted, examination of letters' contents by penal institution personnel will always be permitted despite any efforts to avoid examination.

(3) Restriction of external communication by prisoners confined in protection cells

[5] The Akita District Court, Judgement of March 1, 2019 (Case No. (wa) 140, 2017), The Akita Branch of the Sendai High Court, Judgement of May 27, 2020 (Case No. (ne) 16, 2019, (ne) 44, 2019).

[6] The Akita Branch of the Sendai High Court, Judgement of February 4, 2019 (Case No. (ne) 34, 2018).

The 2005 Prison Act stipulates that an inmate may be confined in a protection cell when the inmate shouts or makes noise and when it is particularly necessary for maintaining discipline in the penal institution. However, the Act does not stipulate any restriction on meetings between an inmate confined in a protection cell and a defense attorney or prospective defense attorney.

In this regard, the Supreme Court ruled that "even if a request to visit an unsentenced person being confined in a protection cell has been made by a defense attorney or prospective defense attorney, the warden of the penal institution may reject such request to maintain discipline and order in the penal institution if the unsentenced person falls under category (ii) of paragraph (1) of said Article at the time of deciding whether to allow such visit".[7]

Given this Supreme Court ruling, even a defense attorney can be restricted from visiting an inmate confined in a protection cell. In addition, as mentioned above, Justice Masayuki Ikegami stated in his supplementary opinion to the Supreme Court's ruling that confining an inmate in a protection cell can be considered legal even when "the inmate shouts intentionally as an act of protest". According to this opinion, if an inmate is protesting the treatment carried out in a penal institution, he/she is not only placed in a protection cell but is also denied access to a criminal defense attorney or an attorney retained for procedures to file a complaint regarding the treatment.

Such concern has already been realized, as the following cases illustrate:

a) The case of Tochigi Prison

A prisoner sentenced to life imprisonment and detained in Tochigi Prison filed a civil lawsuit regarding the treatment carried out by the penal institution and appointed an attorney to represent him in the case. Subsequently, the inmate was confined in a protection cell and was no longer allowed to meet with the attorney after a December 20, 2018 meeting. On July 2, 2019, the attorney submitted an application for human rights relief to the Tochigi Bar Association, alleging that external communication with the prisoner had been blocked for more than six months.[8] The case is currently under investigation by the Tochigi Bar Association.

[7] 1st Petty Bench of the Supreme Court, Judgement of October 25, 2018 (*Minshu* Vol. 72, No.5, at 940).
[8] Asahi Shimbun "Human relief application for a female prisoner: no permission to visit for 6 months" (July 2, 2019).

b) A case in which a prisoner confined in a protection cell was not allowed to meet the criminal defense attorney

This is a case where a sentenced prisoner's criminal defense attorney made a request on three occasions to visit the prisoner who was being confined in a protection cell; each request was denied. The Akita District Court held that not suspending the confinement in the protection cell and not allowing the criminal defense attorney to meet with the prisoner were not illegal, because the requirements for the confinement in a protection cell were satisfied at the times when such requests were made.[9]

3. De facto life imprisonment without possibility of parole (LOI, para. 17)

Recommendations that we request

(i) The requirements for parole should be objectified, and subjective requirements such as "public sentiment" and "sentiment of contrition" should be removed.

(ii) Periodic parole hearing system should be established.

(iii) The independence of the Regional Parole Boards should be strengthened and their composition should be reconsidered in order to ensure appropriateness and fairness of parole decisions.

(iv) (a) The disposition to deny parole should be implemented by a decision, (b) such decision should be notified in writing to the prisoner along with the reasons, and (c) application for examination of the disposition of parole denial should be allowed.

(1) Criteria for the granting of parole

a) The Penal Code sets forth two requirements for granting parole to prisoners sentenced to life imprisonment: the prisoner has served at least 10 years, and the prisoner evinces "signs of substantial reformation" (Article 28 of the Penal Code). The criteria for deciding whether there are "signs of substantial reformation" are provided in Article 28 of the Ordinance for Treatment within Society: "A prisoner shall be granted parole in a case where the prisoner has a sentiment of contrition and a willingness to reform and rehabilitate himself/herself, and there is no risk that the prisoner would commit crimes again, and placing the prisoner under probation is deemed appropriate for his/her reform

[9] The Akita District Court, Judgement of January 24, 2020 (Case No. (wa) 10, 2018).

and rehabilitation; provided, however, that this shall not apply to a case where it is considered that the public sentiment does not approve of granting parole to the prisoner".

b) The first problem is that parole can be denied on the grounds of "public sentiment" even if the prisoner's rehabilitation has progressed sufficiently and there is no longer a risk of committing crimes again. It is inappropriate to consider the "public sentiment" in addition to the requirement that the prisoner has served for a sufficient period of time proportionate to the gravity of the crime committed.

c) Another problem is that the "sentiment of contrition" is premised on an admission of guilt, and a "sentiment of contrition" is likely to be denied in cases where a person denied the facts charged in a criminal trial and seeks a retrial after the sentence becomes final and binding. International standards only require that the prisoner is ready to reintegrate safely into society, and to meet this requirement, a "sentiment of contrition" (i.e., an admission of guilt and repentance) by the prisoner is not necessary.

d) The requirements for parole need to be objectified.

In addition, it is necessary to strengthen the independence of the Regional Parole Boards and reconsider their composition to ensure appropriateness and fairness of parole decisions.

e) Also, there are procedural problems regarding parole. In particular, prisoners cannot submit an application for examination of the disposition of parole denial, and prisoners are not even notified of the reasons for such disposition. This is because, while the Rehabilitation Act provides that one may submit an application for examination of a disposition implemented by the decision of the Regional Parole Board pursuant to the Administrative Appeal Act (Article 92 of the Rehabilitation Act), it does not provide that a disposition denying parole shall be made by a decision.

Introducing objection procedures is specified as a minimum standard in the Tokyo Rules. Therefore, the Rehabilitation Act should be amended so that (1) the disposition to deny parole is implemented by a decision, (2) the prisoner is notified in writing of the decision, along with the reasons for it, and (3) application for an examination of the decision is allowed.

(2) The number of parolees since 2014

a) Among prisoners sentenced to life imprisonment, the number of those granted parole was 7 in 2014, 11 in 2015, 9 in 2016, 11 in 2017 and 10 in 2018. Approximately 10 parolees each year is far too few. The number of parolees excluding "those who were

granted parole again after parole was revoked" (as cited in the Japanese government's response) was 6 in 2014, 9 in 2015, 7 in 2016, 8 in 2017, and 7 in 2018.[10]

The following is a table detailing the number of prisoners sentenced to life imprisonment and related information, excerpted from a document titled "Status of execution of life imprisonment and operation of parole regarding prisoners sentenced to life imprisonment" published by the Ministry of Justice in December 2019.

1. Status of Execution of Life imprisonment

(1) Number of prisoners sentenced to life imprisonment, etc.

Table 1-1 Number of prisoners sentenced to life imprisonment, prisoners sentenced to life imprisonment and released on parole, and prisoners sentenced to life imprisonment who died

(2009-2018)

	Number of prisoners sentenced to life imprisonment serving as of the end of the year	Number of newly arrived prisoners sentenced to life imprisonment	Number of prisoners sentenced to life imprisonment and released on parole	Number of prisoners sentenced to life imprisonment and newly released on parole* …(1)	Average term of imprisonment of (1)	Number of prisoners sentenced to life imprisonment who died
2009	1,772	81	6	6	30y 2m	14
2010	1,796	50	9	7	35y 3m	21
2011	1,812	43	8	3	35y 2m	21
2012	1,826	34	8	6	31y 9m	14
2013	1,843	39	10	8	31y 2m	14
2014	1,842	26	7	6	31y 4m	23
2015	1,835	25	11	9	31y 6m	22
2016	1,815	14	9	7	31y 9m	27
2017	1,795	18	11	8	33y 2m	30

[10] "Status of execution of life imprisonment and operation of parole regarding prisoners sentenced to life imprisonment" (p.1) published by the Ministry of Justice in December 2019. http://www.moj.go.jp/content/001274998.pdf

2018	1,789	25	10	7	31y 6m	24
Total		355	89	67		210

Note: "Number of prisoners sentenced to life imprisonment and newly released on parole" represents the number of prisoners sentenced to life imprisonment and who were released on parole excluding "those who were granted parole again after the parole was revoked".

The number of prisoners sentenced to life imprisonment as of the end of each year remained roughly flat from 2014 to 2018, ranging from 1,842 individuals to 1,789, but only approximately 10 were released on parole each year. Also, it is evident that the periods of incarceration before the granting of parole were overly long considering that the average length of incarceration of the newly released prisoners was between 31 and 33 years.

In addition, the number of prisoners sentenced to life imprisonment who died was 23 in 2014, 22 in 2015, 27 in 2016, 30 in 2017, and 24 in 2018. This means that those who have died in prison totaled more than twice the number of parolees.

b) As for the number of prisoners sentenced to life imprisonment by age as of the end of 2018, there were 358 (20.0%) prisoners in their 70s and 97 (5.4%) prisoners in their 80s or older, which shows that a substantial number of aged prisoners are detained in prison for indefinite terms.[11]

The aging of inmates imprisoned for indefinite periods is becoming a serious problem, and blame can be attributed to the rarity of parole. To solve this problem, the measures mentioned in (1)(d)and(e) are indispensable.

(3) Opaque parole procedures: the case of Fumiaki Hoshino[12]

The extreme opacity of Japanese parole procedures is illustrated by the case of Fumiaki Hoshino, an inmate imprisoned for an indefinite period in Tokushima Prison.

Mr. Hoshino was sentenced to life imprisonment for murder, arson of inhabited buildings, obstruction of public duty, bodily injury, and unlawful assembly with weapons, and was transferred to Tokushima Prison on October 30, 1987. Mr. Hoshino served more than 30 years of his sentence in Tokushima Prison, but the Shikoku Regional Parole Board denied

[11] "Status of execution of life imprisonment and operation of parole regarding prisoners sentenced to life imprisonment" (p.3) published by the Ministry of Justice in December 2019. http://www.moj.go.jp/content/001274998.pdf

[12] These facts are based on "Let's get back Mr. Fumiaki Hoshino! National Retrial Liaison Conference". http://fhoshino.u.cnet-ta.ne.jp/

parole on March 25, 2019. On April 18, 2019, Mr. Hoshino was transferred to the East Japan Correctional Medical Center, where he died of liver cancer on May 30, 2019.

Since 2018, Mr. Hoshino's defense attorneys had been aware of his deteriorating health and requested Tokushima Prison to conduct a medical examination. However, Tokushima Prison did not accept their requests. On March 20, 2019, the attorneys submitted an opinion to the Shikoku Regional Parole Board and insisted that Mr. Hoshino should be released on parole to receive proper medical care, but the Board did not grant parole. On April 15, 2019, the attorneys requested the Board to specify the reasons for its denial. However, the Board did not respond to this request.

The procedural problem underlying the case of Mr. Hoshino goes beyond the lack of disclosure of the reasons for denying parole. Mr. Hoshino's behavior was highly favorable: He was punished only seven times during his 32 years of imprisonment. The details of his acts and related punishments are described in the Appendix 2. l were merely trivial acts which any ordinary person takes for granted in daily life and which did not interfere with the discipline and order of the prison. In particular, the seventh punishment in May 2018 was imposed for the first time in eight years and occurred just before the commencement of the parole hearing. His support group criticized this punishment as being imposed to negatively impact the hearing. There are no reasonable grounds to dispel such criticism given that no reason for rejecting his parole request has been specified.

Section 3. Detention in psychiatric hospitals

1. Progress made in establishing a National Human Rights Institution (LOI, para. 4)

Recommendation that we request

The Government should establish a National Human Rights Institution（NHRI）in accordance with the Principles relating to the Status of National Institutions (the Paris Principles).

(1) Introduction

In Section 5 below, we will argue the necessity of ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and an appropriate national human rights remedy system in line with

international standards. This section deals with the human rights bodies of the Ministry of Justice of Japan, which the Japanese Government has been using as an excuse in international society until today. We will discuss the weakness of their legal basis and, as illustrated by several case examples related to psychiatric treatment, their dysfunction.

The response of the Japanese Government submitted to the Committee states "the Government continues to conduct an appropriate review of the framework for a human rights remedy system, while bearing in mind the discussions conducted thus far", which is a non-response in effect. On the other hand, in the follow-up submitted at the second cycle of the Universal Periodic Review (hereinafter "UPR"), the Government provided the following response to Recommendations 34, 60, 62, 63, 66, 79, 84, 87, 89, 92, 114, 115, 139, 142, 149, 161, 162, 163, 164 and 166: "The human rights bodies of the Ministry of Justice provide human rights counseling centers and other services for those who suffer discrimination, and when they become aware of suspected human rights violations, the bodies investigate the cases without delay and take appropriate measures depending on the cases", as if the human rights bodies are alternative mechanisms of NHRIs. [13] However, their system is not the same as that of NHRIs, nor are they functioning as an alternative mechanism of NHRIs.

(2) Legal basis of the human rights bodies of the Ministry of Justice

The legal basis for the human rights protection activities conducted by the Ministry of Justice and the Legal Affairs Bureau is the Act for Establishment of the Ministry of Justice, which provides that the Ministry of Justice has jurisdiction over matters related to (1) investigation of human rights violation cases and remedies for and prevention of human rights violations, (2) human rights awareness-raising and, in the private sector, promotion of human rights protection activities, (3) human rights commissioners, and (4) human rights counseling.

Among the above-mentioned matters, the most important are the investigation of human rights violation cases and remedies for human rights violations. However, even if an application for remedies is made, the Ministry has no authority to conduct a compulsory investigation and cannot investigate without the cooperation of the person who allegedly violated human rights, because the grounds for an investigation are merely provided in

[13] The Government of Japan Mid-term Report on progress made in the implementation of the recommendations issued at the second cycle of the Universal Periodic Review, January 2017.

circulars titled “Rules for Investigating and Handling Human Rights Violation Cases” and “Detailed Rules for the Investigation and Handling of Human Rights Violation Cases”.

In addition, the jurisdiction set forth in the law is narrowly interpreted by the circulars and in practice. For example, to warrant an investigation, a human rights violation is required to constitute an illegal act under the domestic law, and in principle, an investigation shall not be commenced upon the lapse of one year from the date of the alleged human rights violation. Therefore, the Ministry of Justice’s human rights bodies are far from capable of conducting investigations and providing remedies in human rights violation cases.

(3) Dysfunction of the human rights bodies as illustrated by examples regarding psychiatric treatment

Consequently, while the number of remedial proceedings newly initiated in 2019 was 15,420, the outcome was merely “instructions” imposed in 99 (0.6%) cases, inducing the other party to reflect on their actions, and “awareness-raising” implemented in 34 (0.2%) cases, deepening the understanding of human rights by concerned parties or communities. These numbers clearly reveal dysfunction within this mechanism[14].

Also, in the cases of Mr. N and Ms. H, in which an application was submitted to seek remedies for human rights violations regarding psychiatric treatment as detailed below (Japanese Lawyers and Citizens Network for the Medical Aid of Welfare and Human Rights was involved in both cases), the Legal Affairs Bureau determined that “the existence of human rights violations could not be confirmed”, that is “non liquet”, because “as a result of the investigation, we could not determine that the facts constituted violations of human rights”, even though the UN Working Group on Arbitrary Detention had concluded that both were cases of arbitrary detention.

An application was submitted in October 2017 regarding “hospitalization for medical care and protection” (Article 33 of the Act on Mental Health and Welfare for the Mentally

[14] 15404 cases out of 15420 cases were dealt with by the bodies. The details are as follows. “Support”: 138233 (89.7%) cases, “Request”: 508 (3.3%) cases, “Instructions”: 99 (0.6%) cases, “Coordination”: 41 (0.3%) cases, “Postponement of Measure”: 17 (0.1%), “Absence of Violation”: 5 (0.03%), “Non liquet”: 694 (4.5%), “Awareness-raising”: 34 (0.2%) cases. “Support” is to provide legal advice and introduce administrative agencies concerned and public/private organizations concerned. “Request” is to request a person who can effectively deal with relief or prevention of damage to take necessary measures. “Postponement of Measure” means not to be taken measures in consideration of the gravity of the case, the extent of showing remorse, and the presence of disciplinary measures.

Disabled, hereinafter referred to as “the Act” in this Section), alleging that compulsory hospitalization of a person with family members based on the consent of a mayor of a municipality constitutes a human rights violation (compulsory hospitalization based on the consent of a mayor is exceptionally permitted when the person in question does not have family members). However, a conclusion is yet to be made in response to this application. For another application submitted in June 2019 to the same effect, it was determined that “the existence of a human rights violation could not be confirmed” because they “could not determine that the facts constituted a violation of human rights”. In response to an application submitted in May 2019 alleging that prohibiting a person from making phone calls to the Human Rights Bureau of the Ministry of Justice constituted a human rights violation, it was determined that “the existence of a human rights violation could not be confirmed”.

In the case of Mr. T detailed below, an application was submitted in July 2019 alleging that continuing the compulsory hospitalization of Mr. T despite the fact that he had never received any treatment since the commencement of his hospitalization in 2015 constituted a human rights violation. However, no conclusion has been made in response to this application, and Mr. T is still being subjected to compulsory hospitalization.

An application submitted in August 2019 alleged that the following incidents constituted human rights violations: The person in question was compulsorily transferred to a psychiatric hospital by a private transfer company without legal basis, and the administrator of public assistance forged an application document for public assistance using the name of the person to cover the transportation costs. In this case, it was determined that proceedings would not be initiated due to the lapse of one year from the date of the alleged human rights violation (Article 7 (1)(v) of the Detailed Rules).

2. Necessity and proportionality of involuntary hospitalization; guarantee of safeguards （LOI, para.15(a))

Recommendations that we request

(i) The Government should recognize the actual situation in which a large number of persons with mental disabilities are subjected to involuntary hospitalization based on extremely broad requirements, and should amend the law or improve

the practice so that the necessity and proportionality of involuntary hospitalization are rigorously determined. **(ii) The Government should make efforts to provide broader means of access to remedies for violations of rights in the context of the initiation or continuation of hospitalization.**
(iii) The Government should amend the law or improve the practice so that the reasons for involuntary hospitalization are disclosed to attorneys working to protect the rights of the patient.

(1) Introduction

The Government responded by stating that "the procedures at the time of hospitalization and the review proceedings during hospitalization are strictly stipulated by the law". Nevertheless, there remains a number of obviously unnecessary involuntary hospitalizations. The situation has not been improved despite the recommendations made in the previous Committee meeting.[15] In this regard, the problematic legal system mentioned by the Government and the problematic operation of laws as well as insufficient social systems regarding mentally disabled persons are to blame for such unnecessary involuntary hospitalizations.

We will point out the problematic issues of the psychiatric medical system in (2) below, and introduce examples illustrating such problems in (3).

(2) Problematic issues

a) Broad requirements

The requirement for involuntary hospitalization is the "risk" of causing self-injury or harm to others due to mental disabilities (Article 29 (1) of the Act). Involuntary hospitalization is initiated upon the decision of the prefectural governor, but the above-mentioned requirement is interpreted and applied extremely broadly. "[H]arm to others" refers to "an act that causes harm to the life, body, chastity, honor, property or social or legal interests of others" (Ministerial Notification No. 125 of the Ministry of Health, Labour and Welfare, April 8, 1988, "The criteria specified by the Ministry of Health, Labour and Welfare based on Article 28-2 of the Act"). For example, an act of soiling a bed in a hotel room due to sickness-induced diarrhea (the case of Ms. H as detailed below)

[15] CCPR/C/JPN/CO/6, para. 17.

constitutes “harm to others” because the act causes harm to others’ property. In addition, it is not evident how far into the future such “risk” should be predicted, and it is doubtful whether such prediction can be made through psychiatric treatment. This requirement inherently leaves room for arbitrary interpretations, and is actually applied in an arbitrary way.

b) Lack of rigorous consideration of necessity and proportionality

Even though segregating a person in a locked ward constitutes a serious restriction on human rights, the necessity of such measure is not considered rigorously enough.[16] As described below, there are cases where involuntary hospitalization was implemented and continued for nearly three months following a minor harm to others, such as shoplifting a can of Coke (the case of Mr. N) or soiling a hotel room bed (the case of Ms. H). In another case, a person who used violence against his family has been involuntarily hospitalized for more than five and a half years to this day (the case of Mr. T). We must say that judgements of designated psychiatrists are made without considering less restrictive alternatives or the proportionality. It is problematic, in the first place, that the judgement regarding necessity of involuntary hospitalization is made by an administrative body without going through judicial procedures. In criminal cases, the imposition of involuntary detention as a form of punishment requires judicial judgment, where evidence is produced by the public prosecutor and an attorney defends the accused’s rights. Judgement on detention is made while giving importance to the proportionality in light of the nature of the crime committed. Likewise, the necessity and proportionality of involuntary hospitalization must be examined more rigorously.

c) Inadequate remedies for violation of rights

Under the current system, there is no opportunity for an attorney to be involved in defense of one’s rights before or immediately following the initiation of detention in psychiatric hospitals. Formally, there are some remedies available after initiation of forced hospitalization, including filing a complaint to an administrative agency or to a court. However, such remedies are not effective, as involuntary hospitalization is very rarely found illegal. This is because the requirements set forth in Article 29(1) of the Act are interpreted extremely broadly, and the discretion of designated psychiatrists who conduct

[16] Cf. A/HRC/30/37, United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, Principle 13 and Guideline 14.

medical examinations is interpreted to be quite broad as well. In other words, administrative bodies or courts pay too much respect to the judgement of the designated psychiatrist who approved involuntary hospitalization, even though such judgement is not made after careful consideration of less restrictive alternatives or the proportionality. Thus, under the current system, people are forcibly hospitalized even when deprivation of liberty is unnecessary. These problems have been repeatedly noted by the Committee against Torture as matters to be improved.[17]

d) Lack of notification of reasons for detention

The Act does not require administrative bodies to inform a detainee of the reasons they decided that "risk" of self-injury or harm to others exists. Informing the reasons is required by neither the Ordinance for the Enforcement of the Act nor a guideline established by the Ministry of Health, Labour and Welfare. Even if the detainee or his/her attorney requests the hospital or administrative body to disclose administrative documents, the crucial reasons which justified the involuntary hospitalization are redacted upon disclosure. Therefore, there is no means by which the detainee or his/her attorney can discover the reasons for the involuntary hospitalization. If notification of reasons is ensured, examination of the necessity for involuntary hospitalization will be conducted more carefully, and arbitrary judgement will be eliminated. The requirement would also serve to release an individual from unnecessary hospitalization. In theory, administrative organs must demonstrate the necessity of involuntary hospitalization, which involves restrictions of liberty, by specifying the dangerousness of the individual based on concrete facts.[18]

(3) Case Examples

Below are three cases illustrating each of the above-mentioned problems. We emphasize to the maximum extent possible that these cases are only the tip of the iceberg.

(a) The case of Mr. N

In July 2017, Mr. N was forcibly hospitalized for approximately two months following an attempted theft of a can of Coke and was not immediately discharged even after the

[17] CAT/C/JPN/CO/1, para. 26 and CAT/C/JPN/CO/2, para. 22.

[18] The Committee on the Covenant of Liberty noted in General Comment No. 35 the importance of notification of reasons upon deprivation of liberty. It also noted that outdated laws regarding the mental health care system should be amended. CCPR/C/GC/35, paras. 24-28 and para. 19. Cf. A/HRC/30/37, United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, Principle 7 and Guideline 5.

forced hospitalization was terminated. At the time of the attempted theft, Mr. N was receiving outpatient treatment for schizophrenia. However, the act was not attributed to his mental disease. In fact, Mr. N thoughtlessly said to himself, “It won't be discovered”, and attempted to steal a Coke from the store. Mr. N had no criminal record, and the amount of property loss was incredibly insignificant given that it was an attempted theft of a can of Coke. Therefore, a serious crime was not involved, and if the case had been handled via criminal procedures, Mr. N would not have been detained or would have been released at an early stage even if detained. The Japanese system, however, allows for involuntarily hospitalization of someone like Mr. N and the deprivation of liberty for a substantial period due to mental disease and an attempted theft. This case was reported to the Working Group on Arbitrary Detention (hereinafter “WGAD”), and WGAD adopted an opinion in 2018 that the involuntary hospitalization of Mr. N and his continued confinement constituted arbitrary detention.[19]

(b) The case of Ms. H

In August 2016, Ms. H was involuntarily hospitalized for three months following an incident in which she soiled a bed in a hotel due to sickness-induced diarrhea. This act did not constitute a crime, because causing damage to property by negligence is not subject to punishment under the Penal Code of Japan. This case was reported to WGAD, which adopted an opinion in 2018 that the involuntary hospitalization of Ms. H and her continued confinement constituted arbitrary detention.[20]

(c) The case of Mr. T

Involuntary hospitalization of Mr. T was initiated following a fight during which he used violence against his family. He is still involuntarily hospitalized to this date. However, Mr. T has been living calmly in the hospital for five and a half years without committing any violent act. Mr. T has had doubts about his mental disease since the beginning of the hospitalization, and has been refusing any treatment or examination other than responding to physicians’ questions. Thus, he has never received treatment for five and a half years in effect. There is no prospect that he will be discharged as long as he continues to refuse

[19] A/HRC/WGAD/2018/8

[20] A/HRC/WGAD/2018/70

treatment or examination. In addition, Mr. T has not been discharged despite the spread of COVID-19.[21]

3. Monitoring and reporting system of abuses (LOL, para. 15(b))

Recommendation that we request

The Government should acknowledge that the current systems are insufficient for effectively investigating and sanctioning abuses, and should ensure an effective and independent monitoring and reporting system regarding psychiatric hospitals.

The Government mentioned current mechanisms such as the Psychiatric Review Board. However, in the domain of psychiatric hospital detention, there is no mechanism such as a "Visiting Committee" that exists in the domain of criminal detention or immigration detention. As explained in Section 5 below, these mechanisms also have problems in terms of independence, but the lack of a mechanism in the first place is even more problematic. In addition, the above-mentioned Psychiatric Review Board was not established for the purpose of effectively investigating and sanctioning abuses. The actual situation of the Psychiatric Review Board is as follows: In one year from April 2018 to March 2019, the total number of discharge requests reviewed by the Psychiatric Review Boards across all prefectures was 2,551, and only 2.0% of such requests were granted on the grounds that "continuing the hospitalization was not appropriate". As for the other requests, the Boards decided that "continuing the hospitalization in the current form was appropriate" (91.8%) and "the form of hospitalization should be changed" (3.3%).[22] Also, the total number of requests for improvement of treatment reviewed by the Psychiatric Review Boards during the same period was 577, and the Boards decided that "the treatment was appropriate" (88%), "the treatment was inappropriate" (6.3%), and "unknown" (5.7%). Take for example the case of S, who was involuntarily admitted to a

[21] In response to the spread of COVID-19, international organizations have issued opinions and guidelines regarding detention. These guidelines note that the assessment of necessity and proportionality of detention must be conducted even more rigorously during public health emergencies. OHCHR and WHO, Interim Guidance on COVID-19: Focus on Persons Deprived of Their Liberty, March 2020; WGAD, Deliberation No. 11 on prevention of arbitrary deprivation of liberty in the context of public health emergencies, May 2020.

[22] Ministry of Health, Labour and Welfare "Data regarding Mental Health and Welfare - 630 Survey (2019)".

psychiatric hospital for nearly one year due to a minor malformation of the cerebellum, a kind of developmental disorder, and inadequate intellectual capacity. The Psychiatric Review Board decided that "continuing the hospitalization in the current form was appropriate" even though the effectiveness of hospital treatment was questionable in this case. It is extremely rare that the Boards grant a discharge or find treatment to be inappropriate, and in most cases, the Boards merely approve the hospitalization initiated based on broad requirements without any judicial decision. The Committee against Torture has also repeatedly made recommendations that all necessary measures should be taken to ensure effective and thorough judicial control over detention procedures.[23]

Section 4. Detention in Immigration Facilities (LOI, para. 21)

1. Prevention of ill-treatment during deportation (LOI, para. 21(a))

Recommendations that we request

The Government should take all appropriate measures to guarantee that immigrants are not subject to ill-treatment during their deportation. In particular, the Government should (i) provide detainees the same level of medical care as provided to the general public, and (ii) take measures to prevent violence against detainees.

(1) Response by the Government

a) The Government responded that "an applicant for recognition of refugee status without status of residence is granted permission for provisional stay and not detained unless he/she is recognized as falling under certain categories such as a case where he/she is likely to flee" (para. 179). However, in practice, if a person applies for refugee recognition immediately after arriving at an airport, it is most likely that permission for provisional stay is refused on the grounds that "risk of flight exists" or any other reason. In fact, permission for provisional stay was granted to only 38 persons in 2017[24] (while 939 persons were denied), and out of 133 persons who applied for refugee recognition at the airport, none were granted permission for provisional stay.[25] Thus, the system for

[23] CAT/C/JPN/CO/1, para. 26 and CAT/C/JPN/CO/2, para. 22.

[24] http://www.moj.go.jp/content/001317678.pdf

[25] https://www.sangiin.go.jp/japanese/joho1/kousei/syuisyo/196/toup/t196140.pdf

provisional stay permission is not functioning, and most applicants for refugee recognition without status of residence are subjected to detention.

b) The Government responded that "deportation is suspended during refugee recognition procedures, and maximum consideration is given to people for whom particular humanitarian considerations are needed, by flexible implementation of provisional release" (para. 180). However, as of August 2020, the Government is attempting to amend the Immigration Act so as to allow for deportation of a person going through refugee recognition procedures — an act against the principle of non-refoulement. In addition, "flexible implementation of provisional release" is not the case at all. In practice, due to a notice issued on February 28, 2018 requiring restrictions on provisional release, the granting of provisional releases has declined and detention periods have been prolonged.

(2) Significant facts

The following are examples of ill-treatment of detainees during detention under deportation procedures which occurred after the previous recommendation.

(a) A case of a Vietnamese man who died (March 2017)

On March 25, 2017, a Vietnamese man in his 40s (Nguyen The Hung) died of subarachnoid hemorrhage at the East Japan Immigration Center. He had been detained in the immigration center since March 15, 2017. He complained of poor health since March 17, 2017 and of severe pain in his head and chest since March 21 and eventually became incapable of moving. However, immigration officials did not send him to a hospital, and he was found dead in his room on March 25, 2017.[26]

(b) A case of a Turkish man who suffered a fracture (July 2018)

On July 12, 2018, at the Osaka Regional Immigration Bureau, a Turkish man (Murat Orhan) was angered by the attitude of an official who came to check his medication status and threw a book against a wall. Immigration officials immediately took him to a solitary cell, and seven or eight officials held him down on the floor, handcuffed him behind his

[26] "Vietnamese died of stroke at Japanese detention center" (Appendix 3-1)
https://www.reuters.com/article/us-japan-detention-death/vietnamese-died-of-stroke-at-japanese-detention-center-official-idUSKBN1750F8

back, and continued to hold him down even though he did not resist. His right arm was broken due to these assaults.[27]

(c) A case of a Brazilian man who suffered injuries (October 2018)

On October 9, 2018, at the Tokyo Regional Immigration Bureau, a Brazilian man (Andre Kussunoki) refused to be transferred to the East Japan Immigration Center and locked himself in a bathroom. Some officials forcibly took him out of the bathroom, held him down on his stomach, and handcuffed him. As a result of these excessive assaults, his fingers bled and he sustained a left rotator cuff injury.[28]

(d) A case of a Kurdish man who suffered an assault (January 2019)

On January 19, 2019, at the East Japan Immigration Center, a Kurdish man (Deniz) protested against immigration officials who did not give him medicines. Following this incident, ten to fifteen staff members came into his room and assaulted him with some of them straddling him and handcuffing him behind his back, twisting his arms behind his back, and pressing his throat hard with their fingers[29]. After suffering these assaults, he was confined to a disciplinary cell for five days. In response to his complaint, the Immigration Bureau admitted that it was an inappropriate act, but in the lawsuit, the Bureau contends that that there was no illegal conduct.

(e) A case of a Nigerian man who died of starvation (June 2019)

On June 24, 2019, a Nigerian man in his 40s died of starvation at the East Japan Immigration Center. [30] The man had been detained since November 2015, but refused to be deported because he had a child in Japan, who has Japanese nationality. He had applied for provisional release four times, but none succeeded.

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[27] "Turkish man sues Japanese gov't, says immigration officials broke his arm" (Appendix 3-2)
https://mainichi.jp/english/articles/20180529/p2a/00m/0na/043000c

[28] "Brazilian man sues Japanese gov't for injuries at immigration center" (Appendix 3-3)
https://english.kyodonews.net/news/2019/11/8fc08ce08c58-brazilian-man-sues-japanese-govt-for-injuries-at-immigration-center.html

[29] "Footage of Kurdish man's detainment submitted to Tokyo court" (Appendix 3-4)
https://english.kyodonews.net/news/2019/12/307487cd8037-footage-of-kurdish-mans-detainment-submitted-to-tokyo-court.html

[30] "Nigerian man died on hunger strike at Japan detention center: agency" (Appendix 3-5)
https://english.kyodonews.net/news/2019/10/974a20bc637c-nigerian-man-died-on-hunger-strike-at-japan-detention-center-agency.html

According to the Report of the Ministry of Justice,[31] immigration officials became aware on May 30, 2019 that he had been refusing to eat for about a week. On the same day, the man appealed to officials saying, “Get me out of here, whether by means of provisional release or deportation”. From June 1 to 4, officials took him to an external hospital to give him an IV. The hospital told the officials that it was unnecessary for him to come back to the hospital as he could receive IVs at the detention facility. The facility's physician examined him on June 5, 7 and 17 and tried to persuade him to eat and receive an IV, but he refused. He became almost bedridden in his room from June 18 on. Officials tried to persuade him to eat and receive an IV, but he died on June 24. He weighed 46.6kg, compared to 71kg in October 2019.

The Ministry of Justice explained in its report that granting provisional release should not be have been given to him, because he had a criminal record, and because provisional release is not necessary to restore the health of those who refuse to eat. The Immigration Bureau issued an internal notice in 2001 which states that forced treatment is available for those who refuse to eat. However, the notice was not communicated to the physicians, and no treatment was provided to him.

In the end, the Immigration Bureau let him die without taking any effective measures, such as the provision of medical treatment, the granting of provisional release, or deportation.

(f) A case of female detainees subdued by a group of officials (April 2020)

On April 25, 2020, at the Tokyo Regional Immigration Services Bureau, several female detainees protested against the denial of their provisional release despite the COVID-19 pandemic, holding up written messages such as “Give us freedom”. Then, a number of guards, including men equipped with helmets and shields, subdued them and locked them in their rooms, after having jumped on them, holding them on the floor, and choking them.[32] There were certain female detainees who were filmed while in their underwear, or who were the targets of obscene words.

These women, subdued suddenly by armed male guards while standing silently, suffered from fear and trauma thereafter.

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[31] http://www.moj.go.jp/content/001306650.pdf

[32] “2 foreign female detainees fearing COVID-19 file suit seeking release” (Appendix 3-6)

http://www.asahi.com/ajw/articles/13410625

(3) Immigration Detention Facilities Visiting Committees

The "Immigration Detention Facilities Visiting Committees" were established with regard to treatment in immigration detention facilities, but they are inadequate mechanisms. These Committees was introduced in 2010. The Immigration Act stipulates that Committees composed of a maximum of 10 members each are to be established in eastern Japan and in western Japan, and that Committee members shall conduct visits to immigration detention facilities and give their opinions regarding the administration of the facilities. However, the Committees' independence is not guaranteed, and their authority is restricted to a large extent by the Immigration Bureau. For example, as the Minister of Justice (i.e., the chief of the ministry supervising the Immigration Bureau) appoints Committee members, it is possible to avoid appointing persons who are critical of immigration detention. In addition, general affairs of the Committees are handled by the Immigration Bureau and, in effect, Committee members cannot freely choose the date of a visit or the area(s) to be visited. The scope of their activity is also limited to "treatment in immigration facilities" due to the Immigration Bureau's adopted interpretation, and it is considered that the Committees cannot refer to the permissibility of detention or matters related to provisional release.

To strengthen the independence of the Immigration Detention Facilities Visiting Committees, it is necessary that the Committees are guaranteed independence from the Immigration Bureau's control.

(4) Conclusion

Ill-treatment during deportation proceedings has not been ameliorated. On the contrary, the situation is worsening due to prolonged immigration detention and a lack of respect for human rights.[33] In particular, incidents involving death due to neglect and failure to provide required medical care have been occurring since 2014. Therefore, we request the same recommendation as in previous recommendations that the Government should take all appropriate measures to guarantee that immigrants are not subject to ill-treatment during deportation. In addition, we request recommendations that the Government provide detainees with the same level of medical care as that provided to the general public, that measures should be taken to prevent violence against detainees, and that

[33] "Japan's hidden darkness: Deaths, inhumane treatment rife at immigration centers" (Appendix 3-7) https://mainichi.jp/english/articles/20190709/p2a/00m/0fe/012000c

independence of the Immigration Detention Facilities Visiting Committees from the Immigration Bureau should be guaranteed.

2. Alternatives to Detention (LOI, para. 21 (e))

Recommendation that we request
The Government should abandon the mandatory detention policy and ensure that immigration detention is exceptionally implemented as a last resort. A maximum period of detention should be stipulated by law, and prompt judicial review of detention should be introduced.

(1) Response by the Government

a) The Government responded that "if a detainee in an immigration detention facility has an objection to that disposition, he/she has the right to file an administrative lawsuit" (para. 193). However, there is no judicial review regarding the "necessity of detention", because necessity is not a statutory requirement for immigration detention. It is possible to file a lawsuit to challenge the grounds for deportation which is a prerequisite for immigration detention, but it is a regular lawsuit which normally takes one or two years to reach a conclusion.

The law currently prohibits deportation of applicants for refugee recognition. However, in July 2020, the Ministry of Justice released an opinion of its private advisory group suggesting an amendment of the law to establish partial exemptions from this prohibition. The Government intends to amend the law in this way, which may lead to consequences that are against the principle of non-refoulement.

b) The Government responded by stating that the Government ensures prompt deportation so that the detention period is not prolonged, or it otherwise utilizes provisional release flexibly (para. 194). However, as the Government tightened the criteria for provisional release on February 28, 2018, the number of provisional releases decreased and detention periods were prolonged until early 2020, when COVID-19 started to spread. (Since the beginning of the COVID-19 pandemic, the number of provisional releases has increased to prevent infection, and the number of detainees has decreased by nearly half. However, certain people insist that the Government should re-detain those who were granted provisional release after the pandemic comes to an end.)

c) The Government stated that the Government is properly recognizing refugee status (para. 195). However, the refugee recognition rate has been far below 1% for the last five years, and it cannot be considered that refugee status is properly recognized. There are many cases where those who are not recognized as a refugee reapply and are subjected to prolonged detention.

Refugee applicants / Recognition rates in Japan

Year	Applicants	Processed	Refugee recognition	Humanitarian protection	Total protected	Refugee recognition rate	Protection rate
2015	7,586	5,202	27	79	106	0.52%	2.04%
2016	10,901	9,632	28	97	125	0.29%	1.30%
2017	19,629	12,846	20	45	65	0.16%	0.51%
2018	10,493	16,596	42	40	82	0.25%	0.49%
2019	10,375	11,001	44	37	81	0.40%	0.74%

*Unit = person

* "Processed" reflects the total number of people for whom any disposition (grant/refusal) at the first tier and review process was made

* Source: Press release regarding refugee recognition in 2019 by Ministry of Justice (http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri03_00004.html)

d) Regarding the Government response para. 198, the inadequacy of medical care has not been improved enough – a reality that even caused a death from starvation in 2019. Moreover, improving medical care is not sufficient to ameliorate the situation, because long-term detention over six months has become the norm, and the health of detainees has deteriorated due to stress and lack of exercise. The only way to maintain their health is to stop long-term detention.

(2) The Immigration Act's mandatory detention policy

Matters regarding immigration detention are stipulated by the Immigration Act. Provisions regarding immigration detention have not been changed since the last report review. A person suspected of meeting any of the grounds for deportation will be detained

for up to 60 days based on a written detention order, and detention after the issuance of a written deportation order can be continued indefinitely until the deportation is implemented. Both detentions are determined by administrative agencies and are not subject to judicial review. The detentions can be implemented unconditionally as there are no legal requirements such as "risk of absconding" for the detentions. There is a system of provisional release, by which a detainee is released on condition of paying a deposit, but the granting of provisional release is determined not by a court but by the director of the immigration detention center or supervising immigration inspector. They have broad discretion in this regard, and the reasons for rejecting a request for provisional release are not informed to the detainee. In addition, the judgement is not made promptly; it generally takes two to three months, or even six months in some cases, after a request for provisional release is made. It is possible to file a regular lawsuit to challenge the decision denying provisional release, but reaching a conclusion takes one to two years. The Immigration Bureau does not conduct regular reviews regarding whether detention should be continued or not.

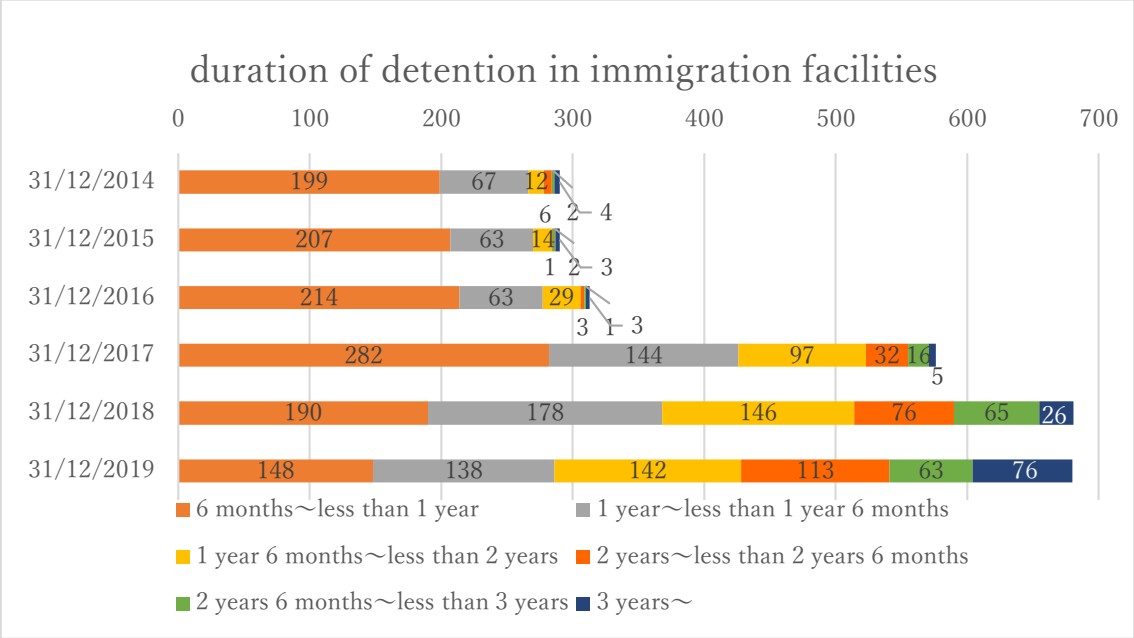
(3) Significant facts

(a) Increase in the number of detainees; Prolonged detention

According to the Ministry of Justice, the number of detainees detained for more than six months between 2014 and 2019 at the end of each year is as indicated in the following table. There has been a significant increase since 2017 in the number of detainees detained for more than six months.

Out of 942 detainees detained by a written deportation order as of the end of 2019, 438 had applied for refugee recognition.[34] The measures taken between 2014 and 2019 by the Immigration Bureau regarding detention are described in (b) to (f) below.

[34] http://www.moj.go.jp/content/001314665.pdf



* This graph is made based on data published by the Immigration Service Agency.
http://www.moj.go.jp/content/001313446.pdf
* Unit: person

(b) Restraint on the granting of provisional release for the sake of the Ise-Shima Summit

From April to September 2016, the G7 summit and related meetings were held in Japan. On April 1, 2016, the Director General of the Immigration Bureau issued a circular requiring restraint on provisional releases before and after the summit on the grounds that foreign nationals on provisional release would cause insecurity to society.

Then, on April 7, 2016, the Director General of the Immigration Bureau issued a circular requiring the efficient and effective expelling of "foreigners who cause insecurity to society" such as those staying illegally in Japan or those refusing to be deported, to realize a safe and secure society in preparation for the 2020 Tokyo Olympics and Paralympics. Although this circular did not explicitly refer to restraint on provisional releases, it is assumed that the circular had an effect of limiting provisional releases in anticipation of the Olympics, an international event like the summit.

(c) Revocation of status of residence and detention of applicants for refugee recognition (published on January 12, 2018)

As mentioned above, almost no refugee applicants are recognized as refugees. As a result, those who cannot return to their country due to fear of persecution have no choice but to

reapply for refugee recognition. However, as described below, the Japanese Government, without radically reforming the refugee status recognition practice, has begun to restrict the residency of reapplicants or to deport them principally without the possibility of provisional release.

In 2010, in an effort to provide stability to the lives of refugee applicants, Japan started granting a residential status of "designated activities" to refugee applicants who have residential status and allowing them to start working after six months.

However, from September 2015 on, the Immigration Bureau started revoking the status of residence of those who have applied for refugee recognition 3 times or more with the same claims as those submitted in previous applications, because according to the Immigration Bureau, the number of refugee applicants had drastically increased due to the aforementioned treatment and some refugee applicants were abusing the system to stay and work in Japan.

In 2017, the Immigration Bureau pressed forward with this policy by issuing an instruction titled "Trial Measures to Facilitate the Return of Reapplicants who are Abusing or Misusing the Refugee Recognition System (Instructions)" and conducted a trial on the revocation of the status of residence of some reapplicants and detaining them at the same time without granting provisional release.

Subsequently, on January 12, 2018, the Immigration Bureau announced a policy of principally revoking the status of residence for those who apply for refugee recognition two or more times. Refugee applicants who submit two or more applications are thus destined to be deprived of their status of residence and detained or, if not detained, prohibited from working.

(d) Restraint on provisional release based on an instruction issued on February 28, 2018

On February 28, 2018, the Director General of the Immigration Bureau issued a document instructing the Immigration Bureau to restrain the granting of provisional releases. [35]

The instruction stated that "those who are deemed inappropriate to be granted provisional release shall, in principle and unless they are injured or sick and unable to bear detention,

[35] "About proper operations pertaining to provisional release measures for persons issued with mandatory deportation orders and more thorough enforcement of behavior monitoring (instructions)" (February 28, 2018) (Appendix 3-8)

be detained until their deportation becomes possible, even if there is no prospect of conducting such deportation, and efforts must be made to implement their deportation". The instruction listed eight categories as examples of "those who are deemed inappropriate to be granted provisional release" , including those who worked while on provisional release, those who changed their residence without prior notification to the Immigration Bureau, and those who applied for refugee recognition two or more times.

(e) Two-week provisional releases for and re-detention of hunger strikers

Due to the series of aforementioned detention policies, the number of provisional releases has significantly decreased and the period of detentions has become longer. As a result, starting around May 2019, the number of detainees who went on hunger strike in protest of prolonged detention increased. After a detainee died from starvation at the Omura Immigration Center in June 2019, the hunger strike spread even more widely. In response to this situation, the Immigration Bureau began granting provisional release on condition that the detainee ends his/her hunger strike. The detainees were granted two-week provisional releases, and re-detained without extension of provisional release upon expiration of the two-week period.[36] Those who were re-detained suffered from mental distress, and there are even individuals who suffered depression or committed self-harm.

(f) Future policy of the Government

The Government is attempting to adopt a policy of vigorously promoting deportation, including deportation of refugee applicants, without taking radical measures to prevent long-term detention.

After the death by starvation of Nigerian man, in October 2019, the government mentioned that it would establish "Expert Group for Detention and Deportation" (the MOJ's private advisory group) and examine the issue of long-term detention. Nevertheless, the report submitted by the Expert Group in 14 July 2020 denied establishment of a maximum period of detention and introduction of judicial review, on the other hand, it proposed amendment of acts such as to make deportation of refugee status applicants possible and to introduce punishments for persons who refused to return to their own countries after the deportation order is issued[37].

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[36] "Re-detention of asylum seekers in Japan, hunger strikes show strained immigration system" (Appendix 3-9) https://mainichi.jp/english/articles/20190902/p2a/00m/0fe/009000c

[37] "Ministry panel proposes new penalties for refusing deportation" (Appendix 3-10) http://www.asahi.com/ajw/articles/13462363

Furthermore, in 1 October 2019, the government emphasized the negative influence of provisional release on society by gathering the cases of crimes committed by the detainees who are on their provisional release (it included the false cases/information) and publishing it[38].

(4) Conclusion

As described above, the Government arbitrarily resorts to immigration detention for vague purposes such as ensuring the safety and security of society, or to suppress applications for refugee recognition, or to force those who have been issued a deportation order to voluntarily leave Japan.

The Government explains to UN agencies that "detention is conducted only in cases where a risk of absconding exists", as if deportation is used as an exceptional means. However, this is not the case. Domestically, the Government has adopted a "principle of mandatory detention" and insists that the purpose of detention is "to prohibit activities in Japan".[39] The Government says that it will continue to implement detention extensively, including upon those who pose no absconding risk, unless they are injured or sick and unable to bear detention.

The Government's response to hunger strikes – granting a mere two-week provisional release to those for whom detention is not necessary, and re-detaining them after two weeks – constitutes arbitrary detention, and it is an impermissible act which disregards human dignity.

In conclusion, we request that the Committee recommend that the Japanese Government (1) establish requirements for immigration detention by law so as to ensure that detention is used only as a last resort, (2) establish the maximum duration of detention by law, and (3) introduce prompt judicial review over immigration detention.

Section 5. Ratification of OPCAT; Designation of NPMs (LOI, para. 4)

[38] "Deleted website of Immigration Services Agency of Japan" (Appendix 3-11)
[39] "Sample of the statement paper by the state" (Appendix 3-12)

Recommendations that we request

On the assumption that Japan ratifies OPCAT, we request the following recommendations that the Government:

(i) Establish an NHRI and enhance the complaint review functions;

(ii) Enhance the independence of each Visiting Committee established for detention facilities under the jurisdiction of the Ministry of Justice; and

(iii) Establish a Visiting Committee for compulsory measures taken in psychiatric hospitals and children's self-reliance support facilities under the jurisdiction of the Ministry of Health, Labour and Welfare.

1. Introduction: Required ratification of OPCAT

As already mentioned in Section 3-1, and as pointed out in many reports, Japan has not yet established an independent national human rights institution. In addition to this problem, this Section deals with the necessity of ratification of the Optional Protocol to the Convention against Torture (hereinafter "OPCAT") and establishment of National Preventive Mechanisms (hereinafter "NPMs") for prevention of arbitrary detention.

The Committee against Torture urged Japan, in paragraph 26 of the Concluding Observations on the Second Periodic Report of Japan, adopted by the Committee at its fiftieth session (May 6 to 31, 2013), to accelerate domestic discussion and ratify OPCAT as soon as possible, noting Japan's commitment in the context of the UPR.

Also, in the procedures of the UPR third cycle (2017), a total of twelve countries – Slovenia, Guatemala, Georgia, Chile, Cabo Verde, Ukraine, Uruguay, Ghana, Denmark, Spain, Turkey and Yemen – recommended Japan ratify OPCAT, and Japan has accepted these recommendations.

OPCAT consists of "two pillars" – international bodies and national bodies. As an "international body", the Subcommittee on the Prevention of Torture, a subcommittee of the Committee against Torture (hereinafter "SPT"), regularly visits the detention places of State Parties and makes recommendations regarding the conditions of detention or prevention of torture. On the other hand, State Parties are supposed to set up, designate, or maintain one or several bodies (i.e., NPMs) which visit detention places.

2. Detention facilities in Japan; Institutions with visiting functions for these facilities and such institutions' actual situations

(1) If Japan ratifies OPCAT, what kind of institution can possibly be designated as an NPM?

The detention places with relevance to OPCAT are: penal institutions (prisons, detention houses); police detention centers; immigration detention facilities; psychiatric hospitals (medical institutions used for involuntary hospitalization or hospitalization for medical care and protection); Designated Medical Institutions for Hospitalization under the medical care and supervision system; juvenile training schools or juvenile classification homes; and children's self-reliance support facilities which can implement compulsory measures with family court permission.

(2) The institutions with visiting functions for the above-mentioned facilities are: the Penal Institution Visiting Committee and the Complaints Investigation and Review Committee (Complaints Review Committee) for penal institutions; the Detention Facility Visiting Committee for police detention facilities; the Immigration Detention Facilities Visiting Committee for immigration detention facilities; and Visiting Committees for juvenile training schools and juvenile classification homes.

However, these institutions with visiting functions significantly lack independence from the authorities. During the review of the third report of Japan by the Committee against Torture, Mr. Alessio Bruni, a member from Italy, asked whether the Penal Institution Visiting Committee was allowed to visit penal institutions without prior notice, and the Japanese Government replied that the Visiting Committee is not legally obliged to give prior notice, but its visitation is often arranged beforehand for the sake of effectiveness. As for the Penal Institution Visiting Committee and the Visiting Committees for juvenile training schools and juvenile classification homes, persons recommended by the Bar Association are always appointed as members, but with regard to the Detention Facility Visiting Committee and the Immigration Detention Facilities Visiting Committee, recommendations by the Bar Association can be exceptionally rejected. In addition, the appointment of members other than lawyers and physicians is left to the authorities relevant to each facility. Therefore, it is possible that members who lack expertise or enthusiasm are appointed.

On the other hand, the Complaints Review Committee consists of academics (criminal law), lawyers, physicians, and former members of the Voluntary Interview Committee with a higher level of expertise compared to the Visiting Committee members. However, it lacks legal basis, as evidenced by its establishment as a provisional de facto

body until an NHRI is established. In addition, only one Complaints Review Committee exists in Japan, and it lacks its own secretariat. Therefore, it is not ready to conduct investigations on its own, and general affairs of the Committee are handled by the Secretarial Division of the Secretariat of the Minister of Justice.

(3) As for psychiatric hospitals, Psychiatric Review Boards are established in each prefecture. However, as stated in Section 3, even though these Psychiatric Review Boards may visit hospitals to hear the opinions of persons concerned in the course of reviewing the appropriateness of detention or treatment during detention, such visits are conducted based on the voluntary consent of the director of such facilities. Boards do not have the right to conduct compulsory visits. Designated Medical Institutions for Hospitalization under the medical care and supervision system do not have external institutions with visiting or reviewing functions. Children's self-reliance support facilities have a third party review system focused on their welfare services, but there is no external inspection system focused on detention.

(4) Whichever organizations are to be designated as NPMs, significant difficulties must be overcome. As mentioned above, there is no visiting institution for certain detention facilities. At the same time, however, designating visiting institutions for each detention facility as NPMs can be an opportunity to improve the existing institutions such as Visiting Committees or the Complaints Review Committee, so that they become human rights institutions of a higher standard which are truly independent from the authorities and operate in accordance with UN norms.

For example, it will be possible for Visiting Committees all over the country to make recommendations based on international human rights law rather than national laws, and request implementation of international human rights standards in every detention place in Japan. Subtle interpretations of national laws, which are far from international standards, will become meaningless. This will have a significant effect on the improvement of the legal system and human rights situation in Japan.