

Report on the 6th Periodic Report of the Government of  
Japan based on Article 40 (b) of the International  
Covenant on Civil and Political Rights

Proposed Recommendations and their Background Circumstances that  
should be Included in the Concluding observations to be Prepared by  
the Human Rights Committee

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## Introduction

### 1 The Implementation of the International Covenant on Civil and Political Rights and the Significance of the Examination of the Government Report

To put the conclusion first, the implementation of the International Covenant on Civil and Political Rights (hereafter, “ICCPR”) is extremely insufficient.

Treaties that have been ratified by Japan are immediately effective as domestic laws of the country. Therefore the substantive provisions of the ICCPR that are self-executing should be applicable by the courts. But in reality, there are few cases in which the courts have recognized the rights of individuals on the basis of the provisions of the ICCPR. In particular, the Supreme Court has yet to recognize a violation of the Covenant based on its provisions. The Japanese courts are extremely reluctant in applying the ICCPR.

When the administrative and legislative organs or local governments propose policies or legislation, they rarely refer to or quote from the ICCPR or other international human rights treaties as their basis.

Japan has not yet recognized the individual communication system under the ICCPR or any other treaties. Furthermore, a national human rights institution has not been established.

Under such circumstances, the reporting system, in which the Government Report is examined, has great significance for Japan as a domestic implementation measure of treaties.

### 2 The Problems of the System of Examination of the Government Report

The Japanese Government Report has been examined 5 times in the past. The Japan Federation of Bar Associations (hereafter “JFBA”) has participated in the process since the examination of the Third Report, as have many other NGOs. The number of the members of the Government Representatives has also increased. The examination of the Government Report has also become more substantial and the Concluding Observations including many recommendations that were significant for this country have been issued.

However, many of these recommendations have not been implemented by the Japanese Government and frequently the same recommendations are repeated. The examination of the Government Report by the Human Rights Committee and the Concluding Observations it issues as a result are not well known in Japan. Consequently, these Observations are not fully used in improving the human rights issues in Japan.

The major challenges, therefore, are to find out ways to improve the many human rights issues for which recommendations have been repeatedly issued in terms of following up on the Concluding Observations through a constructive dialogue with the Government, as well as to respond to new human rights issues.

### 3 Initiatives Taken by the JFBA

In view of the above circumstances, the JFBA would like to take the following initiatives as well as making an effort to achieve a productive examination of the 6th Government Report, and receive the observations from the Human Rights Committee (hereafter, “CCPR”) on the improvement of the human rights situation in Japanese society.

First, we will endeavor to achieve the implementation of the recommendations and other comments through constructive dialogue with the various administrative organs under the Government and the local governments, as well as with the cooperation with NGOs working on the relevant issues, by indicating that the issues have been identified by the CCPR.

Second, as international human rights law is yet to be well known in Japan, the JFBA will make efforts to disseminate the international human rights law and the Concluding Observations to the citizens, NGOs, mass media, and the administrative and legislative organs. In particular, we would like to disseminate the laws and Observations to the members of law enforcement and the judiciary, including judges, prosecutors, and attorneys.

Third, as a mandatory membership organization for all attorneys in the country, we will make efforts to have all registered attorneys actively invoke international human rights treaties to achieve judgments in which the courts recognize violations of such treaties, and consequently contribute to the protection and promotion of human rights.

Fourth, we will make efforts to realize the implementation of the individual communication system under the ICCPR, and to achieve the establishment of a national human rights institution that is independent from the government, as well as the establishment of regional human rights mechanisms of which Japan would be a member.

## Part I General Comments

### 1 The Institutional Aspect of Human Rights Protection in Japan

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The report states that the Human Rights Bureau of the Ministry of Justice, the Legal Affairs Bureaus and District Legal Affairs Bureaus, as well as the Civil Rights Commissioners carry out activities to protect and promote human rights appropriately on fair and impartial grounds.<sup>1</sup> It also states that the Government considers the establishment of a national human rights institution independent from the Government to be a critical issue and is continuing efforts to prepare for the establishment of the institution.<sup>2</sup>

In the Core Document, the Government also lists bodies which handle specific issues, in addition to the above-mentioned institutes under the Ministry of Justice, such as the Gender Equality Bureau of the Cabinet Office, the Comprehensive Ainu Policy Office in the Cabinet Secretariat, the Equal Employment Offices of Prefectural Labor Bureaus, Child Guidance Centers, the Psychiatric Care Councils, measures under the Act on the Prevention of Elder Abuse, Support for Caregivers of Elderly Persons and Other Related Matters, and the Japan Legal Support Center.<sup>3</sup>

(3) Current Situation

The specific issues are handled by above-mentioned bodies to a certain degree. Meanwhile, human rights issues in general are mainly handled only by the human rights protection organs under the Ministry of Justice. However, the Ministry of Justice cannot provide sufficient protection for human rights, as it presides over sections which directly exercise public authority that may cause human rights violations, such as the Public Prosecutor's Office and the prisons. We can say that the Ministry has been extremely reluctant in responding to human rights violations by prison officers who are under its jurisdiction.<sup>4</sup>

Of the cases of human rights infringements that the Ministry of Justice dealt with in 2011, only 49 of 298 cases (16.4%) of infringements by prison officials were handled with specific measures to solve the problem, such as providing assistance to the victims and sending request to the other parties, while 16,500 of 17,446 cases (94.6%) of infringements between private individuals and 4,217 of

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1 Paragraph 3.

2 Paragraph 4.

3 Statistical material of each bodies (partial)

Spousal Violence Counseling and Support Center, Gender Equality Bureau, the Cabinet Office <http://www.gender.go.jp/dv/soudan.html>; the Equal Employment Offices of Prefectural Labor Bureaus, <http://www.akusyo.mhlw.go.jp/wp/index.htm>; Child Guidance Centers, [http://www.mhlw.go.jp/toukei/youran/indexyk\\_3\\_2.html](http://www.mhlw.go.jp/toukei/youran/indexyk_3_2.html)

4 "Human Rights Infringement Cases" Statistics (2011) Ministry of Justice [http://www.moj.go.jp/JINKEN/jinken03\\_00064.html](http://www.moj.go.jp/JINKEN/jinken03_00064.html)



4,609 cases (91.5%) of infringements in schools or by teachers were handled as such. On the other hand, 122 out of 298 cases (40.9%) of infringements by prison officials were determined with reprieves of any measures, no grounds for infringement, or indefinite grounds for infringement, while only 321 of 17,446 cases (1.9%) of infringements between private individuals and 162 of 4,609 cases (3.5%) of those in schools and by teachers were determined as such. The reluctance of the Ministry is notable as shown in the proportion of undecided cases. 480 cases (2.8%) among private individuals were undecided as were 274 cases (5.9%) for cases by teachers while 117 (39.3%) for cases by prison officials were undecided. (The reluctance is more apparent when compared with the statistics of human rights infringement cases by the police and other special public officers, which is not under direct jurisdiction of the Ministry of Justice. The Ministry took specific measures such as providing assistance in 175 of 235 cases (74.5%), 34 cases (14.5%) resulted in reprieves of measures, decided as having no grounds or indefinite grounds, and 22 cases (9.4%) were undecided.)

Meanwhile, the local Bar Associations which are members of the JFBA, receive applications for human rights relief measures from the general public through their Human Rights Protection Committees. The majority of such applications are submitted by prison inmates. In fiscal year 2011, 220 or 56.3% of the total 391 cases concerned human rights violations in prisons and detention centers<sup>5</sup>. These figures also show that the human rights protection activities of the Ministry of Justice are insufficient. The Human Rights Protection Committees of the local Bar Associations are making great efforts in providing human rights relief, but their authority and methods in investigating the facts are limited, as they have no enforcement powers. In addition, their warnings, recommendations or requests have no legal binding force and faithful response by the relevant parties cannot be secured. Therefore these procedures cannot be said to be fully effective.

It seems that international human rights treaties are almost never invoked by the human rights protection organs of the Ministry of Justice or the other above-mentioned bodies. As explained below, the establishment of a national human rights institution and the realization of the individual communication systems are necessary.

## 2 The Concept of “Public Welfare” under the Constitution of Japan

### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

*10. While taking note of the State party’s explanation that “public welfare” cannot be relied on as a ground for placing arbitrary restrictions on human rights, the Committee reiterates its concern that the concept of “public welfare” is vague and open-ended and may permit restrictions exceeding those permissible under the Covenant (art. 2).*

***The State party should adopt legislation defining the concept of “public welfare” and specifying that any restrictions placed on the rights guaranteed in the Covenant on grounds of “public welfare” may not exceed those permissible under the Covenant.***

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<sup>5</sup> White Paper on Attorneys 2012, 3-3 The JFBA’s Activities involving Human Rights Relief, the Number of Human Rights Relief Cases (by Category), JFBA ([http://www.nichibenren.or.jp/jfba\\_info/statistics/reform/fundamental\\_statistics.html](http://www.nichibenren.or.jp/jfba_info/statistics/reform/fundamental_statistics.html))

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

As it has done in the 4th and 5th Periodic Reports, the Government continues to explain that the concept of “public welfare” has been made concrete by court precedents on the basis of the inherent nature of the rights. It states that the contents of the human rights protection and the restrictions are substantially the same as those under the ICCPR. It further declares that under no circumstance would human rights be arbitrarily restricted by state authority, nor would any restrictions imposed on the rights protected under the ICCPR go beyond what is allowed under the Covenant.<sup>6</sup>

(3) Current Situation

1) In the above Concluding Observations to the 5th Periodic Report the Committee considered that in restricting the rights protected under the ICCPR, these would only be allowed for the purpose and within the scope of restrictions stipulated in each provisions of the ICCPR. The Committee’s position is that restrictions on the rights protected under the ICCPR for any other reasons, or by theories on interpretation of domestic laws are not permitted.

2) Despite the comments from the Committee, the Government explanation for the 6<sup>th</sup> Report examination shows no progress since the examination of the 4<sup>th</sup> Periodic Report, and there have been no changes in the domestic laws or practice.

This means that the Government has not changed the domestic laws restricting the rights under the ICCPR beyond the restrictions provided for under the Covenant. The judiciary also does not see the application of such domestic laws as violations of the ICCPR. The Government Report provides no response to the concerns of the Committee.

The Government refers to the judgment by the Petty Bench of the Supreme Court of July 7, 2011 (summary) as a concrete example of the logical framework of “public welfare.”

The case concerns the defendant (former school teacher), who protested against standing and singing the national anthem at the graduation ceremony of a senior high school. He called out in a loud voice to the parents in the gymnasium, in which the ceremony was held, and shouted at the vice-principal, who tried to stop him, causing a chaos, and delaying the start of the ceremony. The Supreme Court stated that “while the freedom of expression must be respected as a particularly important right in a democratic society, article 21, paragraph 1 of the Constitution does not guarantee the freedom of expression absolutely without any reservation, but allows such restrictions that are necessary and reasonable for the public welfare. When it comes to the means to announce one’s opinion outside, no means would be allowed should they unreasonably harm the rights of others. The act of the defendant in this case was conducted in an undue manner that did not fit the occasion and caused a considerable disturbance to the smooth performance of the graduation ceremony, while it should have been performed in a calm atmosphere. As such an act is impermissible in light of general societal norms, it evidently involves illegality” and held the defendant guilty of forcible obstruction of business.

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6 Paragraphs 5, 6.

The above section explaining the contents of public welfare is extremely vague, and no consideration, whether explicit or implicit, is given to the purpose of the restrictions on the freedom of expression provided for under Article 19 paragraph 3 of the ICCPR.

(4) Proposed Recommendations for the Concluding Observations

- 1) The State party should define the concept of “public welfare” as well as take legislative measures to ensure that any restrictions on the basis of the concept on the freedom of religion, opinion and expression would not go beyond what is permitted under the ICCPR.
- 2) The State party should ensure that teachers would not be punished with pay cuts, suspensions or dismissals for refusing to stand and sing the national anthem at school events.

### 3 The Relationship between the Covenant and Japanese Laws including the Constitution

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

*The Committee notes the absence of information on domestic court decisions, other than Supreme Court judgements finding no violation of the Covenant, which make direct reference to provisions of the Covenant (art. 2).*

***The State party should ensure that the application and interpretation of the Covenant form part of the professional training for judges, prosecutors and lawyers and that information about the Covenant is disseminated at all levels of the judiciary, including the lower courts.***

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Regarding the relationship between the ICCPR and the laws of Japan including the Constitution, as has been explained in the previous Reports, all treaties that Japan has ratified will have the effect as domestic laws in light of the purpose of Article 98 paragraph 2 of the Constitution.

On the other hand, on whether a treaty provision is directly applicable or not would be determined case-by-case, by taking into consideration the purpose, content and language of the provision. In many cases, laws necessary to comply with the obligations under the treaties are separately legislated, and therefore, almost all cases of violations of the ICCPR are treated as violations of domestic laws.<sup>7</sup>

(3) Current Situation

- 1) The position of the Japanese Government on the self-executing nature and the duty to implement immediately the Covenant is unclear

According to the theory widely recognized in Japan, the domestic legal effect of treaties ratified by the Diet may fall below the Constitution, but takes precedence over other domestic laws. Also, Article 2 of the ICCPR requires that the provisions be implemented immediately, therefore the substantive provisions of the ICCPR should be self-executing in principle, and when the provisions are infringed, judicial remedies should be provided.

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<sup>7</sup> Paragraph 7.

The Japanese Government, however, gives only a vague explanation as mentioned above in the 6th Periodic Report, that treaties concluded by Japan have the effect of domestic laws, and the direct applicability of treaty provisions will be determined on a case-by-case basis. It does not make clear, which specific provisions of the ICCPR it considers directly applicable.

Further, in the Concluding Observations after the examination of the 4th Periodic Report, the Committee strongly recommended again that the State party “bring its internal law into conformity with the Covenant<sup>8</sup>.” Yet the Japanese Government has failed to refer to conflicts between the ICCPR and the domestic laws in its subsequent Reports. In the 6th Periodic Report, it mentions in abstract that “domestic laws are in most cases enacted in order to carry out the obligations of the Covenant.”

Also, the Concluding Observations to the 3rd Periodic Report on the International Covenant on Economic, Social and Cultural Rights stated that “(t)he Committee reiterates its previous concern that the State party has not given effect to the provisions of the Covenant in its domestic legal order. This situation has led to decisions by courts in the State party stating that the provisions of the Covenant are not applicable.”<sup>9</sup>

- 2) A violation of the ICCPR is not recognized as grounds for appeal to the Supreme Court, and there are many cases, in which violations of the ICCPR are not considered in the Supreme Court

Under the laws of both civil and criminal procedure in Japan, ground for appeal to the Supreme Court is limited to violations of the Constitution, so violation of the ICCPR is not recognized as a legitimate ground for appeal.<sup>10</sup> When an individual wants to appeal to the Supreme Court arguing a violation of the ICCPR, there is a possibility that the appeal may be accepted when the individual argues that it “involves material matters concerning the construction of laws and regulations.”<sup>11</sup> But there have been no cases in which appeals based on violations of the Covenant were accepted, and appeals are dismissed without the Supreme Court making any determination on the violation of the Covenant.

Related to this matter, in the Concluding Observations after the examination of the 5th Periodic Report, the Committee “notes the absence of information on domestic court decisions, other than Supreme Court judgements finding no violation of the Covenant, which make direct reference to provisions of the Covenant.”<sup>12</sup> The 6th Periodic Report merely states that these were “mentioned in the previous periodic reports” regarding court decisions in cases which violations of the Covenant were argued.<sup>13</sup>

Consequently, unless a path for judicial remedies is provided regarding the rights under the ICCPR, the objectives of Article 2 paragraph 3 of the ICCPR will remain buried.

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8 CCPR/C/79/Add. 103 Paragraph 8.

9 E.C.12/JPN/CO/3, Paragraph 7.

10 Article 312 Civil Procedure Code, and Article 405, Criminal Procedure Code

11 Article 218 of the Civil Procedure Code (Petition for Acceptance of Final Appeal). Article 406 of the Criminal Procedure Code (Acceptance of a case). The decision whether these applications may be accepted or not, rests within the scope of authority of the Supreme Court.

12 CCPR/C/JPN.CO/5 Paragraph 7.

13 CCPR/C.JPN/6 Paragraph 6.

(4) Proposed Recommendations for the Concluding Observations

The State party should recognize the legally binding force of the provisions of the ICCPR in the domestic legal system and should ensure that the application and interpretation of the ICCPR are included in the professional training of judges, public prosecutors and attorneys, as well as that information regarding the ICCPR is provided to all levels of the judiciary including the lower instances.

#### 4 Human Rights Education, Encouragement, and Publicity

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

There were no recommendations on human rights education, raising awareness and public relations in general, but reference is made regarding the legal profession in above mentioned paragraph 7.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Government reports on the Act for Promotion of Human Rights Education and Encouragement, the efforts under the World Programme for Human Rights Education, dissemination of treaties on human rights including the ICCPR in Japanese, human rights education and raising awareness for judges, public officials and the general public, as well as on the policies to raise awareness on human rights, as efforts related to human rights education, raising awareness and public relations in general.<sup>14</sup>

Regarding the recommendations in the Concluding Observations after the examination of the 5th Periodic Report, it states that “the courts are taking measures to disseminate information about international human rights covenants to judges<sup>15</sup>” and on the compulsory training for judges, it understands that reference is made on “how to apply and interpret the international human rights covenants.”<sup>16</sup> Also, for the training at the Legal Training and Research Institute at which all lawyers including judges, prosecutors and attorneys undergo training before acquiring their qualifications, the Government understands that the “training contains curricula on international human rights covenants and the Committee”<sup>17</sup> and that it provides “lectures on the Covenant and on the protection and support for crime victims, gender consideration, and other issues”<sup>18</sup> for mandatory training for Public Prosecutors.

(3) Current Situation

The Committee’s recommendations in the Concluding Observations after the examination of the 5th Periodic Report is based on the observation in relation to the obligation to implement the ICCPR to ensure effective remedies for individuals whose rights under the Covenant are violated (Article 2), that there is an “absence of information on domestic court decisions, other than Supreme Court judgments finding no violation of the Covenant, which make direct reference to provisions of the

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14 Paragraphs 9 to 24.

15 Paragraph 17.

16 Paragraph 18.

17 Paragraph 19.

18 Paragraph 20.

Covenant.” The Government Report in this sense remains formalistic, and does not provide a concrete report that responds to the Committee’s awareness that specialized training on the application and interpretation of the Covenant is necessary for the lawyers including judges, prosecutors and attorneys responsible for providing the judicial remedies, that constitute the core of effective remedies, to be able to apply the Covenant directly in judicial practice.

Moreover, the JFBA has provided human rights training for the attorneys who are members of the JFBA on the topics stated in section II C. 3. (6) of the Common Core Document. The JFBA is planning to continue providing such training on international human rights law in the future.

Further, recommendations on human rights education have been made in the Outcome of the second Universal Periodic Review (March 2013) regarding law enforcement agencies and public servants<sup>19</sup>, in the Concluding Observations on the 2nd Periodic Report on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (May 2013) regarding the development and strengthening of training programmes for public officials, encouragement for involvement of non-governmental organizations in training of law enforcement officials and assessment of the effectiveness and impact of training programmes<sup>20</sup>, and in the Concluding Observations on the 3rd Periodic Report on the International Covenant on Economic, Social and Cultural Rights (May 2013) regarding in particular, training programmes for judicial professionals and lawyers on the justiciability of economic, social and cultural rights<sup>21</sup>.

(4) Proposed Recommendations for the Concluding Observations

- 1) The State party should develop training programmes that promote and establish the understanding that the ICCPR is directly applicable for the training of judges, public prosecutors and attorneys.
- 2) The State party should ensure that the Japanese translation of the General Comments and the Concluding Observations on the Periodic Report are distributed to each judge.

## 5 National Human Rights Institution

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

*9. The Committee notes with concern that the State party has still not established an independent national human rights institution (art. 2).*

***The State party should establish an independent national human rights institution outside the Government, in accordance with the Paris Principles (General Assembly resolution 48/134, annex), with a broad mandate covering all international human rights standards accepted by the State party and with competence to consider and act on complaints of human rights violations by public authorities, and allocate adequate financial and human resources to the institution.***

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19 Paragraphs 123, 125, 147.

20 Paragraph 17.

21 Paragraph 8.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Government considers the establishment of a national human rights institution independent from the Government to be a critical issue and is continuing efforts to prepare for the establishment of the institution.<sup>22</sup>

(3) Current Situation

1) The draft Bill on the Establishment of a Human Rights Commission submitted to the Diet by the Democratic Party

In November 2011, the then Democratic Party Cabinet decided on the draft Bill on the Establishment of a Human Rights Commission, and submitted it to the Diet. But the draft was abandoned when the House of Representatives was dissolved and a general election was held.

2) The position of the current government regarding the draft Bill on the Establishment of a Human Rights Commission

The Liberal Democratic Party, which is the current governing party has made a public commitment to oppose any establishment of a national human rights institution.

3) The recent position of the courts regarding international human rights treaties

The conventional practice of the courts towards assertions of violations of human rights treaties raised by the parties as part of their legal arguments was to ignore them and render judgments without deciding on them. Recently, however, in a judgment on September 4, 2013 on the Civil Code provision on inheritance stipulating that the share of inheritance for children born out of wedlock shall be half of that of children in wedlock, the Grand Bench of the Supreme Court referred to the ICCPR, the recommendations from the Human Rights Committee in 1993, as well as those of the Committee on the Rights of the Child in 2010 and held that discrimination in inheritance shares based on whether the child was born within or out of wedlock was unconstitutional and therefore not permissible.<sup>23</sup>

Further, on March 14, 2013, the Tokyo District Court held that a provision in the Public Offices Election Act uniformly depriving adult wards of the right to vote for public officers on the grounds of being under guardianship, violated the Convention on the Rights of Persons with Disabilities and the international human rights standards, and declared it void.

As these examples show, cases in which international human rights laws are applied as judicial standards seem to be on a gradual but increasing trend.

4) The current domestic situation involving the establishment of a national human rights institution

It is unlikely that the current government is actively contemplating creating a national human rights institution. But the human rights situation in Japan, seen from an objective viewpoint, requires a creation of such an institution as soon as possible.

In Japan, cases of human rights violations, particularly those shown below, are occurring

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<sup>22</sup> Paragraph 4.

<sup>23</sup> 2012 (ku) No. 984 and 985, Decision concerning whether the provision of the first sentence of the proviso to Article 900, item (iv) of the Civil Code, is in violation of Article 14, paragraph (1) of the Constitution

frequently in recent years, and measures responding to these violations are an urgent issue.

[1] The issue of bullying, corporal punishment and child abuse

In Japan, many cases of so-called bullying happen on a daily basis, in which members of a group of people such as in schools or companies sustain physical or mental harm from other members.

Bullying is a pathological phenomenon that occurs in schools. It is intricately linked with corporal punishment by the teachers as well as the educational environment emphasizing competitiveness. Bullying in schools along with corporal punishment, abuse and humiliating treatment of children in all aspects of their daily lives including at schools and homes, are considered a major human rights problem that should be solved by the Japanese society.

The UN Committee on the Rights of the Child has expressed its concern to the situation surrounding the children, and has recommended the establishment of an independent monitoring institution in line with the Paris Principles to the Japanese government three times in the past.

In 2013, as the suicide of a victim of bullying became a social issue, the Act on Prevention of Bullying was legislated. But although this Act provides for the establishment of an organization or institution in schools and local governments to investigate serious cases of bullying, it does not require the creation of an independent standing institution on the rights of children. Furthermore, the Act sees the issue as a problem just between the two parties, the bullied child and the bullying child, and calls for provision of care for the victim and raising the sense of norm in the bullying child. It does not recognize that those who bully are also children requiring support.

Currently, quite a number of local governments have established independent committees to investigate bullying problems, but many of them were established on exceptional bases after bullying cases had happened. Far from being the true organizations for human rights remedies, the independence of these committees is weak, and they face many problems, such as the transparency and fairness in the selection of their members, the lack of guarantee on the authority to investigate and to issue recommendations among others, and they do not have their own secretariats. The creation of a national human rights institution is necessary to promote, provide remedies and prevent violations of the human rights of children.

[2] The issue of providing remedies for rights of people with disabilities

In February 2014, the Convention on the Rights of Persons with Disabilities entered into force in Japan. To prepare for the ratification, Japan enacted the Act on the Elimination of Disability Discrimination.

This law can be appreciated as having placed an obligation on administrative institutions and enterprises to prohibit unfair discriminatory treatment based on disabilities as the domestic law required for ratifying the Convention adopted by the UN in 2006. However, the Act does not place a duty to provide “reasonable accommodation” on private enterprises, and the Dispute Coordinating Committees of the Prefectural Labor Bureaus continue to coordinate the implementation of the Act. Also, Article 33 of the Convention on the Rights of Persons with Disabilities requires the establishment of an institution in line with the Paris Principles to



monitor, provide remedies and policy recommendations as well as human rights education regarding the Convention. Nevertheless, the Act does not create an institution to investigate and provide remedies for violations of the rights of people with disabilities, but leaves those functions to the existing administrative organizations of the local governments and the national labor administration.

The lack of a “national human rights institution based on the Paris Principles” must again be pointed out.

Further, the Act on the Prevention of Abuse of Persons with Disabilities and Support for Attendants of Persons with Disabilities was adopted in October 1, 2012, The abuses for which remedies will be provided under the Act are limited to (1) abuse by the attendants, (2) abuse within institutions, and (3) abuse within workshops (employers), excluding abuse in schools, medical institutions (such as hospitals for mental illness), and administrative institutions (such as prisons). Also, unfair discrimination and the non-provision of reasonable accommodation are not covered by the Act. According to the newspaper reports, there have been over 1,500 acknowledged cases of abuse of persons with disabilities within the six months from March to September 2012 prior to the adoption of the Act, but there have been no reports of these cases having been appropriately solved.

The Services and Supports for Persons with Disabilities Act was adopted for people with disabilities requiring social support, but as soon as the person with disabilities covered by the Act reaches the age of 65, the person would be automatically transferred to within the purview of the Long-term Care Insurance Act. This means that the person would be required to bear some of the costs of support.

[3] Remedies for human rights violations by public authority

The Study Group on Review of Appeals Filed by Inmates of Penal Facilities is considered to be a de-facto institution for complaints mechanism established provisionally within the Ministry of Justice until a national human rights institution is created (recommendation of the Council for Correctional Policy Reforms). The Study Group is not an institution established by law, but is merely a private body under the Minister of Justice.

Meanwhile, the Penal Facilities Visiting Committee and the Detention Facilities Visiting Committee are located in each prison or detention facility and have the authority to give views on the operation of that facility, but have no powers to investigate claims of human rights violations from individual inmates or detainees or take measures to provide remedies. A national human rights institution is really necessary, and it is something that was already foreseen by the recommendation of the Council for Correctional Policy Reforms.

Moreover, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Japan has ratified requires the establishment of a National Preventive Mechanism, but Japan does not have an institution, which functions as such.

[4] The Bar Associations in this country and the Japan Federation of Bar Associations has adopted resolutions calling for the early creation of a national human rights institution.

5) The current international situation regarding the creation of a national human rights institution

[1] Recommendations by the United Nations Human Rights Council

The United Nations Human Rights Council was launched in 2006 as one of the three Councils of the United Nations, the other two being the Security Council and the Economic And Social Council.

The Human Rights Council has a procedure of regular reviews of the human rights situation of each country and to recommend improvements (the Universal Periodic Review, hereafter, UPR). Japan has been reviewed twice under this procedure.

In the first review in May 2008, a number of countries noted that Japan had not yet established a national human rights institution and recommended that it does so. The Japanese government made a public commitment that it would “follow up” on the recommendations. At the second review in October 2012, it was pointed out that the commitment had yet to be implemented, and the Japanese government again, made a public commitment to “follow-up.”

It is very significant that the Human Rights Council recommended the Japanese government that it should establish a national human rights institution, and that the Japanese Government publicly committed itself to following up on the recommendation. It is a commitment made to the United Nations and the international society and has to be fulfilled.

Moreover, the Japanese government has also agreed to follow up on the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Optional Protocol requires the establishment of a national preventive mechanism, with powers to visit places of detention, which is a role that could be played by the national human rights institution, as can be seen in other countries.

[2] Recommendations of Treaty Bodies under the International Human Rights Treaties

Treaty bodies established under the International Covenants and other human rights treaties have repeatedly called on the Japanese government to create a national human rights institution.<sup>24</sup>

In May 2013, the Committee on Economic, Social and Cultural Rights urged at the examination of the 3rd Periodic Report on the International Covenant on Economic, Social and Cultural Rights “to expedite the establishment of a national human rights institution.”<sup>25</sup> It also called “on the State party to ensure that the curricula at the Legal Training and Research Institute of Japan as well as the training programmes for judicial professionals and lawyers adequately cover the justiciability of economic, social and cultural rights.”<sup>26</sup>

Also in May 2013, at the examination of the 2nd Periodic Report on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Committee

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24 Child Rights Committee, June, 1998, Human Rights Committee, November, 1998, Committee on the Elimination of Racial Discrimination, March 2001, Committee on Economic, Social and Cultural Rights, September, 2001, Committee on the Elimination of Discrimination against Women, July, 2003, Child Rights Committee, February, 2004, Committee against Torture, August, 2007, Human Rights Committee, October, 2008, Committee on the Elimination of Discrimination against Women, August, 2009, Committee on the Elimination of Racial Discrimination, March, 2010, Child Rights Committee, June, 2010, Committee on Economic, Social and Cultural Rights, May, 2013, Committee against Torture, May, 2013.

25 Paragraph 8.

26 Paragraph 7.

against Torture, Committee Members repeatedly raised questions on the national human rights institution. For example, Mr. Menéndez (Country Rapporteur) noted that a national human rights institution was necessary to realize the basic human rights, and called for its creation under the current government. The Japanese government responded that the draft Bill on the Establishment of a Human Rights Commission was submitted to the Diet in November 2012, but the draft was abandoned. Mr. Tugushi also asked whether there were any plans to create an independent national human rights institution, to which the government replied that it could not give an answer, as it was still considering future plans.

On May 31, 2013, the Committee noted *“with concern that the State party has not yet established a national human rights institution, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) (art. 2)”* and continued, *“(n)oting the commitment made by the State party in the context of the universal periodic review (A/HRC/22/14/Add.1, para s .147.47 ff ), the Committee urges the State party to expedite the establishment of an independent national human rights institution in conformity with the Paris Principles.”* It is to be noted that the establishment of a national human rights institution was indicated as part of an official recommendation and that it also referred to the UPR.

[3] Report of Mr. Doudou Diène

In 2006, Mr. Doudou Diène (Senegal), the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance appointed by the Human Rights Council submitted and published a report to the United Nations based on his visit to Japan.<sup>27</sup>

In the report, the Special Rapporteur made 24 recommendations calling on the Government to (i) recognize the existence of racial discrimination in the Japanese society and express its political will to combat it, (ii) adopt a national law against racism, and (iii) establish a national commission for equality and human rights bringing together the most important fields of discrimination, including race, color, gender, descent, nationality, ethnic origin, disability, age, religion, and sexual orientation.

6) Summary

As shown above, there is an increasing need for an institution for human rights remedies that can respond to discrimination against people with disabilities, the elderly, women, foreign nationals and others. The problem is that it has not yet grown into a force strong enough to move the governing party forward.

The international society has strongly urged Japan to swiftly establish a national human rights institution. In order to fulfill its responsibility toward the international society, the establishment of such an institution is an urgent issue that Japan should implement without delay. Japan is required to make efforts to improve the human rights situation so that is no longer a shame to the international society. Nevertheless, the current Japanese government has not even indicated a course of action for the establishment of a national human rights institution.

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27 E/CN.4/2006/16

#### (4) Proposed Recommendations for the Concluding Observations

The Ministry of Justice which is responsible for the draft Bill on the Establishment of a Human Rights Commission is serious about the adoption of the Bill. JFBA appreciates the draft Bill proposed by the Democratic Party as a whole, but we still consider that the following points need improving on to achieve an institution based on the Paris Principles.

- Positive aspects
  - The rights to be protected and remedied under the bill were expanded from “discrimination and abuse” under the previous draft to human rights in general.
  - Therefore, human rights violations by public authorities were included in the scope to be remedied.
  - It was to have been established as a commission under Article 3 of the National Government Organization Act, which would have enabled it to exercise its authority independently.
  - The provision in the previous draft regulating expression and methods of gathering information for the media was deleted, removing the threat to the freedom of the press.
- Issues for the Concluding Observations
  - 1) The scope of human rights that come under its jurisdiction should explicitly include all the rights recognized under international human rights law, such as the International Covenant on Economic, Social and Cultural Rights. It should also have an explicit mandate to make policy recommendations and investigations based on international human rights standards.
  - 2) The Commission would have only 5 members, which is too few, and the secretariat was expected to be staffed by officials from the Human Rights Bureau of the Ministry of Justice. It was clear that the institution would be small in terms of personnel, and the personnel and financial resources necessary for pursuing activities in multiple fields nation-wide has not been secured.
  - 3) The Commission does not have offices around the country. As it is expected to aim to provide remedies for damages of human rights violations through simple and swift communications from those whose rights were violated, the Commission should have local commissions with permanent human rights commission members and secretariat that can receive communications and provide remedies anywhere in the country.

Even if the response to local cases had to be inevitably entrusted to the District Legal Affairs Bureau Chief, an independent management system of the Commission should be secured for claims of human rights violations by public authority.
  - 4) There should be explicit provisions on the legal duty to accept investigations by the human rights institution in cases of human rights violations by public organs.
  - 5) The Commission should be established under the Cabinet Office instead of the Ministry of Justice to effectively ensure its independence.
  - 6) The following points regarding the selection of Commission members, the composition of the secretariat, and the scope of the budget should be explicitly provided for in law.

[1] criteria for selection of the members and the procedures for the appropriate selection

- [2] the size of the secretariat and personnel exchange with the Ministry of Justice should satisfy the accreditation criteria of the ICC
- [3] even if local cases of human rights remedies are entrusted to the District Legal Affairs Bureau Chief, the Commission should be able to respond appropriately to cases of human rights violation by public authority
- [4] the budget for personnel should be secured to respond to cases of human rights remedies in many fields, such as those involving people in criminal detention facilities, people with disabilities and foreign nationals
- [5] a system to request for and secure experts is necessary for cases such as those involving human rights under international human rights law, human rights of the elderly, people with disabilities, women and foreign nationals
- [6] the relationship between the Commission and international human rights organs, in particular, the powers of the Commission to be involved in the preparation of the Periodic Reports should be explicitly included in the mandate
- [7] the Commission's powers to investigate, assess and make policy recommendations based on the International Covenants regarding new draft bills and changes in administrative policy should be explicitly included in its mandate

## Part II Reports on the Specific Articles

The following report sets forth the issues in the order of articles of the ICCPR. Those issues that involve more than two or more articles, would be explained under one of the articles, with a note of references to each other.

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### Article 2: The Duty to Implement the ICCPR

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#### 1 The Issue of Foreign Nationals

##### 1-1 The Amendment of the Immigration Control Act

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Under the Immigration Control system that was introduced in July 2012 with the amendment of the Law for Partial Amendment to the Immigration Control and Refugee Recognition Act (hereafter, “Immigration Control Act”), the Minister of Justice is now able to ascertain the status of foreign nationals residing in Japan for the medium to long term accurately on an ongoing basis. Information on the status of foreign nationals residing in Japan will be reflected in the basic resident registers to be newly created and enable provision of more enhanced administrative services to foreign nationals.<sup>28</sup>

(3) Current Situation

1) The purpose of the Immigration Control Act amendment

The purpose of the introduction in July 2012 of the new system of immigration control system was to prevent crimes committed by foreign nationals, and to lower the number of foreign nationals who do not have any residence status, and who are seen as causing the crimes committed by foreign nationals. The substance of the amendment was to strengthen control of all foreign nationals residing in Japan (excluding those with special permanent residence status) for that purpose.

However, there have been no so-called acts of terrorism committed by foreign nationals, and it has not been proven that the crime rate for ordinary crimes by foreign nationals were notably higher than those by Japanese. Also, the number of foreign nationals without residence status was 251,697 in January 2000 but has decreased to 67,065 in January 2011. Therefore there are no reasons for strengthening control. The strengthening of control will violate the right to privacy of foreign nationals. Targeting only foreign nationals for strengthening controls also amounts to discriminatory treatment, and there is concern that it may encourage discrimination and prejudice towards ethnic minorities in Japanese society.

2) Strengthened controls

[1] Under the latest amendment, mid-and long-term residents (except for those with special

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28 Paragraph 26.

permanent residence status) are required to notify the Ministry of Justice within 14 days when

- a) there is a change of address
- b) a resident with employment or student status has changed the organization to which he/she belongs
- c) there is a change in the situation regarding a resident with the status of spouse of Japanese nationals or others, such as through divorce or death of spouse.

A delay in the notification may lead to criminal sanctions (fine), and the resident may be subject to revocation of the residence status. There are no equivalent duties to notify change of address for Japanese, that are subject to criminal sanctions.

- [2] A new system of revocation of status of the spouse of Japanese nationals or others has been created, which allows the Immigration Control Bureau to revoke the status and order the resident to be deported, when it comes to know that the resident is separated, divorced, or the spouse has died, through the notification such as that of change of address.

The amended Act states that the status will not be revoked when there are justifiable grounds for the separation, but there are no explicit provisions on what constitutes justifiable grounds. In particular, there is concern that the status may be revoked when the separation is due to acts of infidelity by the Japanese spouse, if the case is not pending in court.

- [3] The Alien Registration System was abolished with the latest amendment, but mid- and long-term residents including permanent residents are required to carry the resident card at all times, which will be newly issued. The only residents who were exempted from the requirement were those with special permanent resident status, who are people originally from the regions formerly under the colonial rule of Japan. Those who fail to comply with the duty to carry the card at all times may be liable for criminal sanctions (fine).

In particular, there are no reasonable justifications for requiring permanent residents to carry the residence cards at all times throughout their lives and subject them to criminal sanctions when they fail to comply. This amounts to unfair discriminatory treatment.

- [4] With the abolishment of the Alien Registration System, mid- and long-term residents will also be registered in the Basic Resident Registration, which used to cover only Japanese nationals. Foreign residents will be provided administrative services by the local governments on the basis of the records in the Basic Resident Registration. But foreign nationals without resident status, who used to be covered by the Alien Registration System, will not be registered in the Basic Residence Registration. Since they will not receive a residence card, foreign nationals without residence status will no longer have any means to publicly prove their address or other data. Therefore, there is a possibility that they will no longer be able to receive the administrative services that had been provided to foreign nationals regardless of their residence status. For example, there is a risk that foreign nationals with no residence status may no longer be able to receive services such as school education for children, health care service for mothers and young children, public health measures including vaccinations, and emergency medical services. The Government has declared that it will continue to provide these administrative services to foreign nationals with no residence status, but there are many issues that are left to the local governments

to deal with, such identifying the recipients, informing them of the contents of the services and to actually provide the services to foreign nationals, whose addresses cannot be identified on public records.

[5] Residents with special permanent status, who are originally from the regions under former colonial rule of Japan, will not be issued residence cards, but they will be required to receive and keep the Special Permanent Resident Certificate even though they are not required to carry it at all times, but to show it to the State when requested. Those who fail to comply may be liable for criminal sanctions. The Government explains that the Special Permanent Resident Certificate will be convenient for the special permanent residents to prove their identity, but they can prove their identity with their residence certificate, and the duty to show the Special Permanent Resident Certificate should be seen as a measure for further control of special permanent residents.

[6] Moreover, under the 2006 amendment of the Immigration Control Act, all foreign nationals except for those with special permanent resident status were required to provide the State with their fingerprint information and facial photograph upon entering Japan. The purpose was said to be to prevent foreign terrorists from entering the country, but there have been no cases of terrorist acts by foreigners in Japan and the measure also has other purposes such as refusing entry to those who have been deported in the past. The fingerprints and photos that are taken upon entry are to be used for immigration control, but it is possible for other government organs to use them in criminal investigations in exceptional cases. These measures violate the right to privacy of foreign nationals, and may cause prejudice regarding foreign nationals and ethnic minorities in society.

## 1-2 Acceptance of Foreign Workers

### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Report explains that the Government will address the issue through careful deliberations based on the consensus of the people of Japan.<sup>29</sup>

### (3) Current Situation

The Government at this point does not allow immigration of foreign nationals for the purpose of unskilled labor. Yet workplaces where harsh working conditions are unavoidable face chronic shortages of labor and there are in fact foreign migrant workers residing in Japan, working in jobs under the harshest working conditions, through systems that the Government officially does not intend to use for the purpose of addressing the labor shortage, such as the acceptance of descendants of Japanese and the trainee and technical intern trainee system.

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<sup>29</sup> Paragraphs 28, 29.



As a consequence of the gap in the official purpose and the actual situation, the respect for human rights of foreign nationals as workers is neglected. A similar risk is being pointed out in the case of acceptance of foreign nationals as nurses and care workers under the Economic Partnership Agreements with other Asian countries. Further, even when the Government considers acceptance of foreign nationals as a workforce, the emphasis of the discussions are focused on the effect on the labor market in Japan and the impact on the national economy. The perspective of the rights of foreign workers to lead a stable life in Japan without discrimination is lacking.

### 1-3 The Government's Position on Employment of Foreign Workers

#### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

#### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Government explains that the Employment Security Act stipulates that no one should be discriminated against in employment placement or vocational guidance and related matters based on their nationality and other grounds and that foreign nationals can receive the same employment placement service as the Japanese. It also states that improvement is being made regarding employment control of foreign workers in accordance with the Guidelines Concerning Employment Conditions for Foreign Workers adopted in fiscal year 2007.<sup>30</sup>

#### (3) Current Situation

##### 1) The Employment Security Act prohibits discriminatory treatment of foreign nationals in employment placement and other related matters. Article 3 of the Labor Standards Act prohibits discriminatory treatment in wages, working hours, and other labor conditions based on the nationality of the worker.

However, there have been no reports by the press or others of specific cases of discrimination in labor conditions based on nationality being identified and punished as criminal offense. Also, there are no provisions prohibiting discriminatory treatment in hiring, and no positive policies such as requiring employers to employ a certain proportion of foreign nationals, or to provide language support to foreign nationals they have hired. (The Guidelines Concerning Employment Conditions for Foreign Workers merely states that the employers should provide minimum Japanese language education necessary to prevent labor accidents.)

As a result, the rate of foreign residents with residence status with no employment restrictions, most of them descendants of Japanese, who are hired directly by private companies, is smaller than that of Japanese. Meanwhile, a larger percentage of them work in indirect employment, working for a certain period at a workplace they were assigned to in the form of 'dispatch' workers or contract workers. This means that there is discrimination in employment against foreign nationals residing in Japan.

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30 Paragraphs 30, 31.

2) The Guidelines Concerning Employment Conditions for Foreign Workers to which the Government Report refers was drafted in view of the amendment of the Employment Countermeasures Act, which went into force in October 1, 2007. The amendment requires employers to report the name, residence status, period of residence, nationality, and other matters of all foreigners (except for those with special permanent status) to the Minister of Health, Labor and Welfare every time they enter or leave employment. Failure to report may lead to criminal sanctions. The information received by the Ministry through the reporting system will be provided to the Ministry of Justice, which has jurisdiction over the Immigration Bureau. The system has the purpose not only for contributing to the preparation of migrant worker policies, but also for the residence control of individual foreign nationals. There are no systems requiring employers to report such information on Japanese workers. Also, there are no reasons why the State has to know the places of employment of permanent residents or residents with the status of spouse of Japanese nationals. These measures violate the right of privacy of foreign nationals, and may lead to discrimination and prejudice against foreign nationals.

#### 1-4 Counseling for Foreign Nationals

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Regarding various human rights issues involving foreign nationals, remedies and prevention of damages by human rights violations are sought through human rights counseling and investigations as well as resolution procedures for human rights infringement cases. Eight Human Rights Counseling Offices for foreign nationals have been created around the country.<sup>31</sup>

(3) Current Situation

The human rights counseling and investigation procedures of the human rights infringement cases are conducted by the Human Rights Bureau of the Ministry of Justice. The Minister of Justice has the power to decide matters regarding the personnel and operations of the Bureau. The Ministry of Justice also has jurisdiction over the Immigration Bureau. This means that the human rights counseling and investigation procedures for human rights infringement cases are not being conducted by third-party bodies independent from the Government and it is difficult to prevent human rights violations by public officials under this system, particularly in relation to the Immigration Bureau.

In fact, of the human rights infringement cases in 2011, the number of applications regarding violations by law enforcement organs other than the police was just 16. None of the cases resulted in requests or recommendations. There were only 69 cases nationwide, that involved human rights violations due to discrimination against foreign nationals, and no cases resulted in requests or recommendations during the same year.

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31 Paragraph 42.

Furhter, since as mentioned below, the Administrative Appeals Act does not apply to dispositions of the State, such as detention in immigration facilities, renewal or changes in the residence status, and if the person in question is not satisfied with the decision, he/she would have to bring the case to court immediately, the significance of human rights counseling as well as investigations and response to cases of human rights violations for foreign nationals should be recognized as being essentially large. It is obvious that the current system is woefully insufficient.

## 1-5 Education for Children of Foreign Nationals Resident in Japan

### 1-5-1 Exclusion of Students of Korean Schools from the Exemption of Senior High School Tuition Fees

#### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

*31. The Committee is concerned that State subsidies for schools that teach in the Korean language are significantly lower than those for ordinary schools, making them heavily dependent on private donations, which are not exempted or deductible from taxes, unlike donations to private Japanese schools or international schools, and that diplomas from Korean schools do not automatically qualify students to enter university (art. 26 and 27).*

***The State party should ensure the adequate funding of Korean language schools by increasing State subsidies and applying the same fiscal benefits to donors of Korean schools as to donors of other private schools, and recognize diplomas from Korean schools as direct university entrance qualifications.***

#### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Government explains that it has introduced a system to exempt students of public high schools from paying tuition, and to provide private high schools with school enrollment subsidies in April 2010. Foreign schools, classified as miscellaneous schools, are also eligible, when these are designated as “having a curriculum equivalent to the Japanese high school curriculum” by the Minister of Education, Culture, Sports, Science and Technology.<sup>32</sup>

#### (3) Current Situation

At the drafting stage of the legislation for the enrollment subsidy system, the Government had stated its intention to exclude students of Korean high schools (including nationals of the Republic of Korea, Democratic People’s Republic of Korea and Japan) from the system because of the cases of abduction of Japanese by the Democratic People’s Republic of Korea (hereafter, “North Korea”) and other issues. The Committee on the Elimination of Racial Discrimination (hereafter, “CERD”) raised its concern in its Concluding Observations after the examination of the 3rd to 6th Periodic Report of the Government of Japan under the International Convention on the Elimination of All Forms of Racial Discrimination (hereafter, “ICERD”), stating that, “*the Committee expresses concern about acts that have discriminatory effects on children’s education including: (e) the approach of some*

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32 Paragraph 36.

*politicians suggesting the exclusion of North Korean schools from current proposals for legislative change in the State party to make high school education tuition free of charge in public and private high schools, technical colleges and various institutions with comparable high school curricula.”<sup>33</sup>*

The system was implemented while the question of the application of the enrollment subsidies to students of the Korean high schools was still pending.

Since then, the Minister of Education, Culture, Sports, Science and Technology has designated 37 foreign schools including Korean schools, following the curriculums in the Republic of Korea, and Chinese schools as recipients of the enrollment subsidies system, while the Korean high schools were the only ones left with the decision pending for approximately 3 years. Then the Government amended the existing Ministerial Ordinance so as not to grant the enrollment subsidies to Korean high schools, for reasons such as the lack of progress in the issue of abduction of Japanese nationals by North Korea.

The Korean high schools satisfy the criteria for “curriculum equivalent to the Japanese high school curriculum” set by the Ministry of Education, Culture, Sports, Science and Technology and the non-application of the enrollment subsidies to Korean high school students is discriminatory treatment on grounds of political and diplomatic issues between the North Korean and Japanese Governments.

#### 1-5-2 Eligibility of Graduates of Korean Schools to Take University Entrance Examinations

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Refer to the paragraph 31 mentioned above.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Government explains that children of foreign nationals can receive education in foreign schools<sup>34</sup> and that in September 2003 the Government increased the flexibility in the system by allowing individual universities to decide by themselves on the eligibility to take the entrance examinations for graduates of foreign schools.<sup>35</sup>

(3) Current Situation

Korean schools, as well as other foreign and ethnic schools, are not recognized as ‘schools’ under the School Education Act. Consequently, graduation from a Korean school is not a publicly recognized qualification for eligibility.

Even with the measure to increase flexibility in the eligibility for entrance examinations mentioned above, graduation from Korean schools is not recognized as a matter of course as qualification for eligibility to take entrance examinations, unlike graduation from other foreign and ethnic schools, but is left to the voluntary decision of each university. The reason is that because the ‘home country’ of these schools do not have diplomatic relations with Japan, and therefore it is impossible to inquire

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33 CERD/C/SR.2004 and CERD/C/SR.2005, April 6, 2010, Paragraph 22.

34 Paragraph 35.

35 Paragraph 38.

whether the curriculum in the schools are recognized as formal curriculum in the home country. This leads to new discrimination among foreign and ethnic school, by excluding Korean schools, which have the education system that most resembles the Japanese school system, from foreign schools whose diploma are recognized as qualifications for eligibility to take entrance examinations.

As a result, in January 2007 the application to take the general entrance examination for Tamagawa University submitted by a Korean student was rejected.

In relation to the application for human rights relief submitted by the Korean school, the JFBA has submitted on March 24, 2008 a recommendation to the Prime Minister and the Minister of Education, Culture, Sports, Science and Technology to change such treatment of Korean schools, as the discriminatory treatment violates the right to education of students who are going or wish to go to Korean schools. The Government to date has not implemented the contents of the recommendation.

### 1-5-3 Discriminatory Statements, Acts, Violence, and Harassment against Students of Korean Schools

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Government mentions distributing pamphlets and leaflets, putting up posters, and carrying out other awareness-raising activities in school zones frequently accessed by a large number of Korean students after incidents of harassment, intimidation, and assaults against Korean students occurred after the official admission by the North Korean Government during the Japan-North Korea Summit in September 2002 that it had abducted Japanese nationals. It also called on these students through these activities to consult with the human rights organs under the Ministry of Justice in the event that they became targets of harassment or threats. It reports of similar actions taken after media reports of missile launches by North Korea in July 2006 and April 2009, as well as after the public announcement that it had conducted nuclear tests in October 2006 and May 2009.<sup>36</sup>

(3) Current Situation

Even after September 2009, the number of cases of discriminatory statements, acts, violence, and harassment against students of Korean schools rose to hundreds nationwide each time a diplomatic incident arose between Japan and the North Korean Government. The students responded each time by going to and from schools in groups, or by being accompanied by teachers or parents. The JFBA has called on the Government to take measures immediately to prevent harassment as well as intimidating statements and acts against resident Korean children to ensure the right of all people regardless of nationality or ethnicity to live in safety and in peace, to formulate and to implement necessary measures.

However, on December 4, 2009, around 10 men calling themselves Zaitokukai (Association of

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36 Paragraphs 40, 41.

citizens intolerant to special privileges granted to Korean residents in Japan) gathered in front of the gates of the First Primary Kyoto Korean School during class, and railed against the school for placing a podium in an adjacent city park. They continued to rant racist abuse for an hour, repeatedly demanding that the school gates be opened and cut the power lines to the speaker microphone in the park. A video of the incident was uploaded on the internet attracting wide support based on racist hatred. Of the men who caused the incident, 4 were convicted of forcible obstruction of business, damages to property, and defamation, but 7 were not prosecuted<sup>37</sup> and the attack on the school was repeated on January 14 and 28, 2010. The Zaitokukai had made prior announcements of the demonstrations for the last two attacks on their website, and called on the public in general to participate in the action. Because of that, approximately 30 people joined the second demonstration, while numerous people joined the third. Also, for the second demonstration, the organizers had applied to the Kyoto Minami Police Station for the permission of the use of the road in front of the First Primary Kyoto Korean School, as they could not “allow the school to unlawfully occupy the neighboring park.” The permit was issued, and on that day, the Kyoto Minami Police mobilized 10 police patrol cars and 100 police officers in front of the School to provide security for the surrounding areas. Before the third demonstration, the Kyoto District Court had issued a provisional disposition banning demonstrations within 200 meters of the School, but the demonstration was conducted in violation of the Court order.

The School filed suit to the Kyoto District Court against the Zaitokiukai and the members who participated in the demonstrations claiming that the demonstrations by the Zaitokiukai constituted incitement to racial discrimination, infringed on the personal rights of the School, violated its right to provide ethnic education, harmed its reputation, and were conducted exclusively for the purpose to incite discrimination, hatred, hostility and ill-will towards resident Koreans. It sought compensation for damage, as well as a ban on similar demonstrations (propaganda activities on the streets). On October 7, 2013, the Kyoto District Court took into consideration that Article 2 paragraph 1 of the International Convention on the Elimination of All Forms of Racial Discrimination places a duty on States Parties to prohibit and end racial discrimination and that Article 6 of the Convention requires States Parties to assure effective remedies through the competent national tribunals against any acts of racial discrimination, and ordered the Zaitokiukai and the members who took part in the demonstrations to pay compensation and banned future propaganda activities in the streets.

The Zaitokiukai and its members were not satisfied with the judgment and they appealed. The case is currently being heard in the Osaka Appeals Court. The Zaitokiukai and its members have organized xenophobic demonstrations criticizing the above Kyoto District Court judgment. There are some reports in the media, that seem to support the activities of the Zaitokiukai, and some members of the public also agree with them, raising concerns about the dissemination of racially discriminatory ideas and incitement to racial discrimination.

The Concluding Observations of the CERD to the 3rd to 6th Periodic Report of the Government of Japan noted “*with concern the continued incidence of explicit and crude statements and actions*

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37 Kyoto District Court, 2010 (wa) No. 1257.

*against groups, including children attending Korean schools” and recommended to “(a) Remedy the absence of legislation to give full effect to the provisions against discrimination under article 4; (b) Ensure that relevant constitutional, civil and criminal law provisions are effectively implemented, including through additional steps to address hateful and racist manifestations by, inter alia, stepping up efforts to investigate them and punish those involved; (c) Increase sensitization and awareness-raising campaigns against the dissemination of racist ideas and to prevent racially motivated offences including hate speech and racist propaganda on the Internet.”<sup>38</sup> However, the recommendations have not yet been implemented.*

## 2 Measures for Persons with Disabilities

### 2-1 Legislation against Discrimination Based on Disabilities

- (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)  
Not mentioned.
- (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)
  - 1) The Government established a Ministerial Board for Disability Policy Reform consisting of all Cabinet Members to reform the domestic laws and other policies necessary for the conclusion of the Convention on the Rights of Persons with Disabilities.
  - 2) The Cabinet decided on the reform schedule in June 2010, which included the legislation of the Act on Prohibition of Discrimination by Reason of Disability (tentative name).<sup>39</sup>
- (3) Current Situation
  - 1) The Convention on the Rights of Persons with Disabilities adopted by the 61st United Nations General Assembly on December 13, 2006 requires all State Parties to take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise. (Article 4 paragraph 1 e)
  - 2) In March 2007, the JFBA called on the Government for a swift ratification of the Convention, as well as for a legislation of an Act on Prohibition of Discrimination by Reason of Disability as one of the measures to reform the domestic laws necessary for the ratification. The Japanese Government signed the Convention in September 2007, but has not yet ratified it. Nor has it legislated an anti-discrimination law.
  - 3) The Japanese Government signed the Convention on the Rights of Persons with Disabilities in September 2007. The ratification was approved domestically, and the ratification instrument was deposited with the United Nations on January 20, 2014. But as explained in the following section, there are remaining problems in the improvement of domestic laws.
  - 4) In June 2013, the Act on the Elimination of Disability Discrimination was adopted. However, (1)

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38 CERC/C/JPN/CO/3-6, Paragraph 13.

39 Paragraph 44.

regarding the violation of the duty to provide reasonable accommodation which is a form of discrimination, legal duties have been placed on administrative institutions and other public entities, but for private entities, there is only a duty to make efforts to provide reasonable accommodation, (2) the institutions for remedies for violation of rights remain insufficient, as the Act envisages utilizing existing institutions, instead of creating a human rights institution independent of the government in line with the Paris Principles. Future improvements are hoped for.

## 2-2 Welfare Services for Persons with Disabilities

### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

With the Services and Supports for Persons with Disabilities Act of 2005 and the partial amendment of the Act adopted in December 2010, the cost burden was changed from use basis to financial capacity basis, consultation support and support for children with disabilities were strengthened, and policies to enable persons with disabilities to live in the community enhanced through measures such as housing subsidies for group homes.<sup>40</sup>

### (3) Current Situation

The JFBA adopted a resolution at the 54th Convention on Protection of Human Rights in October 2011 titled the Declaration Calling for the Abolishment of the “Act on Services and Support for Persons with Disabilities” and Requesting the Establishment of a General Welfare Act which Guarantees the Rights of Persons with Disabilities while Giving Utmost Respect to their Opinions.

The Services and Supports for Persons with Disabilities Act initially started as the legal framework for the benefits principle, but there were strong criticisms from people with disabilities, as the system would contravene the spirit of the Convention, which protects the rights of people with disabilities to live equally with others. The system also considered support, which was essential to live, as “benefits”, and disabilities as the person’s “own responsibility” and therefore was contrary to the basic idea of support for persons with disabilities. There were harsh criticisms from people with disabilities, claiming that they cannot go on living under the Act. In October 2008, they filed suit around the country arguing that the Act was unconstitutional, and the lawsuits continued into the second and third rounds.

The state (Ministry of Health, Labor and Welfare, hereafter the state) responded to the voices of the people with disabilities, and signed a Basic Agreement on January 7, 2010 with the groups of plaintiffs and their representatives of the Services and Supports for Persons with Disabilities Act lawsuits. The state made a commitment to abolish the Act by August 2013.

In order to implement the Convention in the country, it is essential that the state ensures the

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40 Paragraph 45.



abolishment of the Act as was confirmed in the Basic Agreement. The Agreement was signed with the understanding of the significance of the lawsuits on the constitutionality of the Act in mind, therefore the Act should be “abolished” and not merely “amended.” JFBA has made a strong call for the definite abolishment of the Act and the legislation of a law that ensures the ability of persons with disabilities to live in the community as a right. The Government instead has merely adopted the Integrated Welfare Service Law for Persons with Disabilities, which amounted to a partial amendment of the Act, on June 20, 2010.

## 2-3 Policies for Persons with Mental Disabilities

### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Act on Mental Health and Welfare for the Mentally Disabled (hereafter, “Mental Health and Welfare Act”) was amended, and medical care that takes further consideration of the human rights of the persons concerned are ensured, by such steps as introduction of special measures for medical examination by designated mental health physicians and the system for reporting medical conditions of inpatients subject to consensual hospitalization.<sup>41</sup>

### (3) Current Situation

The number of people hospitalized in psychiatric hospitals has not significantly decreased from over 300,000 and of those approximately 40% have been in the institutions for more than 5 years. The policy for persons with mental disabilities has continued to maintain large numbers of persons hospitalized for a long period of time, and welfare policies that support out-patient medical care and living in the communities are lacking.

## 2-4 Act on Employment Promotion of Persons with Disabilities etc.

### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Government believes that employment of persons with disabilities is progressing steadily, except for at small and medium sized enterprises. Therefore, it is making efforts to improve employment at these enterprises.<sup>42</sup>

### (3) Current Situation

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41 Paragraph 46.

42 Paragraphs 47, 48.

The term “permanent employees” required by the Act on Employment Promotion etc. of Persons with Disabilities (hereafter, “Employment Promotion for Persons with Disabilities Act”) means regular workers in the straight-forward interpretation of the word. But the Government took a warped view, that non-regular employment was sufficient, and included non-regular employers in the calculations for the employment rate of persons with disabilities.

Moreover, in its Concluding Observations after the second Periodic Report of the Government of Japan, the Committee on Economic, Social and Cultural Rights noted “*with concern that discrimination against persons with disabilities continues to exist in law and practice, particularly in relation to labour and social security rights*”<sup>43</sup> and urged “*the State party to continue, and speed up, progress in enforcing the employment rate for persons with disabilities in the public sector that is provided in legislation.*”<sup>44</sup>

### 3 First Optional Protocol to the Covenant

#### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

8. *The Committee notes that one of the reasons why the State party has not ratified the first Optional Protocol to the Covenant is the concern that such ratification may give rise to problems with regard to its judicial system, including the independence of its judiciary.*

***The State party should consider ratifying the Optional Protocol, taking into account the Committee’s consistent jurisprudence that it is not a fourth instance of appeal and that it is, in principle, precluded from reviewing the evaluation of facts and evidence or the application and interpretation of domestic legislation by national courts.***

#### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Government reports that it considers the individual communications procedure to be noteworthy in that it effectively guarantees the implementation of the Covenant, while it is making an internal study of various issues including whether it poses any problems in relation to Japan’s judicial system or legislative policy, and a possible organizational framework for implementing the procedure if it were to accept it. It explains that it has established the Division for Implementation of Human Rights Treaties in the Ministry of Foreign Affairs in April 2010. It states that the Government will continue to seriously consider whether or not to accept it.<sup>45</sup>

#### (3) Current Situation

- 1) The number of State Parties to the First Optional Protocol has increased rapidly after it came into force in 1976. Currently there are 114 State Parties. State Parties in the Asia-Pacific region include the Republic of Korea, the Philippines, Australia, and New Zealand, but Japan has not yet ratified the instrument. Moreover, there are no regional human rights treaties in Asia, and no individual

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43 E/C.12/1/Add.67, Paragraph 25.

44 E/C.12/1/Add.67, Paragraph 52.

45 Paragraph 50.

communication system under such treaties.

In the case of the United States, individuals can avail themselves of the individual petition system to the Inter-American Commission on Human Rights regarding violations of the American Convention on Human Rights. Therefore, Japan is one of a few member countries of the OECD having no individual communication system.

Among the G8 nations, Japan is the only country that is not participating in an individual communication system, and consequently, it is the only country to have no individual communication system among the economically advanced countries. Since Japan has been advocating human rights diplomacy, and is a member of the United Nations Human Rights Council, it has to be a role model as a country with an advanced human rights protection system in Asia, yet has not lived up to the role.

- 2) The examination of the periodic reports by the State Parties and the individual communication system are the procedures to ensure the rights under the ICCPR, but since Japan has not accepted the individual communication system, which is an important part of the mechanism for ensuring the rights under the Covenant, those rights could hardly be ensured fully.

Accordingly, even when someone argues in a domestic court that his/her rights under the ICCPR are violated, the court tends not to give any substantial interpretations about the treaty, or at times fails to consider the treaty violations at all in the judgment. If the individual communication system is accepted, the domestic courts will have to consider fully the violation of the rights under the treaty, as the Committee may consider the case after the domestic court proceedings, thus facilitating to ensure the rights under the treaty in the domestic courts.

- 3) The JFBA has been continuing dialogues with the Ministry of Foreign Affairs and the Ministry of Justice regarding the introduction of the individual communication system since the examination of the 5th Periodic Report, but its introduction has not been realized to date.

As explained above, the Division for Implementation of Human Rights Treaties has been established in the Ministry of Foreign Affairs in 2010. According to the Ministry, the Division is an organization for the introduction of the individual communication system. The Ministry explains that the studies needed before introducing the individual communication system have already been completed within the Division.

The JFBA has been continuing talks with the Ministry of Justice at the working-level, and in July 2012, as was suggested by the talks, the JFBA visited the neighboring Republic of Korea, which has already introduced the individual communication system, to study the number of personnel, budget and other matters required when the system was introduced. According to the conclusion of the study, the Republic needed no particular increase of personnel or budget for the introduction of the individual communication system, and that the introduction and use of the system was leading to progress in solving domestic issues.

- 4) Japan should immediately ratify the first Optional Protocol for the following reasons: as it has ratified the ICCPR in 1979, there are no reasons for it not ratifying the first Optional Protocol, which is a means of implementing the Covenant; Japan has raised the banner of human rights diplomacy, and is in a position to set an example in Asia in the field of human rights; the system is

now a global standard for the implementation of treaties; as the specific design of the domestic systems reflecting the views of the Committee, would be left to the State party, there are no reasons to refuse the revisit of the domestic human rights issues according to international standards; the preliminary studies in the Ministry of Foreign Affairs on the ratification have already been completed; and the improvement of the domestic human rights situation is a non-partisan issue, and there should be no reason to object.

(4) Proposed Recommendations for the Concluding Observations

The State Party should immediately ratify the first Optional Protocol, as there are no reasonable reasons to hesitate.

## 1 Mechanisms for the Promotion of the Realization of a Gender-Equal Society

### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

11. *The Committee reiterates its concern about discriminatory provisions in the Civil Code affecting women, such as the prohibition for women to remarry in the six months following divorce and the different age of marriage for men and women (art. 2 (1), 3, 23 (4) and 26).*

***The State party should amend the Civil Code, with a view to eliminating the period during which women are prohibited from remarrying following divorce and harmonizing the minimum age of marriage for men and women.***

12. *The Committee notes with concern that, despite numerical targets for the representation of women in public offices, women hold only 18.2 per cent of the seats in the Diet and 1.7 per cent of Government posts at the level of directors of ministries, and that some of the numerical targets set in the 2008 programme for accelerating women's social participation are extremely modest, such as the 5 per cent target for women's representation in positions equivalent to directors of ministries by 2010 (art. 2 (1), 3, 25 and 26).*

***The State party should intensify its efforts to achieve equitable representation of women and men in the National Diet and at the highest levels of the Government and in the public service, within the time frame set in the Second Basic Plan for Gender Equality adopted in 2005, by adopting special measures such as statutory quota and by reviewing numerical targets for women's representation.***

### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Government adopted the Third Basic Plan for Gender Equality under the Basic Act for a Gender-equal Society (hereafter, "the Third Basic Plan") by a Cabinet decision in December 2010. The Third Basic Plan was formulated as an effective action plan, based on the Council for Gender Equality Report of July 2010 and included specific numerical targets and deadlines.<sup>46</sup>

There are 15 priority areas in the Plan each with a "Basic Approach" and long-term policy directions until 2020 as well as concrete measures to implement them by the end of 2015.<sup>47</sup>

### (3) Current Situation

The Government has received encouragements and recommendations from the Committee on the Elimination of Discrimination against Women, to take concrete steps to amend the Civil Code and to introduce measures such as temporary special measures to increase participation of women in the decision-making process,<sup>48</sup> but it has failed to respond fully to these recommendations, and the amendment of the Civil Code, as well as the promotion for gender equality is stagnating.

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46 Paragraph 50.

47 Paragraphs 51, 52.

48 CEDAW/C/JPN/CO/6, Paragraphs 17, 18, 27, 28.

On the amendment of the Civil Code, the provision discriminating children born out of wedlock in inheritance was removed, yet there have been no progress in amending the other provisions.

Regarding the promotion of the Third Basic Plan, although the Government has continued to set a target of “30% by 2020” for women’s participation in policy and decision making process in the Third Basic Plan, some of the specific numerical targets are far below the 30%, and others lack concrete policies to achieve those targets. There is no introduction of the quota system for Diet Members or candidates for the Diet, civil servants, or positions in education, research, or managerial level in private companies. Nor are there special legal or institutional measures such as requiring companies to have a temporary special measures policy as conditions for applying for public procurement contracts. The only incentive is the introduction of the commendation award, and there are no appropriate measures for either individuals or organizations.

The Gender Equality Bureau, which is a section of the Cabinet Office, acts as the national machinery for gender equality, but it is an ineffectual organization in terms of personnel and resources, that do not go beyond liaison, coordination, and public relations. Even the Minister of Gender Equality is not a full-time position, but has concurrent duties. It is problematic, that the national machinery does not have the powers and proportionate financial resources to fulfill its mandate.

In the second round of Human Rights Council Universal Periodic Review of Japan, recommendations were made to consider ratifying the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women<sup>49</sup> and to ensure the full application and incorporation of the Convention in the domestic legal system.<sup>50</sup>

#### (4) Proposed Recommendations for the Concluding Observations

- 1) The State party should reform the domestic laws to bring them in line with the provisions of the Convention by setting the minimum age for marriage at 18 for boys and girls, eliminating the waiting period required only for women before they can remarry after divorce, adopting a system allowing the choice of surnames for married couples, and eliminating discriminatory provisions against children born out of wedlock.
- 2) The State Party should also increase the effectiveness of the monitoring system to assess the progress of the Basic Plan for Gender Equality and improve the activities of the domestic headquarters for improving the status of women to vitalize its functions.

## 2 Women’s Participation in Policy and Decision-Making Process

### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Refer to the paragraph 12 mentioned above.

### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Government advocated the promotion of effective positive action in the Third Basic Plan, as

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49 50,147,12.

50 51,147,33.

well as set goals with concrete time tables and numerical targets.<sup>51</sup>

In the area of national politics, the number of female Diet members is 97 among the total of 721 Diet members as of November 2011 (13.5 %) and some are Chairpersons of Standing Committees and the Chairperson of a Special Committee in the House of Representatives.<sup>52</sup> The Third Basic Plan sets the target of 30% for candidates for Diet seats by 2020, and the Minister of State for Gender Equality is requesting the cooperation of each political party and each of the associations of chairpersons of local assemblies in increasing the ratio of women assigned to posts of higher responsibility in each political party, increasing the percentage of female candidates for Diet elections and local assembly elections, improving mechanisms for promoting work-life balance, along with introducing positive action including to facilitate networking of female local assembly members.<sup>53</sup>

Regarding participation of women in national advisory councils, the Government aims to achieve the participation of either male or female members at a percentage of not less than 40 percent among all members in the entire Government councils by the year 2020. By the end of September 2010, it had managed to reach 33.8% and currently, the ministries and agencies are making efforts using female personnel databases and other means.<sup>54</sup>

The National Personnel Authority has formulated guidelines for increasing recruitment and promotion of female national public employees in May 2001 and notified the ministries to increase the recruitment and promotion of female employees in public service.<sup>55</sup>

The Government set the target of increasing the proportion of women among those who are recruited through the National Public Service Level I Recruitment Examination for administrative service and in 2009, managed to increase the proportion to more than 30%. But the proportion of female personnel assigned to posts of director or higher in central ministries or agencies, though increasing, is still at 2.2%. The Third Basic Plan therefore set numerical targets for the respective position levels for the Government as a whole and the numerical targets relating to recruitment and promotion were set by respective ministries and agencies as well. Regarding increasing women's participation in local public service, the Minister of State for Gender Equality requested that the heads of local governments introduce measures including positive action.<sup>56</sup>

### (3) Current Situation

In the legislative branch, the proportion of women in the national parliament is below the international level, and the proportion of women candidates for Diet seats, although it is on the rise in the House of Representatives, decreased in the latest election of the House of Councilors. There was also a steep decline in the proportion of women among those elected. The proportion of women in local assemblies of the prefectures, cities, other municipalities, and special wards tends to be large in urban areas and small in rural areas. As of December 2011, there are no prefectural assemblies that

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51 Paragraph 53.

52 Paragraph 54.

53 Paragraph 55.

54 Paragraph 56.

55 Paragraph 57.

56 Paragraph 59.

have no women among its members, but close to 40% of municipal assemblies still have no female members.

In the executive branch, the proportion of women according to the positions in public service is relatively high at the level of section chiefs, but becomes notably lower as the positions rise. The proportion of women in national advisory councils had been increasing but as of September 30, 2011, the proportion was 33.2%, declining for the first time since the study began in 1975. Meanwhile, the proportion of women among expert committee members is increasing.

On the whole, the proportion of women in leading positions in policy decision-making processes is gradually increasing, but the level is still low. The achievement of the target of “30% by 2020” set by the Government will be difficult to achieve. From an international perspective, according to the Human Development Report published by the United Nations Development Plan in 2012, Japan ranks high in the Human Development Index and the Gender Inequality Index, but according to the Gender Gap Index published by the World Economic Forum in 2013, Japan ranks 105th among 136 countries, even below the 101th among 135 countries in 2012. It is apparent that in participation in economic and political activities as well as decision-making, Japan finds itself in significantly low ranks.

The Committee on the Elimination of Discrimination against Women (hereafter, “CEDAW”) recommended, after its examination of the 6th Periodic Report of the Government of Japan, that temporary special measures be adopted to increase the participation of women in political and public life with numerical goals and timetables so the representation of women in decision-making positions is increased at all levels.<sup>57</sup> It also raised concerns about the low percentage of women in high-ranking positions above directors in the Government, the Diet, and that the numerical targets set in the 2008 plan were far too low.

#### (4) Proposed Recommendations for the Concluding Observations

- 1) The State party should introduce positive measures for improvement including quota systems, to increase the proportion of female members and candidates in the national and local parliaments. It should also increase the proportion of women in higher positions in the parliaments and the Cabinet Office as well as the proportion of women in the members of the government representatives in international conferences.
- 2) The State party should implement policies to increase the proportion of women in all organizations, and enhance the activities of organizations that monitor and improve the progress of the implementation.

### 3 Employment Measures

#### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

*13. The Committee is concerned about reports that women hold only 10 per cent of management positions in private companies and earn on average only 51 per cent of men’s salaries, that women*

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<sup>57</sup> CEDAW/C/JPN/CO/6, Paragraph 28.



account for 70 per cent of informal workers and as such are excluded from benefits such as paid leave, maternity protection and family allowance, are vulnerable to sexual harassment owing to their unstable contractual situation, and that they are often forced to work as part-time workers to sustain family life (art. 2 (1), 3 and 26).

***The State party should take measures to promote the recruitment of women as formal workers and to eliminate the gender wage gap, including (a) require all companies to take positive action to ensure equal employment opportunities for women; (b) review any deregulation of labour standards resulting in longer working hours; (c) further increase the number of child-care facilities, with a view to enabling women as well as men to balance work and family life; (d) relax the conditions for equal treatment of part-time workers under the revised Part-Time Workers Law; (e) criminalize sexual harassment at the workplace; (f) extend the prohibited forms of indirect discrimination under the Law on Equal Opportunity and Treatment of Men and Women to include the different treatment of employees on the basis of their status as heads of household or as part-time or contract employees; and (g) adopt effective measures to prevent indirect discrimination.***

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The proportion of female employees among all people in employment in Japan is on a rising trend and women's entry into the labour market is progressing. The ratio of women in senior positions at levels equivalent to chief, section manager, and director has also increased.<sup>58</sup>

The Government supports enterprises which are working on gender equality and work-life balance.<sup>59</sup> It also revised the Act on Equal Opportunity and Treatment between Men and Women in Employment (hereafter, "Equal Employment Opportunity Law") in 2006 (fully enforced from April 2007). Under this revised Act, discrimination against both men and women including indirect discrimination is prohibited, measures against sexual harassment have been strengthened, and positive actions concerning equal employment have been promoted.<sup>60</sup>

With regard to the wage disparity between men and women, the Government made supporting tools and their manuals in order to increase the visibility of gender gaps in each industrial sector, based on the actual employment management practices.<sup>61</sup> The Ministry of Health, Labour and Welfare defined what constitutes indirect discrimination under the Equal Employment Opportunity Law by its ordinance.<sup>62</sup> However, according to its definition, the requirement for an employee to be the "head of household" in order to be eligible for either family allowance or housing allowance is not considered to constitute indirect discrimination.<sup>63</sup> Likewise, treatment of employees differentiated based on their positions, such as part-time workers and fixed-term employees, is not recognized as indirect

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58 Paragraph 60.

59 Paragraph 61.

60 Paragraph 62.

61 Paragraph 63.

62 Paragraph 65.

63 Paragraph 66.

discrimination.<sup>64</sup>

In order to strengthen measures against sexual harassment, the Equal Employment Opportunity Law obligates employers to take measures necessary for employee management, and it stipulates the responsibilities of employers in connection with employee management.<sup>65</sup> In order to promote positive actions, the revised Equal Employment Opportunity Law enables the Government to provide assistance to employers who disclose their positive action efforts. The Government also started providing information services about positive actions on its website. It sets the target for the proportion of enterprises engaged in positive actions at 40% or more, to be achieved by 2014.<sup>66</sup>

As per child and family care, the Child Care and Family Care Leave Act was revised in order to obligate employers to establish a shorter working hour system; raise the age limit when both father and mother can take childcare leave; and launch a system allowing employees short-term leave for nursing care.<sup>67</sup> In order to support work-life and family-life balance, the Government has decided to increase the capacity of day-care centres by about 50,000 annually. Such quantitative expansion is ensured through securing operating costs for day-care centres under the FY 2011 national budget. The Government is promoting the establishment of licensed child day-care centers by utilizing public spaces in schools, etc.<sup>68</sup>

### (3) Current Situation

The number of female workers has increased, but the labour force participation ratio of women who have spouses is low. The labour market continues to put women at a disadvantage. The ratio of non-regular workers among women is on the rise and is now over 50%.

The wage disparity between men and women is remarkably wide: When the wage of a regular male employee is 100, the wage of an equivalent female employee is around 60.1, and the wage of a female part-time employee is around 45. Equal treatment for non-regular employees is not legally established and women inevitably receive lower wages.

The indirect discrimination based on “the employment management category” which is stipulated in the Guideline under the Equal Employment Opportunity Law still remains. The course-based management system is having a great effect on de facto gender discrimination, but the systematic discrimination has not been reviewed yet. The principle of equal pay for equal work has not been established at all.

With regard to work-life balance, the number of women who take childcare leave has increased, but the ratio of women who continue to work before or after childbirth has not increased. More women quit their jobs after childbirth because women have assumed family and household responsibilities. The ratio of men who take childcare leave is extremely low. Japanese men spend only about one hour per day on unpaid domestic work. This is a low level compared with other developed countries.

Many women face sexual harassment at small and medium-sized enterprises.

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64 Paragraph 67.

65 Paragraph 69.

66 Paragraphs 71-73.

67 Paragraph 74.

68 Paragraphs 77-79.

The Equal Employment Opportunity Law stipulates in its supplementary provisions that it is supposed to be reviewed, considering the state of its enforcement, after five years have passed since its enforcement. However, the review has been postponed despite of the above situations.

(4) Proposed Recommendations for the Concluding Observations

The State party should revise the Equal Employment Opportunity Law to stipulate the prohibition of wage discrimination and indirect discrimination in order to ensure the equal opportunity between women and men, prohibit unfair treatment due to pregnancy and childbirth, and prevent sexual harassment. The revised law should also stipulate the provisions for effective positive actions.

## 4 Protection from Violence

### 4-1 Domestic Violence

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

*15. The Committee is concerned that sentences for perpetrators of domestic violence are reportedly lenient and that violators of protection orders are only arrested in cases of repeated violations or when they ignore warnings. It is also concerned that there is a lack of long-term assistance for victims of domestic violence, and that the delays in granting foreign victims of domestic violence residence status effectively bar them from applying for stable employment and from having access to social security benefits (art. 3, 7, 26 and 2 (3)).*

***The State party should review its sentencing policy for perpetrators of domestic violence, detain and prosecute violators of protection orders, increase the amount of compensation for victims of domestic violence and of child-rearing allowances for single mothers, enforce court orders for compensation and child support, and strengthen long-term rehabilitation programmes and facilities, as well as assistance for victims with special needs, including non-citizens.***

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Based on the second revision of the Act on the Prevention of Spousal Violence and the Protection of Victims (hereafter, “the Domestic Violence Prevention Act”), the Government conducted proper investigation and punishment in a manner appropriate to the individual case. It is reported that foreign victims of domestic violence are permitted to “change” the status of residence in principle, or granted special permission to stay in Japan.<sup>69</sup>

(3) Current Situation (including replies to the list of issues 7)

The Domestic Violence Prevention Act was revised in 2007, but it does not fully protect violence among same sex couples or dating violence. It does not include an emergency protective order so that it takes two weeks on average to obtain a protective order. In June 2013, the Act was revised again to

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69 Paragraphs 83, 88, 89, 95.

be applied to cases for couples living together. However, the court released its interpretation and guidelines to exclude same sex couples from the application of the revised provision.

According to a recent survey on violence between men and women conducted by the Gender Equality Bureau at the Cabinet Office in April 2012,<sup>70</sup> one in four women suffer from physical violence from their spouses and one in 20 has experienced life-threatening violence. However, the number of perpetrators who were punished by violation of protective orders or crimes of injury in the Penal Code is very small as it is reported in the paragraph 88 of the Japanese Sixth Periodic Report. It is questionable if the individual case has been properly investigated and punished. Compensation for victims has not been always available.

According to the “Report on Policy Assessment on the Prevention of Violence from Spouses: Results of Assessment and Recommendation” published by the Ministry of Internal Affairs and Communications on May 26, 2009,<sup>71</sup> there is not enough support for the protection of victims, employment promotion for victim’s self-reliance, housing for victims, and schooling for their children, especially in terms of their quality. Middle and long-term assistance for victims is missing.

Translation services and changing residential status for foreign-born domestic violence victims are arranged to a certain degree. However, multilingual information should be more readily available and utilized, and translation services in consultation and support activities should be established. Under the revised Immigration Control Act implemented in July 2012, a foreign resident who does not engage in the activities as a spouse without a justifiable reason may be subject to revocation of their residence status. Foreign victims are afraid that their status might be revoked and they may hesitate to report the spousal violence and give up on divorce proceedings.

In addition, even though the CEDAW recommended a 24-hour free hotline for counseling women victims of violence in its Concluding Observations, no hotline has been opened and high-quality support services for women, including immigrant women and women of vulnerable groups have not been provided.<sup>72</sup>

Moreover, the governmental documents do not reflect the real situation of domestic violence, especially regarding the effect on children. A link between child abuse and domestic violence has also not been reflected. The damage of domestic violence should include when children were battered or children knew that violence had happened in the family even though the children themselves were not battered.

The Government does not even grasp the effect of domestic violence on the workplace and its link with suicide. Grasping the real situation of domestic violence, including the effect on children, will lead to implementing effective awareness-raising campaigns and measures to eliminate it. In 2013, the Committee on Economic, Social and Cultural Rights (hereafter, “CESCR”) recommended “*The Committee notes with concern that, while violations of restraining orders against violent spouses are punished under the revised Act on the Prevention of Spousal Violence and the Protection of Victims, spousal violence and marital rape are not explicitly criminalized. (art. 10) The Committee urges the*

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70 [http://www.gender.go.jp/e-vaw/chousa/h24\\_boryoku\\_cyousa.html](http://www.gender.go.jp/e-vaw/chousa/h24_boryoku_cyousa.html)

71 [http://www.soumu.go.jp/main\\_content/000023063.pdf](http://www.soumu.go.jp/main_content/000023063.pdf)

72 CEDAW/C/JPN/CO/6, Paragraph 32.

*State party to criminalize spousal violence, including marital rape. The Committee requests the State party to update the Committee in its next periodic report on the establishment of Spousal Violence Counselling and Support Centres and the implementation of basic plans by municipalities as well as their impact on reducing spousal violence.*”<sup>73</sup>

Later in 2013, the Domestic Violence Prevention Act was revised and the scope of protection has been expanded by applying the provisions of protection orders to “dating violence between those who live together.” However, the Act does not apply to couples living separately. Other issues have not solved yet.

The Criminal Code does not exclude a rape from a husband. However, perpetrators are rarely punished unless a marital relation is broken. According to a survey on violence between men and women conducted by the Gender Equality Bureau at the Cabinet Office (April 2012), one in seven women suffer from coercive sexual activities by their spouses.

#### (4) Proposed Recommendations for the Concluding Observations

- 1) Strongly recommend that the State party implement recommendations in the previous Concluding observations of the CCPR (2008), the CEDAW (2009), and the CESCR (2013) with utmost efforts.
- 2) The State party should provide stronger support for middle- and long-term care in supporting DV victims, and remove legal and actual barrier to support foreign, disabled and minority women and promote their access to support.
  - [1] Legal protection should be applied to dating violence of a couple living separately by revising the Domestic Violence Prevention Act.
  - [2] Recommend as in the previous Concluding observations, to prohibit the exclusion of same sex partners from protection under the Act.
  - [3] Introduce urgent protection order in Act that does not require having a hearing from the other party.
  - [4] Provide specialized trainings on DV, its violence mechanism and effects on victims to judges and clerical officers involved in DV cases through the thorough trainings.
  - [5] Provide enough education and trainings on DV to relevant national and local public officers.
  - [6] Expand the legal assistance by lawyers for representing victims.
  - [7] Shorten the trial in operating the Domestic Violence Prevention Act.
  - [8] For self-support of victims, revise the Domestic Violence Prevention Act, and introduce the system what enable a court to issue a payment order for marital expenses, child support, and medical expenses in addition to exclusion and restraining orders.
  - [9] Ensure 24 hour consultation at an early date.
  - [10] Utilize the “Report on Policy Assessment on the Prevention of Violence from Spouses: Results of Assessment and Recommendation” published by the Ministry of Internal Affairs and Communications on May 26, 2009 in the efforts by relevant ministries and local governments.

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<sup>73</sup> E/C.12/JPN/CO/3 Paragraph 23

[11] In implementing Section 7, Paragraph 1, Article 22-4, appropriately interpret “activities engaged as a spouse” or “a case there is a justifiable reason to be a resident without activities as a spouse” stipulated in the provision, in order for foreign women to make a living after leaving a penetrator. Legal protection for foreign DV victims should be secured in order to avoid unjust and unstable legal status. It is useful to list what applies to “justifiable reason” in the guidelines.

#### 4-2 Sexual Violence

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

*14. The Committee notes with concern that the definition of rape in article 177 of the Criminal Code only covers actual sexual intercourse between men and women and requires resistance by victims against the attack, and that rape and other sexual crimes cannot be prosecuted without a complaint filed by the victim except in cases where the victim is under 13 years of age. It is also concerned about reports that perpetrators of sexual violence frequently escape just punishment or receive light sentences, that judges often unduly focus on the sexual past of victims and require them to provide evidence that they have resisted the assault, that the monitoring and enforcement of the revised Prison Law and the guidelines of the National Police Agency for victim support is ineffective, and that there is a lack of doctors and nurses with specialized training in sexual violence, as well as of support for non-governmental organizations providing such training(art. 3, 7 and 26).*

***The State party should broaden the scope of the definition of rape in article 177 of the Criminal Code and ensure that incest, sexual abuse other than actual sexual intercourse, as well as rape of men, are considered serious criminal offences; remove the burden on victims to prove resistance against the assault; and prosecute rape and other crimes of sexual violence ex officio. It should also introduce mandatory gender-sensitive training in sexual violence for judges, prosecutors and police and prison officers.***

*27. The Committee is concerned about the low age of sexual consent, which has been set at 13 years for boys and girls (art. 24).*

***The State party should raise the age of sexual consent for boys and girls from its current level of 13 years, with a view to protecting the normal development of children and preventing child abuse.***

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Government claimed that a rape against a spouse is punished under the crime of rape in the Penal Code; sexual violence against a male is strictly addressed as a crime of forcible indecency. For an act to constitute rape or forcible indecency, resistance of the victim is not required and to protect the reputation and the privacy of the victim, the crime of rape and the crime of forcible indecency are prosecutable only upon a complaint.<sup>74</sup>

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74 Paragraphs 90-92.

(3) Current Situation (including replies to the list of issues 7 and 26)

Marital rape is not exempted under the Penal Code. However, it is rare that perpetrators are punished unless the marriage relationships are broken up. The survey on the violence between men and women conducted by the Gender Equality Bureau at the Cabinet Office in April 2012 showed one in every seven women are forced to have sexual intercourse by their spouses.

For an act to constitute rape, as already stated in the Government's periodic report, resistance itself is not required, but the fact whether the victims have resisted the assault is used to prove assault or intimidation from perpetrators and victims' consent in criminal cases. The degree of assault or intimidation which constitutes the crime of rape has to be a level that makes it extremely difficult for the victim to resist against the act before the court.

Sexual crimes became prosecutable only upon a complaint. The effect is questionable because it might make the victims not only refrain from filing a petition but also withdraw the accusations. The Committee of Specialists on Violence against Women of the Gender Equality Council in the Government announced "Concerns and Measures to eliminate violence against women – promoting measures against sexual crimes"<sup>75</sup> in July 2012. It pointed out that it is useful if sexual crimes are prosecutable without a complaint for the protection of the victims and strict punishment. However, the Governmental Report did not reflect this consultation.

The CCPR has been concerned about the low age of sexual consent, which is set at 13 years for both boys and girls. However, consultations and discussions are not conducted enough for the age of sexual consent.

Regarding the expert trainings, the trainings for sexual crime investigators at the police have been conducted to a certain degree, but they do not cover all police agents. The trainings on violence against women have not been introduced well among judges and lawyers.

In 2013, the Committee against Torture (hereafter, "the CAT") recommended, "*While taking note of the State party's efforts to combat gender-based violence, the Committee is concerned at reports on the continuing incidents of gender-based violence, in particular domestic violence, incest and rape, including marital rape, the low number of complaints, investigations, prosecutions and convictions for such cases, and insufficient legal protections for victims. Furthermore, the Committee expresses its concern at the requirement of the victim's complaint in the Penal Code in order to prosecute crimes of sexual violence. (arts. 2, 12, 13, 14 and 16)*

*In light of previous recommendations made by the Committee (para.25) and the Committee on the Elimination of Discrimination against Women (CEDAW/C/JPN/CO/6, paras.31-34), the State party should strengthen its efforts to prevent and prosecute all forms of gender-based abuse, including domestic violence, incest and rape, including marital rape, in particular, by:*

*(a) Adopting and implementing a coherent and comprehensive national strategy for the elimination of violence against women that includes legal, educational, financial and social components;*

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75 [http://www.gender.go.jp/danjo-kaigi/boryoku/houkoku/index\\_hbo07.html](http://www.gender.go.jp/danjo-kaigi/boryoku/houkoku/index_hbo07.html)

*(b) Guaranteeing victims of such violence access to complaint mechanism, and facilitating victims' physical and psychological rehabilitation. Such supports should be extended to victims of all military personnel, including those in foreign forces in the State party.*

*(c) Promptly, effectively and impartially investigating all incidents of violence against women and prosecuting those responsible. The Committee urges the State party to revise its legislation to ensure that the crime of sexual violence is prosecuted without complaint by the victim;*

*(d) Broadening public awareness-raising campaigns on all forms of violence against women and gender-based violence.”*

The Ministry of Justice reported that it has only given various considerations within the Ministry, using the third Basic Plan for Gender Equality (5 year strategy from 2010) as an excuse. The Basic Plan states, “The shape of criminal punishment on sexual crimes including the review of the crime of rape (prosecuting ex officio, raising the age of consent for sexual activities, and reviewing the elements of the crime, etc.) will be discussed.” The Ministry of Justice is discussing only within the department which in charge. The review process has not been open to the public. The Ministry's intention for the review is not obviously observed and its attitude toward the review is quite passive.

#### (4) Proposed Recommendations for the Concluding Observations

1) Strongly recommend that the State party gives full efforts to implement the recommendations in the previous Concluding observations of the CCPR (2008), the CEDAW (2009), and the CESCR (2013), including a review of the elements of the penal code.

2) Recommend that the State party introduce mandatory gender-sensitive training in sexual violence on judges, prosecutors, police and prison officers for support of victims of sexual violence. It should also establish One Stop Support Centers which make it easier for victims to access various services including medical care at least one in every single prefecture, possibly one in every 200,000 people at the appropriate time.

The following recommendation should be included:<sup>76</sup>

[1] Regarding the crime of rape, consider a great deal of the existence of consent, raise the penalty, specify incest and marital rape, punish rape against men, raise the age of consent to sexual activities to above 13 years old. These recommendations have been made from a couple of UN human rights bodies. Consider the elements of the crime of rape and punishment provisions based on these recommendations.

[2] Provide enough consideration to enable the crime of rape to be prosecuted ex officio.

[3] Provide fulfilling educational training on judges, prosecutors, investigators and lawyers who deal with rape cases from the gender perspectives.

[4] Release the number of convictions for marital rape. Review the strict application of law on marital rape.

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<sup>76</sup> See the Report of JFBA Regarding the Third Periodic Report by the Government of Japan under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, and Japan Federation of Bar Associations Report on Response to the Second Report of the Japanese Government under Paragraph 1 of Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.



- [5] In criminal trials, consider the regulations to prohibit judges to focus on the sexual past of victims. The regulations should include not only trial management based on the Code of Criminal Procedure and the Rules of Criminal Procedure, but also effective measures such as legislation.
- [6] In criminal proceedings of rape cases, positive measures should be taken to lighten the burden on victims to prove the existence of assault, threat, and non-consent. Psychological burden and Privacy of victims should be actively protected in the cases of sexual violence, which can be sent to the Saiban-in (lay judge) system.
- [7] Promote further support for victims of sexual violence. Strengthen support for male and boy victims of sexual violence.
- [8] Establish shelters specialized for victims of sexual violence.
- [9] How does the Government plan to utilize in the future the result of analysis of the telephone consultation program on sexual violence and DV, which was briefly implemented in 2011? Plan concrete measures including the resumption and continuation of the program.

#### 4-3 Protection of Child Victims

- (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)  
Not mentioned.

- (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)  
The Government reported that in conducting investigation and trials of child prostitution cases, special consideration is placed on the rights and characteristics of victimized children.<sup>77</sup>

- (3) Current Situation

In criminal proceedings, the witness can be protected at a certain level under the Criminal Procedure Code. However, recorded testimony is not available for children so that children are subject to additional trauma as a result of being requested to testify repeatedly.

It is the jurisdiction of the Ministry of Justice to revise the Penal Code in order to raise the minimum age to sexual activities above the current level of 13 years old. The Ministry of Justice reported that it has only given various considerations within the Ministry, using the third Basic Plan for Gender Equality (5 year strategy from 2010) as an excuse. The Basic Plan states, “The shape of criminal punishment on sexual crimes including the review of the crime of rape (prosecuting ex officio, raising the age of consent for sexual activities, and reviewing the elements of the crime, etc.) will be discussed.” The Ministry of Justice is discussing only within the department which in charge. The review process has not been open to the public. The Ministry’s intention for the review is not obviously observed and its attitude toward the review is quite passive.

However, sexual abuse to low teenager often happens, and the number of abortion of girls under 15

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<sup>77</sup> Paragraph 97.

years old exceeds 400 cases a year and is slightly increasing. The relationship between them can be inferred. With the conditions that there is no special penalty provision for incest and victims have to file a complaint of rape cases by themselves, the above attitude of the Government makes it difficult to protect and support the victimized children.

(4) Proposed Recommendations for the Concluding Observations

Request that the State party provide positive consideration to raise the minimum age of consent to sexual activities from 13 years old, stipulate special penalty provision for incest, and take measures to prohibit children giving testimonies repeatedly.

#### 4-4 Stalking

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

In addition to its statement regarding strict crackdowns, the Government also showed the trends in the application of the Anti-Stalking Act.<sup>78</sup>

(3) Current Situation

Regarding stalking cases, the Anti-Stalking Act stipulates the system that allows the National Public Safety Commission to issue a restraining order with punishment when the stalking acts listed in the Act are repeated. However, it does not allow the victims to file for a restraining order, and the number of issued orders remained only a few dozen per year. The Act failed to protect the victims and their families as seen in the recent heinous crimes in Nagasaki and Kanagawa prefectures.

In 2013, the Anti-Stalking Act was revised to regulate persistent transmission of emails. Improvements were made by the revised Act at a certain extent. However, a murder case happened after the revision. A girl high school student reported a stalker incident to the police with her parents, but the police considered she was not in danger. On the same day, she was murdered. (Mitaka Case)

(4) Proposed Recommendations for the Concluding Observations

Request that the State party establish specialized units for law-enforcement officers such as police to properly and promptly deal with DV and stalking, and provide training to all police officers on treatment of these cases to ensure the guarantee of safety of victims.

## 5 Other Issues regarding Article 3 of the Covenant

### 5-1 Punishment of Female Prostitutes

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78 Paragraph 98.

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Not mentioned.

(3) Current Situation

Under the Anti-Prostitution Act, prostitutes are subject to prosecution for soliciting for the purpose of prostitution. The Government has not yet taken appropriate measures to suppress the exploitation of women for prostitution, including discouraging the demand for prostitution as expressly called upon to do in the Concluding Observations of the CEDAW.<sup>79</sup>

(4) Proposed Recommendations for the Concluding Observations

1) The State party should delete Article 5 of the Anti-Prostitution Act (inducement, etc.) which provision does not punish a man as a client but punish a woman who induces. Also delete Article 3 of the Act which stipulates discriminatory protective custody for treating those women as objects of correction.

2) Recommend to take appropriate measures to prevent sexual exploitation of women in prostitution by suppressing the demand (a client side).

## 5-2 Punishment for Artificial Abortion

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Not mentioned.

(3) Current Situation

The Penal Code regulates all artificial abortion cases. In this regards, the Government has not made any progress on the revision of the Penal Code in response to the CEDAW's Concluding Observations that recommends to amend, when possible, its legislation criminalizing abortion in order to remove punitive provisions imposed on women who undergo abortion, in line with the Committee's general recommendation No.24 on women and health and "the Beijing Declaration and Platform for Action."<sup>80</sup>

In addition, the Government expressed its intension not to abolish the provisions of crimes of abortion. Article 14 of the Protection of Maternal Body Act is regarded as a justifiable cause of

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79 CEDAW/C/JPN/CO/6, Paragraphs 39, 40.

80 CEDAW/C/JPN/CO/6, Paragraphs 49, 50.

noncompliance with the law, and it stipulates the conditions for artificial abortion. However, this provision requires consent from a husband for having an artificial abortion. When a husband refuses to give consent, women are forced to continue unwanted pregnancy and delivery against their will. In the case of DV, this provision forces women not only to have unwanted delivery but also contact a husband for his consent. It may risk women's lives and bodies.

(4) Proposed Recommendations for the Concluding Observations

- 1) The State party should abolish Article 212 (Abortion), 213 (Abortion with Consent; Causing Death or Injury), and 214 (Abortion through Professional Conduct; Causing Death or Injury). These are the Penal Code provisions which impose criminal punishment only on women (not husbands) and on practitioner of abortion.
- 2) The State party should revise Article 14 of the Protection of Maternal Body Act which requires consent from a husband for having an artificial abortion in principle. Also revise the Act to enable women to have an artificial abortion by her will only at least in cases of DV and there is disagreement with a husband.

## 1 Application of Death Penalty

### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

*16. While noting that in practice the death penalty is only imposed for offences involving murder, the Committee reiterates its concern that the number of crimes punishable by the death penalty has still not been reduced and that the number of executions has steadily increased in recent years. It is also concerned that death row inmates are kept in solitary confinement, often for protracted periods, and are executed without prior notice before the day of execution and, in some cases, at an advanced age or despite the fact that they have mental disabilities. The non-use of the power of pardon, commutation or reprieve, as well as the absence of transparency concerning procedures for seeking benefit for such relief, is also a matter of concern. (arts. 6, 7 and 10)*

***Regardless of opinion polls, the State party should favourably consider abolishing the death penalty and inform the public, as necessary, about the desirability of abolition. In the meantime, the death penalty should be strictly limited to the most serious crimes, in accordance with article 6, paragraph 2, of the Covenant. Consideration should be given by the State party to adopting a more humane approach with regard to the treatment of death row inmates and the execution of persons at an advanced age or with mental disabilities. The State party should also ensure that inmates on death row and their families are given reasonable advance notice of the scheduled date and time of the execution, with a view to reducing the psychological suffering caused by the lack of opportunity to prepare themselves for this event. The power of pardon, commutation and reprieve should be genuinely available to those sentenced to death.***

### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Government Report claims that in Japan, the death penalty is applicable to 19 types of crimes only. The Government asserts that the application of the death penalty is carried out in an extremely strict and prudent manner and the death penalty is applicable only to the crimes which involve loss of life.<sup>81</sup>

### (3) Current Situation

Though the Committee reiterates its concern that the number of crimes punishable by the death penalty has still not been reduced<sup>82</sup>, the number of capital crimes has formally increased. In 2009 the antipiracy law was enacted, and the death penalty for piracy resulting in death was stipulated, so that the number of crimes punishable by death increased to 19.

Furthermore, it cannot be said that the application of the death penalty is “carried out in an extremely strict and prudent manner”. In May 2009, the lay judge system was introduced. Under the system, ordinary citizens, together with career judges, make decisions on both the fact finding and

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81 Paragraph 103

82 CCPR/C/JPN/CO/5, Paragraph 16 etc.

sentencing for relatively severe offences which fall into specific categories. As of the end of year 2013, public prosecutors had sought death sentences for defendants in 27 cases under the lay judge system.

The unanimity of the court is not required even if it is a case where death sentence is rendered.

Among the 27 cases, the death sentence was rendered in 20 cases, and life imprisonment in 6 cases, and a defendant was acquitted in one case (against this acquittal case, the public prosecutor appealed to the high court, seeking for reversal of the acquittal, but the case was closed before the Appeals Court could hear the case, because the defendant died.).

The percentage of death sentence handed down is 74.07% (20 cases out of 27 cases), which far exceeds the corresponding ratio under trials by career judges only (55.7%).<sup>83</sup>

Three cases out of 20 death sentences have been already finalized. This is because defendants withdrew their appeals due to a lack of mandatory appeal system.

The Committee against Torture recommended after the examination of the 2nd Periodic Report in 2013, to introduce “*a mandatory system of review in capital cases, with suspensive effect following a death penalty conviction in first instance.*”<sup>84</sup>

#### (4) Proposed Recommendations for the Concluding Observations

The State party should take measures to limit the application of the death penalty to the most serious crimes, and should immediately take such steps, in particular to introduce the requirement of unanimity in decision of death sentence, a system of mandatory review in capital cases, as well as prohibition of prosecutors’ appeals for death sentences.

## 2 Government’s Position on Whether to Retain or Abolish the Death Penalty

### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Refer to the paragraph 16 mentioned above.

### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Government report claimed that it is not appropriate to abolish the death penalty immediately mainly relying on public opinion.<sup>85</sup>

### (3) Current Situation

The Government did not take any measures in response to the Committee’s recommendation, that is, “[r]egardless of opinion polls, the State party should favourably consider abolishing the death penalty and inform the public, as necessary, about the desirability of abolition.” On the contrary, discussion at the “Study Meeting on the Death Penalty”, which was created by the Ministry of Justice in August 2010, was terminated in March 2012. After that, the Liberal Democratic Party returned to

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83 Calculate from the Data of Incidents Settled from 1980 to 2009, Written in “The ideal existence of discussion over sentencing in Lay Judge Trial”, edited by the Legal Training and Research Institute (Judicial Study Report No. 63 vol. 3).

84 CAT/C/JPN/CO/2, Paragraph 15.

85 Paragraph 104.

power, and since then, the LDP-led Government has repeatedly clarified its position that it will not review the death penalty system.

Furthermore, almost all the information about the death penalty is not made accessible to the public for the reasons of privacy of condemned death row inmates, etc. The reality of the opinion polls, on which the Government relies, is only a reflection of the average citizens' view under such a situation.

In addition, the opinion poll in 2009 quoted by the Government has a number of problems. This survey poses two options asking respondents to choose either of them: a) "the death penalty should be abolished under any circumstances," or b) "death penalty is unavoidable in some cases". The question itself lacks neutrality and is inappropriate as it asks approval for the death penalty with phrase "in some cases," while it asks whether the penalty should be abolished "under any circumstances." The Government is planning another such opinion survey by the end of 2014, and the JFBA has urged the Government to change the questions into unbiased ones.

Moreover, the Committee against Torture has recommended that the Japan should consider "*the possibility of abolishing the death penalty*" in its Concluding Observation on the 2nd Periodic Report<sup>86</sup>.

#### (4) Proposed Recommendations for the Concluding Observations

The Committee repeats the recommendations in the Concluding Observations to the 5th Periodic Report. The State party should, taking into account that a society without the death penalty is desirable, and should at first implement a moratorium on executions of death sentences, then broadly disclose information on the death penalty system and its administration, and initiate a society-wide discussion on the abolition of the death penalty.

### 3 Condemned Prisoner's General Treatment

#### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

*21. The Committee is concerned that death row inmates are confined to single rooms during day and night, purportedly to ensure their mental and emotional stability, and that lifetime prisoners are sometimes also placed in solitary confinement for protracted periods of time. It is also concerned about reports that inmates may be confined to protection cells without prior medical examination for a period of 72 hours initially which is indefinitely renewable, and that a certain category of prisoners are placed in separate "accommodating blocks" without an opportunity to appeal against this measure. (arts. 7 and 10)*

***The State party should relax the rule under which inmates on death row are placed in solitary confinement, ensure that solitary confinement remains an exceptional measure of limited duration, introduce a maximum time limit and require the prior physical and mental examination of an inmate for confinement in protection cells and discontinue the practice of segregating certain inmates in "accommodating blocks" without clearly defined criteria or***

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86 CAT/C/JPN/CO/2, Paragraph 15.

*possibilities of appeal.*

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Government report claims that as death row inmates have no obligation to work, and they are allowed to buy food and drink at their own expense, they are “treated in a manner nearly equivalent to that for unsentenced persons”, and that “in order to help death row inmates stabilize and control their emotions, they are allowed to seek counseling or teachings from religious leaders or voluntary prison visitors.”<sup>87</sup>

(3) Current Situation

However, the description that death row prisoners are “treated in a manner nearly equivalent to that for unsentenced persons” differs greatly from reality.

1) Stability of Mind

Article 32 (1) of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees (hereinafter referred to as ‘the Act’) provides that, as principle for the treatment of death row inmates, “upon treatment of an inmate sentenced to death, attention shall be paid to help him/her maintain peace of mind.” For a long period of time, the phrase of ‘peace of mind’ had been used for justification of restriction on various kinds of human rights including strict limitation on communication with the outside. Therefore, upon the enactment of the Act, it was clearly pronounced by the Ministry of Justice that the phrase “maintain peace of mind” is stipulated in order to respect inmates’ own feelings or thoughts and should not be used as a basis on which various human-rights restrictions are justified.<sup>88</sup>

However, in reality, “maintain peace of mind” phrase still plays a critical role as a principle to restrain various rights of death row inmates, as typically seen in the problems of contact with the outside or prior notice of an execution, both of which are discussed in the following sections.

Actual practice has not been changed since the days of the previous law.

2) Day-and-night solitary confinement

Article 36 of Act on Penal Detention Facilities and Treatment of Inmates and Detainees states, “(1) Treatment of an inmate sentenced to death shall be conducted in an inmate’s room throughout day and night, except where it is deemed appropriate to conduct it in the outside of the inmate’s room, (2) The room of an inmate sentenced to death shall be a single room, and (3) No inmates sentenced to death shall be permitted to make mutual contacts even in the outside of the inmate’s room, except where deemed advantageous in light of the principle of treatment prescribed in paragraph (1) of Article 32.”

However, group treatment defined in (3) has not been done in fact, and all the death row inmates are placed in solitary confinement. It means, except 30 minutes for physical exercise and 15 minutes for bathing, the law requires to put the prisoners in solitary confinement without any

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87 Paragraph 107.

88 The answer by Mr. Yoshinobu Onuki, the head of the Correction Bureau, at the Justice Committee in Lower House Committee on April 14, 2006.



contact with persons other than prison staffs for an indefinite period of time until their executions. This is nothing but inhuman treatment.

Moreover, the Committee against Torture has recommended in its Concluding Observations to the 2nd Periodic Report in 2013, that the State Party “ensure that death row inmates are afforded all the legal safeguards and protections provided by the Convention” and to revise “the rule of solitary confinement for death row inmates.”

(4) Proposed Recommendations for the Concluding Observations

The State party should amend the Act on Penal Detention Facilities and Treatment of Inmates and Detainees to remove the term “peace of mind” from Article 32, as well as abolish the principle day-and-night solitary confinement of inmates sentenced to death, which is provided in Article 36 paragraph 1 of the Act.

#### 4 Condemned Prisoner’s Contact with the Outside

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

*17. The Committee notes with concern that an increasing number of defendants are convicted and sentenced to death without exercising their right of appeal, that meetings of death row inmates with their lawyer in charge of requesting a retrial are attended and monitored by prison officials until the court has decided to open the retrial, and that requests for retrial or pardon do not have the effect of staying the execution of a death sentence (art. 6 and 14).*

***The State party should introduce a mandatory system of review in capital cases and ensure the suspensive effect of requests for retrial or pardon in such cases. Limits may be placed on the number of requests for pardon in order to prevent abuse of the suspension. It should also ensure the strict confidentiality of all meetings between death row inmates and their lawyers concerning retrial.***

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Government report says that inmates sentenced to death are placed in an extreme situation where they must wait for execution, and they are afflicted by extraordinary mental instability and emotional distress, and it is therefore necessary to pay due consideration to their mental stability, as well as to ensure their detention in a strict manner. It quotes the provisions of the Act about the visit or other contact with the outside.<sup>89</sup>

(3) Current Situation

The Act stipulates no limitation on the numbers outside persons with whom death row prisoners are allowed to have contacts. Thus anyone who meets the requirements of the law should be able to contact with prisoners on death row.

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89 Paragraphs 108 and 109.

However, in fact, the maximum number of outside persons is limited to five except for prisoner's relatives and lawyers, and such practice is commonly seen in every penal facilities. Moreover, once the contact with a specific person becomes impossible for some reasons, prisoners are not allowed to have contacts with a different person, even if the prisoners file official requests to replace a previous person with a new one, and it seems that such practice is prevailing. Furthermore, there are few cases in which outside people are allowed to have contacts with prisoners at the discretion of prison warden.

In addition, even if a lawyer who is in charge of an appeal for retrial visits his/her client, a prison official tries to attend the meeting in principle, and even a letter exchanged between a prisoner and his/her attorney will be inspected in principle.

Some lawyers have filed lawsuits against official's attendance to the meetings and in a case, in which the lawyers filed for state compensation, the court held that the attendance was illegal, and allowed the claims of the lawyers<sup>90</sup>. The judgment was upheld by the Supreme Court<sup>91</sup>. Since then, while there are some reports that officials are no longer present during the meetings with attorneys for appeals for retrials, there are still some reports of officials official's attendance at such meetings.

Moreover, the Committee against Torture recommended in the Concluding Observation to the 2nd Periodic Report in 2013 that the government should guarantee "*effective assistance by legal counsel for death row inmates at all stages of the proceedings, and the strict confidentiality of all meetings with their lawyers.*"<sup>92</sup>.

#### (4) Proposed Recommendations for the Concluding Observations

The State party should allow condemned prisoners to contact with the outside (by meetings or correspondence), when they need to make such contacts, and the contact with the outside will not cause harm to the discipline and order of the penal facilities. Also, It should also ensure strict confidentiality of the meetings as well as exchange of letters between condemned prisoners and their lawyers, regardless of whether they are for civil or criminal cases.

## 5 Notice of Execution

### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Refer to the paragraph 16 mentioned above.

### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Government report says that the authority would not notify the death row inmates about the execution of him/herself in advance, this is partly because it is considered that if the notification were given before the date of execution, it would seriously affect the mind of the inmates sentenced to

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90 Hiroshima Appeals Court 2011 (ne) No. 285, Judgment on January 27, 2012, Hiroshima District Court, 2008 (wa) No. 2145, Judgment on March 23, 2011, Hiroshima District Court 2009 (wa) No. 979, Judgment on January 30, 2013.

91 Third Petty Bench, Judgment on December 10, 2013.

92 CAT/C/JPN/CO/2, Paragraph 15.

death and make it difficult to maintain their peace of mind<sup>93</sup>.

(3) Current Situation

Until around 1972, prior notice of the execution had been given to the prisoners in Japan. It is believed that such practice was abandoned because a death row inmate who had received the advance notice committed suicide. Thus, in fact, it is thought that this practice have been prevailing not from the humanitarian viewpoint but from the need to prevent suicide and secure the execution of death sentence.

Also, due to no notification in advance, many death row inmates have been executed before their formal request of retrials even in the middle of preparation for retrials. Thus and prisoners on death row are terrified at possible execution every day and this clearly shows that notification on the day of execution is a big problem. In addition, according to the survey conducted by a legislator, more than 60% of the prisoners said they want to receive the notification in advance.<sup>94</sup>

Moreover, the Committee against Torture recommended in the Concluding Observations to the 2nd Periodic Report in 2013, to give “*death row inmates and their family reasonable advance notice of the scheduled date and time of the execution*”<sup>95</sup>.

(4) Proposed Recommendations for the Concluding Observations

The State party should notify the condemned prisoners, their families and lawyers of the schedule for the execution at least a several days before the scheduled date.

## 6 Pardon

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Refer to the paragraph 16 mentioned above.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The report says that death row inmates can apply for pardon at any time; however in recent years there are no cases in which a pardon has been granted to death row inmates.<sup>96</sup>

(3) Current Situation

In spite of the previous Concluding Observations which said “*their power of pardon, commutation and reprieve should be genuinely available to those sentenced to death,*” the improvement for pardon system has not been done. There has been no example of pardon or commutation of the sentence granted to a death row inmate since June 1975.

Moreover, the Committee against Torture recommended in its Concluding Observations to the 2nd

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93 Paragraph 110.

94 Result of the Questionnaires sent by Senator Mizuho Fukushima (December 29, 2012 on Chugoku Shimbun’s article)

95 CAT/C/JPN/CO/2, Paragraph 15.

96 Paragraph 112.

Periodic Report in 2013 to make “*available the power of pardon, commutation and reprieve in practice for death row inmates*”<sup>97</sup>.”

(4) Proposed Recommendations for the Concluding Observations

The State party should reform the Pardon Act and related laws to enable condemned prisoners to realistically benefit from the pardon system

## 7 Elderly People and Persons with Mental Disabilities

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Refer to the paragraph 16 mentioned above.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Government says that while no Japanese law stipulates any special treatment concerning execution of the death penalty by reason of the fact that a prisoner sentenced to death is an elderly person, article 479, paragraph 1 of the Code of Criminal Procedure stipulates that, when the person who has been sentenced to death is in a state of insanity, the execution shall be suspended by order of the Minister of Justice, and the mental condition of a prisoner sentenced to death is carefully considered at all times<sup>98</sup>.

(3) Current Situation

In spite of the last Concluding Observations, which said “[c]onsideration should be given by the State party to adopting a more humane approach with regard to the treatment of death row inmates and the execution of persons at an advanced age or with mental disabilities”, no such consideration has been paid to date.

Although there is a legal provision to stipulate a stay of execution in case of insanity, the Government says that they “do not know” a case to which the above provision was applied and the execution was stayed<sup>99</sup>. In reality there is at least one prisoner who has been on death row for a very long period of time without taking any legal action such as request for retrial or pardon. Therefore actual reason why the prisoner remains on death row seems that he is in a state of insanity.

On the other hand, there have been some cases where prisoners who were suspected to be insane were actually executed<sup>100</sup>. Therefore, it cannot be said that the provision of stay of execution has been properly applied.

The fundamental problem is that there is no reliable system under which medical and other experts independent of the penal detention authorities examine whether a prisoner is insane or not. This is because 1) not only death row inmates but all the detainees in criminal facilities are not allowed to

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97 CAT/C/JPN/CO/2, Paragraph 15.

98 Paragraph 112

99 Japanese Government, Reply to Question from CAT, 2nd Time (July 2011, CAT/C/JPN/2)

100 Japan Federation of Bar Associations’ “Human Rights Remedy Case Facing Death Penalty” Demanding Paper, Nov.19, 1997

access to their own medical records; 2) in reality, because of the limitation on contacts with the outside, it is impossible for the external psychiatrists who are independent of the penal facilities to visit the death row inmates and fully examine their mental condition, and therefore the inmates themselves, their families and lawyers cannot know exact condition of illness and medical treatment by the facilities.

Moreover, the Committee against Torture expressed its concern in its Concluding Observations to the 2nd Periodic Report in 2013, that there were “(r)eports about executions carried out even if the person was determined by a court to be mentally ill, as in the case of *Seiha Fujima*, in contradiction of article 479(1) of the Code of Criminal Procedures which prohibits the execution of a detainee in a state of insanity.” It then recommended to ensure “an independent review of all cases when there is credible evidence that death row inmate is mentally ill. Furthermore, the State party should ensure that a detainee with mental illness is not executed in accordance with article 479(1) of the Code of Criminal Procedures<sup>101</sup>.”

#### (4) Proposed Recommendations for the Concluding Observations

The State party should take measures to ensure that executions of condemned prisoners with serious mental disorders would not be carried out. It should also reform the system to enable the condemned prisoners themselves their families and lawyers to access records on the state of their physical and mental health, as well as to enable them to be examined by doctors independent of the penal facilities.

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101 CAT/C/JPN/CO/2, Paragraph 15.

## 1 Ratification of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)  
Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)  
Japan ratified the Convention against Torture and Other Cruel Inhuman Degrading Treatment or Punishment (hereafter, “Convention against Torture”).<sup>102</sup>

(3) Current Situation

Japan has not made a declaration of acceptance of individual communication procedure under Article 22 of the Convention against Torture. Moreover, Japan has not ratified the Optional Protocol to the Convention, which requires the establishment of the National Preventive Mechanism.

Meanwhile, there is a fatal problem about Article 36 of the Constitution. At the moment, it says “The infliction of torture by any public officer and cruel punishments are absolutely forbidden,” however the ruling party (Liberal Democratic Party)’s recent draft amendment that was released in April 2012 omits the word “absolutely” from the above provision.

## 2 Restrictions by the Revised Immigration Control Act of Countries for Deportation

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

*25. The Committee notes with concern that the 2006 Immigration Control and Refugee Recognition Act does not expressly prohibit the return of asylum-seekers to a country where there is a risk of torture, that the recognition rates for asylum-seekers remain low in relation to the number of applications filed, and that there are often substantial delays in the refugee recognition process during which applicants are not allowed to work and receive only limited social assistance. It is also concerned that the possibility of filing an objection with the Minister for Justice against a negative asylum decision does not constitute an independent review because the refugee examination counselors advising the Minister upon review are not independently appointed and have no power to issue binding decisions. Lastly, it is concerned about reported cases of rejected asylum-seekers having been deported before they could submit an objection against the negative decision on their application to stay the execution of the deportation order (art. 7 and 13).*

***The State party should consider amending the Immigration Control and Refugee Recognition Act, with a view to explicitly prohibiting the return of asylum-seekers to countries where there is a risk of torture or other ill-treatment, and ensure that all asylum-seekers have access to counsel,***

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102 Paragraph 114.

*legal aid and an interpreter, as well as to adequate State-funded social assistance or employment during the entire length of proceedings. It should also establish an entirely independent appeal mechanism, including for applicants who are deemed to be “possible terrorists” by the Minister for Justice, and ensure that rejected applicants are not deported immediately after the conclusion of the administrative proceedings before they can submit an appeal against the negative asylum decision.*

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Article 53 of Immigration Control Act clearly stipulates that “another State where there are substantial grounds for believing that he would be in danger of being subjected to torture” specified in Article 3, Paragraph 1 of the Convention should not be included in “the countries to which the person subject to deportation may be deported.”<sup>103</sup>

(3) Current Situation

Immigration Control and Refugee Recognition Act does not provides any procedures for recognition of people who are believed to be in danger of being subjected to torture based on substantial grounds or for granting a status of residence in Japan.

The criteria for recognition of refugee status under the Act are not based on the Article 3 of the Convention.

In the system under Article 53 of Immigration Control Act, applicants are not entitled to seek for examination about whether they are given the protection under the Article 3 of the Convention, and it rests solely on the discretion of the authorities whether to start such examination.

The manual for judgments on violations of the Act (disclosed in March 2009), which was created as guidelines for officials who take charge of deportation procedure, does not instruct the officials to investigate or question about the possibilities to be tortured in the Countries of Origin.

There is no procedural guarantee for foreigners to be reviewed by the Authority whether there are substantial grounds that they might be tortured in the countries of origin or other third countries, when they are screened under Article 53 of the Immigration Control Act.

That is, in the examination, there are no systems for presenting arguments through legal representatives, legal aid to appoint legal representative, presentation of evidence by the foreigner him/herself or legal representative, interview with the foreigners by the authority members in charge of reviewing, information disclosure for the reasons of judgment. Therefore, the JFBA provides assistance to pay the lawyers’ fees on behalf of the applicants to the lawyers who represent foreign nationals seeking recognition of refugee status in the procedures for application for the recognition of refugee status, for filing objection to the non-recognition, and for filing for rescission of the non-recognition. This assistance is carried out in part with financial assistance from the UNHCR, and with funding from the JFBA, as a non-governmental organization, as well as our members. The authorized personnel who have power on the decision of deportation are the immigration bureau staff

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103 Paragraph 115.

and there is no independency of the review.

### 3 Deportation to the Country Where Inhumane Treatment would be Assumed

- (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)  
Refer to the paragraph 25 mentioned above.
- (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)  
Same as the above, clause (2).

- (3) Current Situation

The CCPR has repeatedly specified that if State Party's disposition regarding its immigration control resulted in infringement of the foreigners' rights guaranteed by the Covenant, its exercise of discretionary power constitutes the violation of the Covenant<sup>104</sup>.

However, the Japanese Government, as well as the courts, denies such rights of foreigners, claiming that foreigners could enjoy rights or benefits which are guaranteed by the Covenant and the Constitution only within the framework of the residence management system.

Therefore, the Japanese Government takes the position that deportation will not constitute violation of the ICCPR, even if it is very much likely that, once the concerned foreigner is deported to his/her country of origin, he/she will receive inhuman treatment such as imposition of punishment which would be regarded as inhuman under the Japanese system.

Meanwhile, by the revised Immigration Control Act prohibits deportation to the countries where there is a risk of torture, however, it is still not forbidden to deportation to the countries with a risk of other inhuman and degrading treatment.

### 4 Inhuman or Degrading Treatment during Deportation

- (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)  
Not mentioned.
- (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)  
Not mentioned.

- (3) Current Situation

There is no regulation by law about use of force in the course of deportation, and only the guidelines for usage of the restraining devices are provided by the internal rule.

On March 22, 2010, a Ghanaian male (45 years old at that time) was deported and died when he was restrained the personnel of the Immigration Bureau.

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104 ICCPR General Comment no.15, (5) etc. the Human Rights Committee



As far as the Ghanaian case, a suit for national compensation against the Government is still pending but it is clear that the personnel of the Immigration Bureau violated the internal rule, that is, they put the handcuff on legs and used a towel and a binding band as restraining devices, both of which are not allowed by the rule. This suggests that such violation of the rule may have occurred routinely during deportation.

In addition, on top of usage of restraining devices other forms of force such as shouldering the person concerned, bending the upper half of the body forward with strong power or holding down the body, however, there is no legal regulation as mentioned above.

After the occurrence of this accident, there has been no deportation accompanied by use of material power at the moment, however, there is no examination or tangible accomplishment for how to regulate the use of force.

## 1 Measures against Human Trafficking

### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

23. *The Committee is concerned about the lack of statistical data on the (estimated) number of persons trafficked to and in transit through the State party, the low number of prison sentences imposed on perpetrators of trafficking-related crimes, the decreasing number of trafficking victims protected in public and private shelters, the lack of comprehensive support for victims, including interpretation services, medical care, counselling, legal support for claiming unpaid wages or compensation and long-term support for rehabilitation, and the fact that special permission to stay is only granted for the period necessary to convict perpetrators and that it is not granted to all victims of trafficking (art. 8).*

*The State party should intensify its efforts to identify victims of trafficking and ensure the systematic collection of data on trafficking flows to and in transit through its territory, review its sentencing policy for perpetrators of trafficking-related crimes, support private shelters offering protection to victims, strengthen victim assistance by ensuring interpretation, medical care, counselling, legal support for claiming unpaid wages and compensation, long-term support for rehabilitation and stability of legal status to all victims of trafficking.*

### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Government formulated in 2009 a revised version of Action Plan to Combat Human Trafficking, and has been implementing measures through mutual coordination among relevant organizations. The information about human trafficking cases comes from various sources or at various opportunities. Based on such information, relevant administrative organs endeavour to understand and analyze the working situations of foreign females and foreign workers, damages caused by human trafficking, the current situations of domestic and foreign brokers and their networks, and other matters. In addition, efforts in cooperation with airline companies are made in order to block human trafficking planned through entries into third countries via Japan. Each trafficker was punished appropriately on a case-to case basis. Efforts to promote the protection of victims are made in coordination with private shelters, if more appropriate protection is expected. In addition, the Government provides support enhanced through using the language of the home country, provides necessary medical care or counselling, and makes known legal assistance available to victims. Looking at the victims of trafficking as persons protected from the amendment of the Immigration Control Act in 2005 to today, special permission to stay in Japan was granted to all of the victims whose residency was illegal.<sup>105</sup>

### (3) Current Situation (including replies to the list of issues 23)

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105 Paragraphs 116-125.

- 1) Statistical data on trafficking published by the Government merely shows the number of victims identified by the Government, and the number of police investigations of the cases identified as the crime of human trafficking. The statistical data does not include the number of persons and cases that the Government knew of the situation but did not identify it as a trafficking case. In addition, the data does not reflect persons and cases that the Government has not known. It is questionable whether the judgment of the Government on each case is appropriate because the methods of human trafficking continually become cleverer, and victim identification is mainly conducted by the investigative organization such as the Police, the Prosecutor's Office and the immigration authorities. The Government does not specify the standards for victim identification. Efforts have not been made by the Government to actively find out victims.
- 2) Resident status such as "spouse of a Japanese national" and "long-term resident" has started to be used since the Government has tightened the criteria for the entertainer visa and it makes it difficult to traffic and receive women by using its visa status. There are many brokers that intercede and arrange a marriage with, an affiliation as a child to, and an adoption to a Japanese national. It is highly suspected that there are a number of heinous agencies which traffic women for the purpose of sexual exploitation. In addition, there is a number of human trafficking of Japanese women for the purpose of sexual exploitation.
- 3) Not only foreign technical intern, but also foreigners (both male and female) who work under terrible working conditions are quite a few. Among them, there are cases that should be regarded as human trafficking for the purpose of labour exploitation. The Government announced to tackle with human trafficking for the purpose of labour exploitation in "the Japan's 2009 Action Plan to Combat Trafficking in Persons" for the first time. Since then, NGOs have repeatedly reported serious cases to the government. However, there is little or no cases regarded as the one for the purpose of labour exploitation.
- 4) Trainings on human trafficking for relevant officials are being conducted targeting at police officers or immigration officials. It is not clear if there is a training session for labour standard inspectors. There are hardly any training programmes conducted for women's consulting offices workers, public prosecutors and judges. It is not clear if the trainings are conducted in view of the victims' rights and needs.
- 5) For victims, it makes a huge difference whether they are identified as "victims of human trafficking" by the Government. Despite the fact that the methods of human trafficking becomes cleverer, victims may not be identified as a victim defined by the Government if their cases do not fit the stereotypical image of victims; i.e. women being confined and forced prostitution. There is a case that the Immigration Control Agency, The Police Agency, and the Public Prosecutor's Office had a different opinion on victims. The provision of protection as victims depends on what agency found them or which agency the victims requested protection from. The Government noted, "Relevant Ministries and Agencies are supposed to treat victims with sufficient consideration for their situations and rights even when they are found not as a victim of human trafficking."<sup>106</sup>

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106 "Jinshin Torihiki Jian no Toriatsukai Houhou (Higaisha no Hogo ni kansuru Sochi) ni tsuite" 1 July 2011, Jinshin Torihiki Taisaku Kankei Shouchou Renraku Kaigi Moushiawase. ("Treatment of Human

However, it is not clear whether such consideration has been given in each case.

- 6) Female victims are rarely referred to private shelters which have rich experiences in support for victims for their temporary protection. Public Women's Consultation Centers provide support mainly in Japanese – interpreters are not stationed – and victims of human trafficking are almost all foreigners. As a result, the victims only stay there to receive food, clothing, and shelter until returning to their home countries, and rarely receive measures toward their recovery and the prevention of further victimization, partly due to differences in lifestyles. Legal assistance for claiming unpaid wages or damage compensation is rarely available. There is not enough cooperation with the Governments and NGOs in their country of origin.
- 7) Protection policies for male victims of human trafficking are not taken.
- 8) The main governmental measures for prevention are: tightening visa screening and immigration control, preventing entry of potential victims, and reinforcing residence management system such as taking measures against undocumented workers. The Government states that measures such as the preparation and dissemination of materials for enlightening human rights, the promotion of enlightenment activities for preventing prostitution through school education, enlightening employers, and the demand side of sexual exploitation have been taken. However, these measures are far from sufficient.
- 9) Eradication of the demand is especially weak. For sexual exploitation, clients are mostly men. However, there are women who are by-standers of the demand around the male clients. The social consciousness toward the demand is quite generous (and if not, it is blamed). Legal and social systems shape consciousness and norms in a great deal. However, the current situation that sexual exploitation drags on implies problems existing in the legal and social systems. The existing laws concerning sexual exploitation regulate in a certain extent when the person who is exploited is below the age of 17. (Rape, forcible indecency, prostitution, human trafficking for the purposes of prostitution and child pornography, provision as well as production, possession, transportation, etc. of child pornography for the purpose of provision are subject to punishment by the penal code or other relevant laws. However, possession of child pornography without a purpose of provision (so called simple possession) is not subject to punishment.) There are almost no regulations if the person exploited is above 18 years old. (The crimes of rape and forcible indecency are restrictive in their elements and operation.) Any agency which intermediates in international marriage and international adoption is not regulated. As for labour exploitation, the government has just responded to urgent problems of the technical intern training program by formulating measures in the revising the Immigration Control Act in 2009. However, the problems are unresolved. (See the following 3)
- 10) In May 2013, the CAT called on the Japanese Government to fully implement the recommendations made by the Special Rapporteur on trafficking in persons,<sup>107</sup> following her visit

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“Trafficking Cases – Measures taken to protect victims” 1 July 2011, Agreement at the Liaison Meeting among Relevant Ministries and Agencies.)  
107 (A/HRC/14/32/Add.4)

to Japan in 2009. In particular, the CAT recommended the Government should ensure that:<sup>108</sup>

- (a) *Victims of trafficking are provided with adequate assistance for their physical and psychological recovery;*
- (b) *Clear identification procedures is set out, so that victims of trafficking are not incorrectly identified and treated as undocumented migrants and deported without redress or remedy;*
- (c) *Perpetrators are prosecuted and punished with appropriate penalties;*
- (d) *Specialized training is provided to relevant public officials in this regard;*

Furthermore, in the second Universal Periodic Review, ratification of the protocol to prevent, suppress and punish trafficking in persons, especially women and children (Palermo Protocol) was recommended.<sup>109</sup>

However, it is hard to say that the Japanese Government has implemented these recommendations until now

#### (4) Proposed Recommendations for the Concluding Observations

- 1) The State party should establish the appropriate method to identify victims properly by collecting information, analyzing it and examining its treatment. Even though the person cannot be identified as a trafficking victim, the person should have proper protection according to the content of the case.
- 2) The State party should conduct trainings on investigation of human trafficking and methods for victim identification to all law-enforcement officers including not only police and immigration officers, but also prosecutors, judges and officers at the Labour Standards Inspection Office. The content of the training should include special consideration of the rights and needs of victims?
- 3) The State party should establish protection support organizations for trafficking victims, and station multilingual staff with good understanding and experience for treatment. Establish protection support organizations for male victims.
- 4) The State party should confiscate the illegal income from perpetrators and use it for the victim support fund. In a case that victims cannot receive compensation or unpaid wages from perpetrators, provide the compensation from this fund.
- 5) Human Trafficking for the purpose of sexual exploitation
  - [1] Review the Anti-Prostitution Act, the Improvement of Adult Entertainment Business Act, and regulations on pornography
  - [2] Take appropriate measures on agencies which intermediate in international marriage and international adoption after conducting research on its business
- 6) Human Trafficking for the purpose of labour exploitation
  - [1] Abolish the technical intern training program
  - [2] In establishing the new program, consider the guarantee of human rights by, for example, guarantee of basic labour rights, prohibition of discriminative treatment, freedom of choice in employment, prohibition of intervention by brokers, prohibition of intervention by the first

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<sup>108</sup> CAT/C/JPN/CO/2 Paragraph 21

<sup>109</sup> 147.24-26

receiving organizations which cause intermediate exploitation, and enabling accompanied by family.

## 2 Issue of So-Called “Comfort Women”

### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

*22. The Committee notes with concern that the State party has still not accepted its responsibility for the “comfort women” system during the Second World War, that perpetrators have not been prosecuted, that the compensation provided to victims is financed by private donations rather than public funds and is insufficient, that few history textbooks contain references to the “comfort women” issue, and that some politicians and mass media continue to defame victims or to deny the events (art. 7 and 8).*

***The State party should accept legal responsibility and apologize unreservedly for the “comfort women” system in a way that is acceptable to the majority of victims and restores their dignity, prosecute perpetrators who are still alive, take immediate and effective legislative and administrative measures to compensate adequately all survivors as a matter of right, educate students and the general public about the issue, and refute and sanction any attempt to defame victims or to deny the events.***

### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Government holds that it is not appropriate for the so-called comfort women issue to be brought up in the review of the country report for the Treaty signed in 1979 long after the incidents took place. Although the Government acknowledges that the issue known as “wartime comfort women” is one that severely injured the honour and dignity of many women, the Government has steadfastly maintained that “the Government of Japan has signed the San Francisco Peace Treaty and various bilateral agreements between Japan and other nations, and have been sincere about the issues of reparations for the damage caused by war accordingly. Thus, the Government has settled all post-war claims of compensation with the countries involved with which Japan has ratified the Treaties”. In addition, the Government reported that “the Asian Peace and Friendship Foundation for Women” (hereafter the “Asian Women’s Fund”) was established in 1995, implementing medical and welfare support projects with the support of JPY 4.8 billion from the Government, and providing six hundred million Japanese yen "atonement money," funded by public donation to offer relief directly to former "comfort women". It is reported that the Asian Women’s Fund was dissolved in March 2007 with the co-ordination with the countries involved.<sup>110</sup>

### (3) Current Situation (including replies to the list of issues 22)

#### 1) Failure to comply with the recommendations

The Japanese Government rejects Recommendation 18 made by the Human Rights Council,

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110 Paragraphs 126-130.

stating that it is not appropriate for the “comfort women” issue to be brought up in the review of the country report. However, the CCPR urged the State Party to take immediate and effective legislative and administrative measures to adequately compensate all survivors as a matter of right, and the CEDAW further reiterates its recommendation that the State party urgently endeavour to find a lasting solution for the situation of “comfort women”.<sup>111</sup> Thus, there has been hardly any progress for the resolution of the problem, despite the recommendations issued from various international bodies for over a decade.

On the other hand, the constitutional court of South Korea decided for the first time on August 30, 2011 regarding the former Japanese military “comfort womens” individual rights to claim compensation from the Japanese Government that it constitutes “a violation of the fundamental human rights of the victims, and it is unconstitutional” for the Korean Government to fail to follow the procedure according to the agreement between Japan and the Republic of Korea on the right to compensation. Following the court decision, Cho Sei-young, the director-general of the Northeast Asian Affairs Bureau at South Korea’s Foreign Affairs and Trade Ministry, requested the direct talk to the minister of Japan to Korea on 15 September, 2011, according to the article 3, clause 1 of the above-mentioned agreement between, Japan the Republic of Korea. Although Korean government made the same request again on 15 November, 2011, the Japan has made no formal response to this request.

## 2) Legal Responsibility

The government claims that as the issues of compensation, property and the right to claim for the damage caused during Second World War has already been solved legally, and thus declares that it is unable to make judicial compensation to the victims. However, Supreme Court of Japan issued a judgment on 27 April, 2007 with regard to the issue of Chinese war victims’ individual right to claim compensation from the Japanese Government that “loss” of right to claim compensation remains as loss of “entitlement to claim compensation through legal proceedings”, and this does not mean that “the rights to claim compensation has substantially dissolved”. Under the premise as mentioned in the Supreme Court judgment, not only the government could make a judicial compensation to an individual victim, but the government should make judicial compensation from the point of view of protecting human rights of the victims. Various NGOs have recommended the government to make judicial reparation, however, the government has not complied with these recommendations.

Recommendation has been adopted regarding this issue in universal periodic review , however, the government has basically rejected these recommendations.

Committee on the Economic, Social and Cultural Rights stated in 2013 that “the Committee is concerned about the lasting negative effects of the exploitation to which “comfort women” were subjected on their enjoyment of economic, social and cultural rights and their entitlement to reparation (arts. 11 and 3). The Committee recommends that the State party take all necessary measures to address the lasting effects of the exploitation and to guarantee the enjoyment of

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111 CEDAW/C/JPN/CO/6, Paragraph 38.

economic, social and cultural rights by “comfort women”. The Committee also recommends that the State party educate the public on the exploitation of “comfort women” so as to prevent hate speech and other manifestations of hatred that stigmatize them.”

The Committee against Torture also claimed in 2013 that “notwithstanding the information provided by the State party concerning some steps taken to acknowledge the abuses against victims of Japan’s military sexual slavery practices during the Second World War, the so-called “comfort women”, the Committee remains deeply concerned at the State party’s failure to meet its obligations under the Convention while addressing this matter, in particular in relation to:

- a) Failure to provide adequate redress and rehabilitation to the victims. The Committee regrets that the compensation, financed by private donations rather than public funds, was insufficient and inadequate;
- b) Failure to prosecute perpetrators of such acts of torture and bring them to justice. The Committee recalls that on account of the continuous nature of the effects of torture, statutes of limitations should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them;
- c) Concealment or failure to disclose related facts and materials;
- d) Continuing official denial of the facts and retraumatization of the victims by high-level national and local officials and politicians, including several diet members;
- e) Failure to carry out effective educational measures to prevent gender-based breaches of the Convention, as illustrated, inter alia, by a decrease in references to this issue in school history textbooks;
- f) The State party’s rejection of several recommendations relevant to this issue, made in the context of the universal periodic review (A/HRC/22/14/Add.1, paras.147.145 ff.), which are akin to recommendations made by the Committee (para. 24) and many other United Nations human rights mechanisms, inter alia, the Human Rights Committee (CCPR/C/JPN/CO/5, para. 22), the Committee on the Elimination of Discrimination against Women (CEDAW/C/JPN/CO/6, para. 38), the Committee on Economic, Social and Cultural Rights (E/C.12/JPN/CO/3, para. 26) and several special procedures mandate holders of the Human Rights Council (arts. 1, 2, 4, 10, 14 and 16).

Recalling its general comment No. 3 (2012), the Committee urges the State party to take immediate and effective legislative and administrative measures to find a victim-centered resolution for the issues of “comfort women”, in particular, by:

- a) Publicly acknowledging legal responsibility for the crimes of sexual slavery, and prosecuting and punishing perpetrators with appropriate penalties;
- b) Refuting attempts to deny the facts by government authorities and public figures and to re-traumatize the victims through such repeated denials;
- c) Disclosing related materials, and investigating the facts thoroughly;
- d) Recognizing the victim’s right to redress, and accordingly providing them full and effective redress and reparation, including compensation, satisfaction and the means for as full rehabilitation as possible;



- e) Educating the general public about the issue and include the events in all history textbooks, as a means of preventing further violations of the State party's obligations under the Convention.

With regard to the recommendations issued by the Committees, the Government approved in the cabinet meeting in June, 2013 that such recommendations from the International Treaty Bodies are not legally binding, and the State Party is not obliged to follow the recommendations.

- 3) Redress for the victims, investigation of the facts, and the prosecution of the perpetrators

The government states that this issue has already been solved legally, and Asian Women's Fund mentioned above has provided certain amount of "atonement money" to the victims, and thus the issue has already been dissolved in effect. Nevertheless, "atonement money" from Asian Women's Fund was financed by private donations rather than public funds, and it was "insufficient and inadequate," according to the recommendations mentioned above. Therefore, the government should once again take measures to provide adequate redress for the victims, following these recommendations, however, the government has indicated no intention to take such measures.

The Government has no intention to conduct further research on the historical facts, nor has intention to prosecute the perpetrators, either. Shinzo Abe, who later became prime minister, and some others who later became cabinet members signed an advertisement publicized in November, 2012, dismissing the issue of "comfort women" by the former Japanese Army.

Prime Minister Abe has held a view that the Government should review the statement made by Yohei Kono, and publicly stated that he would review Kono's statement until just before he became prime minister. Thus, it has been shown that he has no intention to resolve the issue as a government policy.

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- 4) Education

Accounts of the "comfort woman" issue in all middle-school textbooks have already disappeared, and description has not restored. The government has taken no special measures against remarks by people in high position to deny the facts of harm. Not only that, the government has recently revised the standard for school textbook screening, and has started to request the authors to state the standpoint of the government in school textbooks. Therefore, it could be stated in the textbook in the future that "issue of comfort women has already been resolved," and due to this, there is a danger that the issue of "comfort women" will not be passed down correctly to the future generation.

- 5) Measures against the recent trend to deny the fact of harm by the government authorities and the public officials

On 13 May, 2013, Hashimoto Toru, Osaka mayor and co-leader of the public political party (Japan Restoration Party) provoked controversy by stating that it is clear to everyone that "comfort women", were necessary for Japan's wartime troops. Nevertheless, the Government of Japan has not made any particular response towards these remarks.

Furthermore, the Government holds a position to steer the public opinion towards the stance that there is no fact to prove that the former Japanese military forcibly seized “comfort women”. That is, the Government (first Abe Cabinet) stated in 2007 in the written answer to the letter of inquiry to the Government from a member of Diet entitled “letter of inquiry with regard to Prime Minister Abe’s recognition of the issue of “comfort women” (inquiry no. 110; House of Representative member, Tsujimoto Kiyomi submitted on 8 March, 2007) as follows. It says that materials the government discovered contain “no records that could prove forced mobilization of comfort women by the military and police” by the time Kono statement was issued in 1993. This reply merely states that “there is no such records in the material the government discovered”, and it does not prove that there was no forced mobilization. However, it has an effect of manipulating the public opinion towards the stance that the former military did not take women by force by emphasizing that “there is no such records in the material the government discovered”.

This written answer needs to be modified, as there is an evidence to prove the forced mobilization in the materials which the Government collected. Having said that, the Government also acknowledged in 2013 in the written answer to “the letter of inquiry with regard to the written answer issued in 2007 which states that there was no evidence for the forced mobilization” (inquiry no. 102; House of Representative member, Akamine Masataka submitted on 10 June, 2013) that there is a records in the “Minutes of an ad hoc Military Court in Batabia” among the materials the government has discovered. And records in the Minutes state that “military officers and private citizens took above mentioned women to the comfort station for the purpose of procuring them, and forced them to stay there and engage in prostitution with threat”. In this case, the government needs to modify the written answer submitted in 2007 in accordance with this description in the “Minutes of an ad hoc Military Court in Batabia”. However, the government has still held its written answer issued in 2007 with no revision up until now.

(4) Proposed Recommendations for the Concluding Observations

- 1) We strongly recommend that the State Party should make concerted effort to realize the recommendations issued by CCPR last time, Committee against Torture in 2013, and Committee on Economic, Social and Cultural Right in 2013.
- 2) We recommend that the State Party should review its position that the issues of compensation, property and the right to claim against the damage caused by war during Second World War have already been legally solved.
- 3) We request the State Party to respond to the issue of “comfort women” in particular with a recognition that it is a State Party’s obligation and duties to sincerely respond to the recommendations issued by the Committees, considering that once the State Party ratify the international treaty, the State Party should put into place domestic measures and legislation compatible with their treaty obligations and duties.

### 3 Foreign Trainee and Technical Intern Program

- (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

24. The Committee is concerned about reports that non-citizens who come to the State party under the industrial training and technical internship programmes are excluded from the protection of domestic labour legislation and social security and that they are often exploited in unskilled labour without paid leave, receive training allowances below the legal minimum wage, are forced to work overtime without compensation and are often deprived of their passports by their employers (art. 8 and 26).

***The State party should extend the protection of domestic legislation on minimum labour standards, including the legal minimum wage, and social security to foreign industrial trainees and technical interns, impose appropriate sanctions on employers who exploit such trainees and interns, and consider replacing the current programmes with a new scheme that adequately protects the rights of trainees and interns and focuses on capacity-building rather than recruiting low-paid labour.***

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The state report explains that the Government revised the Immigration Control Act in July 2009 to enable foreign technical interns to seek protection under the Labour Standard Act and other labour-related legislation of Japan from the first year of their stay (enforced in July 2010). It also explains the monitoring system against violations strengthened such that the period of suspension for the acceptance of technical interns by accepting organizations that committed any serious abuse of human rights through improper conduct, including taking custody of interns' passports and nonpayment, has been extended to five years.

In addition, it explains that the Government has strengthened its supervision and direction through labour standards inspection authorities, and endeavoured to properly operate the programs through the mutual notification system established between labour standards inspection authorities and immigration bureaus.<sup>112</sup>

(3) Current Situation

The Immigration Control Act revised in July 2009 stipulates measures aiming only at problems that can be urgently responded to among other problems of the Technical Intern Training Programs.<sup>113</sup>

The revised Act temporarily responded to the international and domestic criticism toward the rampant human rights violations of programs such as the following: trainees and interns are in fact low-paid labourers, their passports and bank books are confiscated during the training period, and they are forced to have mandatory savings.

As seen in the following 1) to 4), the situation has not improved at all since July 2010 when the Act came into force.

The Technical Intern Training Programs should be abolished. Moreover, the pros and cons and the scope of a new program to accept foreign workers, which includes creating a new status of residence

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112 Paragraphs 32-34.

113 Paragraph 10 (the Lower House Judicial Affairs Committee) and paragraph 13 (the Upper House Judicial Affairs Committee) of additional resolution on the revised Immigration Control Act, 2009. Basic Plan for Immigration Control 4th edition (March 2010).

that admits less skilled workers should be seriously discussed at the Diet and other places.

- 1) Status of recent cases subjected to supervision and direction of Labour Standards Inspection Offices and sent to public prosecutor's office in order to ensure appropriate Welfare (October 25, 2012)

According to the above statistics, the number of workplace inspections conducted by the Labour Standards Inspection Offices was 2,748 in fiscal 2011. Out of this number, the Office found 2,252 violations of the Labour Standard Act and other labour-related legislation (82%). These figures exceed the numbers from the previous Act. Twenty-three out of 2,252 cases were sent to prosecutors. This figure also increased from the previous year.

The cases sent to prosecutors are serious and malicious violations: a case where a supervision office aided and abetted a receiving organization in violating the Minimum Wage Act; a case where violations of the Minimum Wage Act were repeated despite the direction of Labour Standards Inspection Office; a case where an explosion caused death of a trainee due to the lack of necessary measures to avoid the risk of flammable substances; a case where a press pinched a trainee to death since the company let the trainee use the press knowing a safeguard was broken.

- 2) "Recognition of 'Misconduct' in 2011" (Immigration Bureau, Ministry of Justice, March 29, 2012)

According to the above release of the Immigration Bureau at the Ministry of Justice, 184 organizations were recognized to engage in "misconduct" during 2011. This is a 12.9% increase compared with the previous year in which only 163 organizations were identified. The three top categories are "unpaid wages" (84 cases, 53.8%), "violation of labour-related legislation" (28 cases, 17.9%) and "differences from submitted training programmes" (15 cases, 9.6%), and these three consist of about 80% (81.4%).

- 3) "The number of death of foreign technical intern trainees in 2011" (JITCO, June 20, 2012)

According to the above release of the Japan International Training Cooperation Organization (JITCO), a public interest incorporated foundation, 285 trainees died between 1992 and 2011. Out of them, 85 (30%) died from "brain and heart related diseases." This trend continues even after the revised Act came into force. "Brain and heart related diseases" are responsible for 6 out of 20 trainees' deaths (30%) in 2011.

Noting that most foreign nationals who come to Japan as technical intern trainees are young and healthy (according to the JITCO White Paper 2012, about 80% of trainees are in their 20s), the 30% of trainee deaths to "brain and heart related diseases" is extremely high. (According to the statistics released by the Ministry of Health, Labour and Welfare, the comparable figure for brain and heart-related diseases in the Japanese population was 5% in 2008.)

- 4) Survey conducted by the JFBA and its public statement

According to the survey findings of relevant organizations such as labour unions and international exchange organizations conducted by the JFBA, the following cases were observed.

[1] There are many reported cases of unpaid wages and overtime money. There are also a number of reported cases that trainees' bank books and passports were confiscated, and trainees were forced to have mandatory savings.

There is a high incidence of cases that contracts have been made for guarantee deposits and penalties between trainees and sending organizations in their country of origin.

Likewise, even after the revised Act came into force, cases prohibited in the revised Act and the relevant ministerial ordinances have not been protected.

- [2] There are cases that host organizations asked agricultural trainees to agree with deletion of a provision on extra payment for overtime, etc. in the employment contract and forced them to return home when they refused it.

There is a high incidence of cases that trainees are forced to return home in many places. However, the revised Act does not regulate this case since it does not recognize this as a problem.

- [3] There are many cases in which trainees cannot change their workplace even though their host organization has a problem. The Ministry of Justice, Immigration Bureau's guidance on the Technical Intern Training Program stipulates that the host organization is supposed to find other programmes only when they cannot continue their training program. However, this is not a practical measure.

Trainees cannot change the host organization for their training programs. They will lose the status of residence if they change a host organization. Under this system, the trainees are easily controlled by host organizations, and the 2009 revision did not solve this problem at all.

Based on the above survey results, the JFBA released the opinion paper concerning the "early abolishment of the foreign technical intern training program" on June 20, 2013.

#### (4) Proposed Recommendations for the Concluding Observations

Abolish the foreign technical intern training program as early as possible. Establish the new resident status on the premise of accepting non-skilled workers. Discuss immediately and thoroughly whether accepting foreigners or not, its scope, and the treatment of current trainees until a system changes, in consideration for the human rights of foreigners.

## 1 Detention of Suspects and the Right to Have Defense Counsel

### 1-1 Bail System and the Right to Appoint Defense Counsel

#### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

*18. The Committee reiterates its concern that, despite the formal separation of the police functions of investigation and detention under the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, the substitute detention system (Daiyo Kangoku), under which suspects can be detained in police detention facilities for a period up to 23 days to facilitate investigations, without the possibility of bail and with limited access to a lawyer especially during the first 72 hours of arrest, increases the risk of prolonged interrogations and abusive interrogation methods with the aim of obtaining a confession (art. 7, 9, 10 and 14).*

***The State party should abolish the substitute detention system or ensure that it is fully compliant with all guarantees contained in article 14 of the Covenant. It should ensure that all suspects are guaranteed the right of confidential access to a lawyer, including during the interrogation process, and to legal aid from the moment of arrest and irrespective of the nature of their alleged crime, and to all police records related to their case, as well as to medical treatment. It should also introduce a pre-indictment bail system.***

#### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Regarding detention periods, the report merely states “As stated in the previous reports” and includes no additional comments.<sup>114</sup>

#### (3) Current Situation

The Japanese Government makes no reference to the Committee’s consideration and recommendations in its report. The Government has made no improvements.

A pre-indictment bail system has not been implemented.

Those under arrest have the right to appoint defense counsel, but must pay the fee themselves as there is neither public subsidy nor legal aid available. A suspect has a right to appoint public defense counsel after application for detention has been filed only where he/she has allegedly committed crimes punishable with the death penalty, life imprisonment, or imprisonment for a maximum period of three years or more. A suspect under detention for other crimes does not have a right to appoint paid defense counsel.

Legal Council’s Special Subcommittee for the Criminal Justice System in the New Generation (hereafter, “the Special Subcommittee”), which has been an advisory body to the Minister of Justice since 2011, published the “Basic Plan for the New, Updated Criminal System” in January 2013. This

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114 Paragraph 131.

plan stated that provision of paid defense counsel for all detainees should be considered. However, it stated the paid defense counsel for the pre-detention arrest should be considered only after they considered the provision of defense counsel during detention.

The Japanese Government does not appear to be trying to improve the current system which violates articles 7, 9, 10, and 14.

In its considerations and recommendations in May 2013, the Committee against Torture stated it is regrettable that suspects have limited access to defense counsels for the first 72 hours from the arrest and can be detained for up to 23 days without the possibility of bail under the provisional detention system. The Committee recommended that a right to the legal aid should be guaranteed from the point of arrest.<sup>115</sup>

(4) Proposed Recommendations for the Concluding Observations

- 1) The State party should implement a pre-indictment bail system.
- 2) All suspects should be able to appoint defense counsel from the point of arrest regardless of their financial condition.

1-2 Interrogation

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Refer to the paragraph 18 mentioned above.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The report claims that the Government has developed and implemented plans to improve interrogation by prosecutors and police officers.<sup>116</sup>

The Government is not considering allowing defense counsel to attend interrogation as it believes it would greatly hamper investigation.<sup>117</sup>

The Government reports that interrogation has been recorded or videotaped on a trial basis in some cases at the investigator's discretion.<sup>118</sup>

(3) Current Situation

As stated in the aforementioned Concluding Observations, interrogation can be conducted up to 23 days for the convenience of investigation. There are regulations on how long interrogation should be per day, but they are merely internal rules. According to these regulations, interrogation should be limited to eight hours maximum per day, but this rule can be overridden with permission from officials such as chief police officers. There is no system for third parties besides the prosecutors and the police to check how interrogation is conducted.

Defense counsel is not allowed to attend interrogation.

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115 Paragraphs 10c

116 Paragraphs 132-139.

117 Paragraphs 140-142.

118 Paragraphs 143-150.

Audio and video recording of interrogation on a trial basis has been expanded but it is not mandatory. Some interrogations have been recorded completely rather than partially, from its beginning to the end. However, interrogation for suspects. The JFBA has also been calling for the mandatory audio and video recording for the investigation on persons of interest.

The Association strongly argued at the Special Subcommittee that defense counsel should be allowed to attend interrogations. However, the Special Subcommittee was not able to reach any decision and did not include this matter in its final consideration due to strong resistance from investigating agencies, which insisted that the presence of defense counsel will greatly undermine the effectiveness of interrogation.

The Committee against Torture expressed great concern in its Concluding Observations for that it is not mandatory to have defense counsel attend the whole process of interrogation, that there is no strict time limit on the continuation of interrogation. It recommended that there should be rules on the duration of interrogation with appropriate penalty in case of breach, and that the whole interrogation should be digitally recorded so that the record can be used in courts.<sup>119</sup>

#### (4) Proposed Recommendations for the Concluding Observations

- 1) A system to audio and video record the whole process of interrogation should be formally established.
- 2) Defense counsel's right to attend interrogation should be recognized.
- 3) The duration of interrogation should be limited by law.

## 2 Detention in Immigrant Facilities

### 2-1 Detention and Provisional Release Status

#### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

#### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Government reports that when it is necessary to release a detainee from detention, due to the need for humanitarian considerations or other circumstances, provisional release of the detainee may be permitted ex officio or upon request. In 2010, a total of 5,629 applications for permission for provisional release were submitted and provisional release was permitted for 4,174 applications.<sup>120</sup>

#### (3) Current Situation

The Japanese Government, however, based on "the principle that the suspect should be detained," detains suspects when there is no potential risk for escape.

In administrative practices, a provisional release is decided at the discretion of the principal

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119 Paragraph 11

120 Paragraph 153.



examiner or the director of immigration detention facilities, but there are no legal standards for whether provisional release will be granted or not. In addition, it often takes 3 months to review an application for provisional release. The Ministry of Justice does not release the number of applications for provisional release, but does publish the statistics on the number of persons who are newly released provisionally. The following is the 2011 statistics. No explanation was made for the difference from the figures on the state report.

The number of new provisionally released persons	
Detention by detention orders	2,095
Detention by Deportation	1,012
Total	3,107

In addition, according to the 2010 statistics of the Ministry of Justice, the number of all detainees was 32,563, the number of reviews received for the grounds for deportation was 25,731 (assuming detention orders were issued in all of the cases), the number of deportation orders issued was 13,153. Compared with these figures, the number of provisional releases permitted was only a few.

When an application for permission for provisional release is denied, the reason on the paper merely states that “There is no ground for granting a provisional release,” and concrete reasons are not provided.

In regard to detainees’ condition, the Nagoya immigration bureau provided the following figures to the Aichi Bar Association: Among all 1,537 detainees at the bureau, when they were detained, 42 were minors, 414 were sick, 13 were taking care of infants or children, 15 were pregnant. As such, minors, those who took care of infants, and pregnant women were detained.

(4) Proposed Questions for List of Issues

- 1) Does the Japanese Government review the substantive need for potential risk for escape on the premise for detention in the deportation procedures?
- 2) Prior to detention, is a judicial review available? After being detained, is there a system that enables the release of the detainee during the judicial review when it becomes clear that there are no substantial needs such as potential risk for escape?
- 3) When an application for provisional release is made, what is the rationale behind not giving reasons when the application is denied? To what degree can the reason be explained?
- 4) Is the standard for detention of minors different from adults?

2-2 Treatment of Detainees at Immigrant Facilities (especially on medical treatment)

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Refer to the paragraph 18 mentioned above.

In addition, in the Concluding Observations of the Japanese 4th periodic report, the CCPR expressed its concern about harsh conditions of immigration detention and called for action as follows: “*The Committee is concerned about allegations of violence and sexual harassment of persons detained pending immigration procedures, including harsh conditions of detention, the use of*

*handcuffs and detention in isolation rooms.” “The Committee urges the Government to take action on the ground of these concluding observations.”<sup>121</sup>*

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

For detainees, all possible measures for healthcare are implemented, including medical care by in-house physicians, or by outside medical care providers on an outpatient basis, and even medical care by psychiatrists and counseling by clinical psychologists.<sup>122</sup>

(3) Current Situation

1) Medical treatment for detainees is extremely poor.

There are only 2 facilities among 7 immigration detention facilities (hereafter, “facilities”) with capacity for over 200 detainees that station doctors regularly. There are no facilities where medical doctors see patients on a daily basis. The Yokohama branch of the Tokyo Immigration Bureau with 200 detainees has surgeon visits only once a week.

2) It is reported that a sick person had to wait for one month after submitting a petition for doctor’s examination. Petitions for receiving medical treatment outside of the immigration detention facilities are often denied. There are many detainees who became seriously ill or continue to suffer from after effect of disease without having received appropriate medical treatment.

3) Among 7 facilities with capacity of over 200 detainees, a psychiatrist visits only one facility (twice a month). 4 facilities (over the half) have neither psychiatrists nor counselors.

4) Hunger strikes or refusing food services by detainees to demand improvement of treatment occur in more than one facility every year. In August 2012, in the East Japan Immigration Center, over 100 detainees collectively refused receiving food services to claim unjust physical restraints and improvement of treatment.

5) At facilities, there are many suicide and suicide attempt cases by detainees. There are not enough sincere efforts made to build trust between immigration officials and detainees. Many immigration officials make detainees call them “Sensei” (Japanese title for teachers and medical doctors) and force them to behave more than properly.. It is reported that the officers sometimes use abusive language against detainees.

6) Some detainees are asylum seekers who have been traumatized with persecution and torture in their home countries. However, there is very little special consideration for mental care of these detainees.

## 2-3 Appeal System and Visiting Committee in Immigration Detention Facilities

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

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121 CCPR/C/79/Add.102, Paragraphs 19, 33.

122 Paragraph 154.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Under the Regulations for the Treatment of Inmates and Detainees, the system using opinion boxes is supposed to be operated as a mechanism for the director of the immigration detention facility to hear detainees' firsthand opinions. An appeal system has been adopted to enable detainees to raise a complaint with the director of the immigration detention facility, if they are dissatisfied with their treatment, and finally to file an objection with the Minister of Justice.

The Immigration Detention Facilities Visiting Committee was set up in July 2010. Efforts are being made to ensure the transparency of security and treatment, and the improvement of facility administration.

If the director of the immigration detention facility deems that attendance of immigration control officer is not needed, detainees are allowed to meet visitors without such attendance, and in some well-equipped detention facilities, detainees are allowed to freely make phone calls during specified hours without being attended by an immigration official.<sup>123</sup>

(3) Current Situation

- 1) A system of hearing detainees' opinions by using opinion boxes does not obligate the director to take some measures, and in many cases, nothing has been improved.

The appeal system to raise a complaint and file an objection is not well-known. An objection will be judged by the Minister of Justice who is the top of the institution to which the director of detention facilities belongs. Therefore, independence is missing from this system. In addition, these objections are hardly accepted.

There is lack of opportunities for the officers in charge and detainees to have a direct dialogue on treatment in the facilities.

The secretariat of the Immigration Detention Facilities Visiting Committee is administered by immigration officials. Thus, the Committee lacks independence. Names of the Visiting Committee members are not disclosed. A brief summary of the opinions of the Committee about all detention facilities and the result of the measures taken is reported only once a year. Thus the activities of the Committee also lack transparency. Translations of the written opinions from detainees are done by immigration officials, so confidentiality cannot be maintained. Every member works part time and does not have their support staff. The budget for them is also small.

- 2) Meetings with visitors are conducted in principle through a screening plate, which does not allow physical contact with families and spouses. (However, there are cases that allow meetings with children below elementary school age in the consular visiting room with no screening plate.) Visiting time is limited to within 30 minutes. Visits are only allowed on weekdays, not on weekends or holidays.

Due to the number of detainees who need to use the telephone and the restricted hours telephones are available to use, there is a line-up to use the telephones. It makes it difficult to call to home countries where a time zone is different from Japan. Individuals are responsible for their telephone

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123 Paragraphs 155-157.

bills.

Detainees are not only prohibited from using the internet, but computers as well.

#### 2-4 Lack of the Rights to Receive Government Funded Legal Assistance for Detainees in Immigration Detention Facilities

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Free legal counselling is provided by attorneys to detainees.<sup>124</sup>

(3) Current Situation

It is true that free legal counselling services have been improved and well informed to detainees based on discussions between immigration bureaus and the JFBA. However, it is notable that this service is provided fully at the expense of the JFBA as a non-governmental organization and its membership fees.

In order to fully guarantee the right to a fair trial for judgement on the legitimacy of detention stipulated in Article 9 of the Covenant, it is indispensable to admit the right to legal assistance. For an initial legal consultation and following legal representation by an attorney, a government funded system should be established.

#### 2-5 Attention for Female Detainees and Children in Immigration Detention

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

No Comments in the 5th Concluding Observations.

However, in the Concluding Observations of the Japanese 4th periodic report, the CCPR expressed its concern about harsh conditions of immigration detention and called for action as follows: “*The Committee is concerned about allegations of violence and sexual harassment of persons detained pending immigration procedures, including harsh conditions of detention, the use of handcuffs and detention in isolation rooms.*” “*The Committee urges the Government to take action on the ground of these concluding observations.*”<sup>125</sup> Therefore, the Japanese Government has been made aware of the necessity of special attention required with respect to female detainees.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

With regard to female detainees, female-specific approaches are being promoted. All tasks for the treatment of female detainees are supposed to be performed by female immigration control officers.<sup>126</sup>

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124 Paragraph 158.

125 CCPR/C/79/Add.102, Paragraphs 19, 33.

126 Paragraph 159.

(3) Current Situation

While administrative notices regarding the special treatment for those who take care of infants and children (many of them are mothers), and on the detention of pregnant women are circulated,<sup>127</sup> the expression on these notices allows for wide discretion among the directors of the local immigration bureaus on whether to implement them. In practice, it is not clear whether these special provisions to avoid detention of pregnant women and mothers who take care of infants and children, are enacted or not.

### 3 Involuntary Hospitalization and Other Measures Taken According to Mental Health and Welfare Act

#### 3-1 Forced Hospitalization That Requires Fear of Harming Themselves and Others (Mental Health and Welfare Act Article 29: Involuntary Hospitalization)

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Not mentioned.

(3) Current Situation

Article 29 of Mental Health and Welfare Act requires substantially that the patient (1) is mentally disabled, (2) has the fear of harming himself or herself or others unless being admitted to hospital for medical service and protection, and (3) has a common diagnosis that the requirements of (1) and (2) exist. This requirement is broader than the substantial requirement of principle 16 of the MI Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (hereafter, “MI Principles”<sup>128</sup>) that “there is a serious likelihood of immediate or imminent harm.” However, when applying this standard, local authorities differ in judging the substantial requirement in the strict sense of the word, and reasonable application is required.

Within the involuntary inpatients, there are long-term inpatients of over 5 years and even 10 years, but their actual treatment, coordination efforts towards discharge, and the elements preventing them from discharge are not disclosed.

In the concluding observations on the second periodic report of Japan, adopted at its fiftieth session, the Committee Against Torture expressed concern for the high numbers of long-term inpatients in Japan, including involuntary inpatients, and urged Japan to ensure that “(b) [o]utpatient and community services are developed and the number of institutionalized patients is brought down; [and]

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127 Nyukan Keibi Kacho Jimu Renraku (Administrative Notice of the security division chief, Immigration Bureau), August 7th, 2007 and April 13, 2011.

128 CAT/C/JPN/2

(c) [e]ffective legal safeguards are respected in all places of deprivation of liberty, including psychiatric and social care institutions.”<sup>129</sup>

At present, however, over 95% of the mental health and welfare budget is appropriated for medical care, with less than 5% for community welfare service, and about 75% of the medical care budget accounts for institutional medical care, making the national budget allocation centralized around hospitalization as a whole. Also, the Japanese Government fails to ensure the right of persons to access attorneys, or human rights defenders, by public funds, in cases of deprivation of liberty by forced hospitalization. The MI Principle 18-1 provides that “[t]he patient shall be entitled to choose and appoint a counsel to represent the patient as such, including representation in any complaint procedure or appeal. If the patient does not secure such services, a counsel shall be made available without payment by the patient to the extent that the patient lacks sufficient means to pay.” However, no legal system in the law of Japan yet suffices this principle.

(4) Proposed Recommendations for the Concluding Observations

- 1) The State party should develop outpatient and community services, and avoid involuntary institutionalization.
- 2) The State party should ensure persons the right to access attorney, the experts in law, in all places of their involuntary institutionalization, and should establish procedures to file objections to independent, permanent-standing quasi-judicial authority.

3-2 Forced Hospitalization That Requires Lack of Competence to Consent (Mental Health and Welfare Law Article 33: Hospitalization for Medical Protection)

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

According to the amendment made to the Law, a special measure – a diagnosis made by a designated private psychiatrist in relation to hospitalization for medical protection – was introduced.<sup>130</sup>

(3) Current Situation

In the concluding observations remark of the first government report hearing of the Convention against Torture, the Committee against Torture (hereafter, “CAT”) expressed concern at “*the role played by designated private psychiatrists in private hospitals in issuing detention orders for individuals with mental disabilities.*”<sup>131</sup> The special measure adopted by the Mental Health and Welfare Revision Act in 2005 is an expedient measure remitting the judgment of involuntary

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129 CAT/C/SR.1164

130 Paragraph 160.

131 CAT/C/JPN/CO/1, Paragraph 21.

institutionalization - discharge restrictions to voluntary inpatients, and hospitalization for medical protection and emergency hospitalization of involuntary patients - to specified doctors (doctors of private psychiatric hospitals) who have no expertise, experience, or qualifications, and are adverse to the intention of the recommendation.

The substantial requirement of Mental Health and Welfare Act Article 33 is that the patient (1) is mentally disabled, (2) has the need to be admitted into hospital for medical service and protection, and (3) is in no condition of voluntary admission. This requirement is broader than the substantial requirement of the MI principle 16 of “failure to admit or retain that person is likely to lead to a serious deterioration in his/her condition or will prevent the giving of appropriate treatment that can only be given by admission to a mental health facility in accordance with the principle of the least restrictive alternative” and the requirement for impediment to judgment is unclear.

Inpatients for medical protection are increasing. One of the main reasons for this is that elderly people with dementia are being admitted to psychiatric hospitals for medical protection. In addition, there are cases where minors with developmental disorders and behavioral disorders have become the object of hospitalization for medical protection. It is feared that forced admission of these patients with poor response to treatment may be prolonged and that psychiatric hospitals may become living facilities. Among these inpatients with medical protection, long-term patients of over 5 years and social inpatients are most problematic.

There are no standard requirements regarding impediment to judgment, and the decision is up to designated psychiatrists in psychiatric hospitals - of which 90% are private- or specially designated doctors equivalent to this. The decision of whether to admit a patient for medical protection varies.

As previously noted, the concluding observations<sup>132</sup> on the second periodic report of Japan<sup>133</sup>, adopted by the CAT at its fiftieth session, expressed concern for the high numbers of long-term inpatients in Japan, including involuntary inpatients, and urged Japan to ensure improvement measures. Of these, the number of inpatients of involuntary hospitalization counts around 2,500 people, while the inpatients for medical protection amount to about 140,000 people, and are increasing in the recent years. In terms of numbers, the problems of involuntary institutionalization are more serious among inpatients for medical protection.

The JFBA requests the following improvement: For the improvement of situation regarding admission for medical protection, the requirement should be made stricter and limit the patient to: (1) a patient who has a serious mental disorder and his ability to judge is hampered, (2) a patient whose condition will deteriorate unless treated by hospitalization and the exercise of self-determination is interminably difficult, on the condition that the patient shows response to treatment. The procedural requirement should also be made stricter to require decision by two designated psychiatrists of which, one should not be a full-time or a part-time doctor from the said psychiatric hospital of admission, the patient should go through screening by the Examination Board for Psychiatric Care at the time of admission, there should be a spokesperson (authorized agent) at the time of admission, the period of admission should initially be within 3 months, and if there is a need for admission over 3 months, the

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132 CAT/C/SR.1164

133 CAT/C/JPN/2

patient should go through a screening by the Examination Board for Psychiatric Care again after submission of reason for amendments to the initial treatment/discharge plans and the amended treatment/discharge plans, and if the continuation of admission is granted, it cannot be longer than a year from initial admission.

However, the Japanese Government revised the Mental Health and Welfare Act in June 2013, and loosened the procedural requirements of hospitalization for medical protection, which formerly required the consent of the custodian, and approved in the Revised Act hospitalization for medical protection with the consent of one of the family members or related persons (guardian, curator, persons who have parental authority, spouse, and persons under duty to support). The revision enables hospitalization for medical protection with the consent of one of the family members or related persons, even when the guardian and all the other family members or related persons are against the hospitalization. Whereas the CAT expressed concern to the first government report hearing, that “*the role played by designated private psychiatrists in private hospitals in issuing detention orders for individuals with mental disabilities,*” the Revised Act rather loosens the requirements for involuntary institutionalization. The law revision permits doctors of private hospitals and family members or related persons—private citizens—to determine involuntary institutionalization, and is reversal to the designation by the CAT. In response to the second government report hearing, the CAT urged Japan to ensure “(a) [e]ffective judicial control over involuntary treatment and placement, as well as effective appeals mechanisms are established.” It indicates the Committee’s significant concern for that the private citizens manage involuntary institutionalization in Japan, but the revision to the mechanism of medical protection is in complete retrogression to the intended direction of the CAT. Moreover, as in the case of involuntary hospitalization, inpatients’ right to access counsel is not ensured by the Revised Act, and the revision failed to take measures to defend human rights.

(4) Proposed Recommendations for the Concluding Observations

- 1) The State party should develop outpatient and community services, and avoid involuntary institutionalization.
- 2) The State party should review that the requirements for involuntary institutionalization restrict hospitalization to the minimum necessity in accordance to the MI Principles, and are managed appropriately.
- 3) The State party should ensure that involuntary institutionalization is managed by the public authority and not by private citizens, and defend the rights of concerned persons to access counsel and get screened appropriately by quasi-judicial authority.

3-3 Use of Solitary Confinement and Restraints

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/C0/5)

Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)



Not mentioned.

(3) Current Situation

The number of people in solitary confinements and under restraints has seen increase over the years, from the reported 13,000 people a day in 2004 to 17,000 people a day (or 1.6 times greater) in 2009.

The concluding observations on the second periodic report of Japan, adopted at the fiftieth session of the CAT, urged Japan to ensure that the “(e) *[u]se of restraints and solitary confinement is avoided or applied as a measure of last resort when all other alternatives for control have failed, for the shortest possible time, under strict medical supervision, and any such act is duly recorded; [and that] (f) [e]ffective and impartial investigations are undertaken in incidents where excessive use of such restrictive measures result in injuries of the patient.*”<sup>134</sup> Even after psychiatric medical institutions established a committee for minimization of restrictive measures within hospitals, the non-independent committee does not successfully minimize the use of solitary confinement and restraints, and the number of people under restrictive measures continues to see a steady increase. Also, the legal system that allow psychiatric medical institutions to operate with 1/3 the number of medical staff members as those of other hospital departments is causing the institutions to compensate the under-staffed floors by using confinements and restraints.

(4) Proposed Recommendations for the Concluding Observations

- 1) The Party state should bring up the number of medical staff in psychiatric medical institutions and avoid the use of restraints and solitary confinements. The psychiatric medical institutions should be obliged to allocate the same scale of medical staff as other departments.
- 2) Legal and medical rules should clarify that the use of restraints and solitary confinement is the measure of last resort, and oblige specific recording that shows that all other alternatives for control have been attempted and failed.
- 3) If such restrictive measures may be used, concerned person should have the right ensured to swiftly meet human rights defenders with expertise in law, and with the assistance of the defender, to receive reasonable screening by quasi-judicial authority.
- 4) The ommittee for minimization of restrictive measures should be independent from medical institutions.

### 3-4 The Examination Board for Psychiatric Care

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

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134 CAT/C/SR.1164

The Government reports that, according to the revision made to the law in 2006, they introduced a system to report the condition of voluntary inpatients<sup>135</sup> as well as system to disclose the names of psychiatric hospitals that do not follow the amendment order, and reports the screening situation of the Examination Board for Psychiatric Care.<sup>136</sup>

### (3) Current Situation

The CAT recommends that *“The Committee is concerned at the role played by designated private psychiatrists in private hospitals in issuing detention orders for individuals with mental disabilities, and the insufficient judicial control over detention orders, management of private mental health institutions and complaints by patients concerning acts of torture or ill-treatment. The State party should take all necessary measures to ensure effective and thorough judicial control over detention procedures in public and private mental health institutions.”*<sup>137</sup>

The members of the Examination Board for Psychiatric Care should be comprised of more than 2 doctors out of the 5 members (Article 14 of the Mental Health and Welfare Act), and that members of other occupations should not become the majority. The Committee is not permanent-standing, nor should a lawyer act as a chairperson of the committee.

Of the rough total of 300,000 inpatients, the Japanese Government recognizes at least 50,100 social inpatients residing in the country, but only 4 persons were recognized in the regular diagnosis report as ready to be discharged and only 93 were granted discharge.

Regions with high numbers of discharge and improvement of treatment granted coincide with those areas with active advocacy of substitute system by attorney, and significant rates of requests filed by the substitute. Evidently, there are grave disproportions in the manner rights are protected depending on whether the attorneys stand as substitute or whether the inpatients take on the necessary procedure themselves. Nonetheless, as Japan lacks public-funded substitute system at present, it is hard to say that adequate mechanisms exist for the protection of inpatients’ rights. There is an urgent need to substantiate, as stated in the previously mentioned MI Principle 18-1, that “[t]he patient shall be entitled to choose and appoint a counsel to represent the patient as such, including representation in any complaint procedure or appeal. If the patient does not secure such services, a counsel shall be made available without payment by the patient to the extent that the patient lacks sufficient means to pay.”

The concluding observations on the second periodic report of Japan<sup>138</sup>, adopted at the fiftieth session of the CAT, urged the Party states to ensure that “(a) [e]ffective judicial control over involuntary treatment and placement, as well as effective appeals mechanisms are established; [...] (d) [a]ccess to effective complaint mechanisms is strengthened; [and that] (h) [i]ndependent monitoring bodies conduct regular visits to all psychiatric institutions.”<sup>139</sup> However, the Examination Board for Psychiatric Care is an internal body under the mayor’s governance and is not a

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135 Paragraph 160.

136 Paragraphs 161, 162.

137 CAT/C/JPN/CO/1, Paragraph 26.

138 CAT/C/JPN/2

139 CAT/C/SR.1164

permanent-standing, independent monitoring body, or a supervising body presided by experts in law. Also, even the request procedure does not ensure the right of inpatients to request attorney as substitute. Examination of periodic reports on diagnosis of inpatients by the Examination Board for Psychiatric Care is paper-based, and the Board does not pay regular visits.

(4) Proposed Recommendations for the Concluding Observations

- 1) The Examination Board for Psychiatric Care should be a permanent-standing body independent of the mayor, and should be a quasi-judicial body presided by experts in law.
- 2) The right of inpatients, along with financial assistance, should be ensured so that inpatients gain access to attorney as substitute in appealing for discharge and improvement for treatment to the Examination Board for Psychiatric Care.
- 3) The Examination Board for Psychiatric Care should conduct regular visits to and inspection of psychiatric institutions.

3-5 Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of Insanity

3-5-1 Hospital Admission for Appraisal (Article 34 of the above Law)

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Government reports that the Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases under the Condition of Insanity (hereafter “Act on Medical Care and Treatment for Insane Persons”) was put into effect on 15 July 2005.<sup>140</sup>

(3) Current Situation

Regarding hospital admission for appraisal, all admissions will be enforced except for those cases where “there is no explicit necessity for medical care.” The duration of admission is, in principle, 2 months and can be extended up to 3 months which is broader than the requirement in the UN Principal 16. For this reason, there are cases where patients leading ordinary community lives are forced to be admitted according to the UN Principal 16. A principle of voluntary treatment is not established for patients admitted for appraisal and there is no procedural guideline for discharge or improvement of treatment.

(4) Proposed Recommendations for the Concluding Observations<sup>140</sup>

- 1) The Party state should prescribe necessary procedures for inpatients of psychiatric evaluation to

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140 Paragraph 163.

appeal discharge and improvement of treatment.

- 2) The Party state should set limitations to the conditions of hospitalization for psychiatric evaluation to avoid unnecessary hospitalization.

### 3-5-2 Medical care through admission (Article 42 of the above Law)

- (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

- (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The fact that the Act on Medical Care and Treatment for Insane Persons was put into effect on 15 July 2005 was reported.<sup>141</sup>

- (3) Current Situation

The requirement for hospital admission was defined as follows: “When there is a need for hospital admission to provide medical care under the Law to improve the mental disorder (apparent in time of performing the concerned action (9 categories of crime including murder and assault)) and promote social recovery and make sure he/she does not perform the same action.” This is broader than the UN Principal 16 and sounds as if admission to prevent the “same action” is accepted.

The text of the law indicates that involuntary treatment is the principle (Article 43 of the above Law). There are patients whose duration of admission has been prolonged without the prospect of discharge, leading to the existence of social inpatients. All patients ranging from acute phase to social recovery are confined in a same hospital ward. Opportunities to go outside or stay overnight are considerably restricted. Requests for improvement of treatment are screened by the non-independent Examination Board for Social Welfare (advisory committee of Minister for Health, Labour and Welfare) and legal control is not secured. A public substitute system is not permitted for its procedure.

High rates of suicide are reported among the outpatients under probation, in accordance to the Act on Medical Care and Treatment for Insane Persons, after the hospitalization under to the same Act. Involuntary hospitalization under the Act is determined by collegial body constituted of psychiatrist and judge, but about 15% of the decision-making involve misdiagnosis and misjudgment in curability. The concluding observations on the second periodic report of Japan,<sup>142</sup> adopted at the fiftieth session of the CAT, urged Japan to ensure “(g) [r]emedies and redress are provided to the victims.”<sup>143</sup> However, the Act does not provide compensation that corresponds criminal compensation, hindering persons who have been unjustly hospitalized from appealing for compensation.

- (4) Proposed Recommendations for the Concluding Observations

- 1) The Party state should investigate and publicize the actual conditions of suicide victims and

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141 Paragraph 163.

142 CAT/C/JPN/2

143 CAT/C/SR.1164

long-term inpatients.

- 2) The requirements for involuntary institutionalization should be consistent with the MI Principles.
- 3) Compensation scheme upon misjudgment and misdiagnosis should be established.

#### 4 Measures to Eliminate the Discrimination against Hansen's Disease

- (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)  
Not mentioned.

- (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

It is reported that the Japanese Government has enacted the laws for compensation and basic principles, and provided appropriate compensation as well as restoration of reputation and promotion of welfare.<sup>144</sup>

It is also reported that, internationally, the Japanese Government contributed to the adoption of the "Resolution regarding Elimination of Discrimination against Persons Affected by Leprosy and their Family Members" and "Principles and guidelines for the elimination of discrimination against persons affected by leprosy and their family members."<sup>145</sup>

- (3) Current Situation

- 1) "Compensation" according to Compensation Law is not enough

The harm done to Hansen's disease inmates were those due do the illegal segregation policy adopted by the Japanese Government, and its rightful compensation is the responsibility of the Government. Indeed, compensation and certain measures were taken by the Japanese Government. However, compensation to Hansen's disease inmates in Japan is extremely insufficient. The indemnity paid according to the "Act on the Payment of Compensation (the Indemnity Law)" was the same amount as the indemnity approved by the judicial decision issued by the Kumamoto District Court (11 May 2001). It is a minimum compensation concerned with the common damage calculated by "comprising all the object of compensation within the range of certain commonality."

Based on this fact, the Japanese Government admitted its responsibility and exchanged a written agreement to implement the following measures: measures to the restore reputation of Hansen's disease inmates, measures to maintain living conditions and to provide medical services at the National Hansen's Disease Sanatorium, measures to support social recovery and social life, and measures to prevent recurrence etc.

- 2) Lawmaker-initiated bill

However, the Japanese Government's policy-planning and implementation was not enough. The Hansen's disease inmates and supporters felt the need to define the responsibility of the Government and thus, the "Act on Promotion of Resolution of Issues Related to Hansen's Disease" was enacted as a lawmaker-initiated bill.

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144 Paragraph 164.

145 Paragraphs 165, 166.

3) The responsibility of the Government defined by the law

According to the above law, the responsibility of the Government is defined as follows:

In light of the harm done throughout social life, it must be implemented with a view to compensate for the harm as much as possible (Clause 1 of Article 3).

When implementing the policy, care must be taken for the inmates so that they can lead safe and enriched lives in their current residences such as the National Hansen's Disease Sanatorium without being segregated by the local community (Clause 2 of Article 3).

The Government holds the responsibility to plan and implement a policy to promote the welfare of (former) Hansen's disease patients based on the basic principle defined in the previous Article (Article 4).

4) The Japanese Government has not accomplished its responsibility

Even after the above law was put into effect, the policy-planning and implementation by the Japanese Government did not proceed at all, and compensation for the harm was not done sufficiently. The victims are getting older, and the average age of inmates at the National Hansen's Disease Sanatorium has risen over 82. The inmates, carrying the aftereffects of the disease, cannot lead humanistic lives unless they are provided sufficient medical care and nursing.

Nevertheless, the Japanese Government insists on reducing the number of Government officials uniformly. The nurses and care staff at the National Hansen's Disease Sanatorium are also targeted, and they are continuously being cut. In addition, as the Government does not change its attitude in hiring part-time staff with low wages, it cannot receive sufficient applications, and as a result, cannot secure the required number of staff. With regards to doctors, the Government does not change its attitude in hiring doctors with low wages, and thus, a lack of personnel continues.

The segregation policy towards Hansen's disease patients implemented by the Japanese Government is an explicit violation of Clause 1 of Article 9 of the Agreement, and the forbearance by the Government which does not compensate for the harm sufficiently, is a violation of the Agreement.

(4) Proposed Recommendations for the Concluding Observations

The Party state should ensure decent living and medical standards of the inmates at the National Hansen's Disease Sanatorium.

## 1 Infringement on the Right to Interview and Communication with a Counsel

### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Refer to the paragraph 18 mentioned above.

The Concluding Observations issued by the CCPR on the Japanese Government's third and 4th periodic reports also expressed their concern about the fact that confidential interviews and communications between a detainee and counsel were not guaranteed.

### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Since September 2008, prosecutors and the police have followed procedures under which they must notify the suspect of his/her right to appoint legal counsel and on how to appoint such counsel when they record his/her testimony and witness statements. If a legal counsel requests an interview with a suspect who is under interrogation or who has been sent to the public prosecutor's office, the prosecutors or the police must make due arrangements so that such an interview can take place at the first available opportunity.<sup>146</sup>

The penal institution can refuse a late-night interview, as necessary for the administrative purposes of the facilities, unless such interview is urgently necessary. According to article 118 of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, the date and time of visits by the defense counsel, etc. to an unsentenced person must be during the working hours of the penal institution for days except Sunday. Nevertheless, if it is urgently necessary, visits by defense counsels on Sundays or other holidays may be permitted under certain conditions. In detention facilities, visits by counsel on non-working days and during hours outside the regular working hours of the facility are accepted to the extent possible.<sup>147</sup>

### (3) Current Situation

The Japanese Government states that the suspect is notified of the right to appoint legal counsel and how to appoint them when they record his/her statements. The notification occurs after the suspect is officially arrested and completes a set of activities, including being taken in to the police station, physical examination, collection of photos and fingerprints and booking. Some suspects are not notified until he/she has completed interrogation under effective physical restraint with the pretext of voluntary appearance, which may last more than 10 hours. There are many reported cases in which confessions have been extracted before the suspects explanations are recorded. Any suspect should be notified of his/her right to appoint legal counsel when he/she is effectively physically restrained, not when the statements being given by the suspect are being recorded.

Concerning the Japanese Government's statement that "The prosecutors and police must give due consideration so that such an interview can take place at the first available opportunity," there are

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146 Paragraph 167

147 Paragraph 170

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

Abuses of the rights defined in Articles 9, 10 and 14 have been recently reported. This means that the suspect's right to confidential communication with a counsel has been abused. As part of the efforts to defend the suspect's rights, counsel occasionally record instances of physical abuse or torture suffered by suspects and immediately have them reproduce the experiences of the suspects who have been subjected to coercive interrogations in a closed-door setting so as to record the same. Detention centers, however, uniformly and completely prohibit taping or videotaping detainees within interview rooms in detention centers using cameras and/or electromagnetic devices. Some wardens of detention centers have recently filed demands seeking disciplinary measures against counsels who have made tape or video recordings with the bar associations to which they belong.

In January 2011 and July 2012, the JFBA published statements urging detention centers to stop their practices going against the Covenants. However, the detention center authorities have refused to accept such recommendations. Some counsels complain that officers would stand immediately outside the interview room to watch them and the detainees and that they intruded into the room when they saw them trying to take out a mobile phone. Other counsels complained that detention center officers had told them that they would not let them leave if they did not delete the images of detainees stored in their mobile phones. They had been obliged to delete them, they said.

In addition, counsels observed different practices in penal institutions or substitute prisons that may have infringed upon the suspect's right to confidential communication with counsel.

1) Infringement of the right to confidential written communications

- Investigators investigated a solitary confinement cell where a detainee was detained under the pretext of the need to investigate a certain crime committed in the past outside the institution, then they confiscated the letters to be addressed to his/her counsel, and read them.
- Police officers took out a letter from an unsealed enveloped, reviewed it and refused to post the letter from a detention center or substitute prison
- An apology letter to be sent to the address of a suspect's counsel was read and permission to post was refused
- A four-page long note to be sent to the address of a suspect's counsel was read and permission to post was refused.
- A "Suspect's Notebook" (a book-form notebook for reporting experiences during interrogations to the suspect's counsel, which was developed by the JFBA) was read and permission to post was refused
- Letters sent and received between a person sentenced to death and his/her counsel were transcribed by officers in Miyazaki Prison and shown to prosecutors.
- Counsels have been denied interview with a detainee
- A request by a counsel to meet an inmate whose death penalty judgment had been finalized and binding, in order to know whether he/she intended to seek a retrial was rejected and 11 days later



the death penalty was executed

- Officers refused to receive sealed documents that counsels were going to give their clients, saying that the envelopes containing the documents must be unsealed and that the documents must be disclosed to them before they could be received.
  - Detention center officers refused to receive envelopes and writing pads that counsels asked them to hand over to detainees in order to help them write letters to the counsels, saying that only the envelopes and letter pads that the detainees bought within the penal institutions or substitute prisons are acceptable.
- 2) Infringement of the right to confidential communication during interview
- The general practice is that detention officers are present at the interview between a detainee and a counsel who has undertaken or will undertake his/her case of appeal for retrial. On January 30, 2013, the Hiroshima District Court found the presence of an officer at an interview between an inmate sentenced to death and his counsel to prepare for a retrial to be illegal and ruled that damages should be paid (this case is pending)
  - Police officers persistently questioned detainees in a substitute prison about their interviews with counsels and forced them to describe the contents thereof
  - Officers refuse to allow counsels to bring their mobile phones and/or video cameras into the interview rooms.

In the concluding observations issued in May 2013, the CAT recommended that the State party should “[g]uarantee all fundamental legal safeguards for all suspects in pre-trial detention, including the right of confidential access to counsel throughout the interrogation process”.

(4) Proposed Recommendations for the Concluding Observations

- 1) The State party should not prohibit counsels from bringing electronic devices into the interview rooms to meet with detainees in penal institutions
- 2) The State party should ensure that the right of detainees, both sentenced and unsentenced, to confidentially consult with counsels are respected in line with the international human rights standards
- 3) The State party should ensure that the right of detainees, both sentenced and unsentenced, to confidentially send and receive letters without censure are respected in line with the international human rights standards.

## 2 Treatment in Penal Institutions

### 2-1 Treatment in Penal Institutions

- (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)  
Not mentioned.
- (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Inmates are generally allowed to contact [1] relatives, [2] persons who need to visit in order to carry out business pertaining to their important concern. In addition, they may be permitted to contact [3] friends and acquaintances if specific requirements are met.<sup>148</sup>

### (3) Current Situation

The Act on Penal Detention Facilities and Treatment of Inmates and Detainees stipulates that the warden of a penal institution shall permit the sentenced person to receive the visit of (i) Person(s) who are relatives of the sentenced person; (ii) Person(s) who need to visit in order to carry out business pertaining to a personally, legally, or occupationally important concern of the sentenced person, such as reconciliation of marital relations, pursuance of a lawsuit, or maintenance of a business; (iii) Person(s) whose visit is deemed instrumental to the reformation and rehabilitation of the sentenced person, such as a person pertaining to the rehabilitation and guardianship of the sentenced person or a person who intends to employ the sentenced person after release (Article 111).

On the other hand, (iv) Friends or acquaintances other than the persons above mentioned, “may be permitted,” only “if it is deemed that there is a circumstance where the visit is necessary for the maintenance of a good relationship with the person or for any other reasons, and if it is deemed that there is no risk of causing either disruption of discipline and order in the penal institution or hindrance to the adequate pursuance of correctional treatment for the sentenced person.” The Act does not guarantee visits by friends or acquaintances as a right.

Immediately after the Act came into force, the restriction on visit requests by friends and acquaintances was eased and more visits by friends and acquaintances were permitted than earlier. After a period of time, however, the decisions regarding visit requests from friends and acquaintances became restrictive again, as if there was some kind of reaction to such a drastic increase in the number of visits. Now, requests to visit whose purposes may be met through letters are often rejected for the reason that there is no “circumstance where the visit is necessary.” Otherwise, excuses including “risk of causing disruption of discipline and order in the penal institution” and “risk of hindrance to the adequate pursuance of correctional treatment for the sentenced person” are extensively used in order to only allow visits in a restrictive manner.

One newspaper reported on a few cases of rejected visit requests (“Chunichi Shimbun”, article dated January 18, 2011). In Gifu Prison (Gifu Prefecture), a supporter, who had earlier been allowed to visit an inmate once per month, was denied his requests to visit the inmate from October 2010 and onwards for the reason that a “visit request from any persons other than family members may not be permitted.” In September 2010, a volunteer probation officer, whose task is to guide ex-inmates for rehabilitation after their release from prison, was denied his request to visit by Kasamatsu Prison (Gifu Prefecture), on the grounds that “the period before the planned release is too long.” In November 2010, a guarantor was denied the opportunity to visit Fukuoka Prison (Fukuoka Prefecture) and in December of such year, a prospective employer had his visit request denied by Fukushima Prison (Fukushima Prefecture).

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148 Paragraph 203.

It is likely that the increase in the number of rejected visit requests can be explained by the increased workload of the officers who have to attend to more and more visits. The Act on Penal Detention Facilities and Treatment of Inmates and Detainees stipulates that “(i) n cases where it is deemed necessary for the maintenance of discipline and order in the penal institution or adequate pursuance of correctional treatment of a sentenced person, or for any other reasons, the warden of the penal institution may have a designated staff member attend a visit for the sentenced person or make a sound or video recording of it (Article 112).” The provision, therefore, characterizes the necessity of officers being in attendance of visits as being an exceptional case. In reality, however, such attendance is a prevailing practice in relation to visits and unattended visits are unusual and exceptional. An increase in the number of visits necessarily causes a shortage of officers available for such attendances. Given that “appropriate contact with the outside world is instrumental to a sentenced person’s reformation and rehabilitation, and to his/her smooth re-entry into society,” it is desirable to generously accept visit requests and grant permissions. To harmonize both the following of the recommendation and the mitigation of officers’ workloads, unattended visits should be allowed to the greatest extent possible.

In addition, it is recommended that inmates be flexibly permitted to receive visits on weekends and holidays from their family members who live in remote locations. Possible alternatives to traditional visits, including by telephone or TV-phone, should be extensively examined for feasibility and trialled.

#### (4) Proposed Recommendations for the Concluding Observations

- 1) The State party should not prohibit counsels from bringing electronic devices into the interview rooms to meet with detainees in penal institutions or other similar facilities.
- 2) The State party should ensure that the right of detainees, both sentenced and unsentenced, to confidentially consult with counsels are respected in line with the international human rights standards.
- 3) The State party should ensure that the right of detainees, both convicted and unconvicted, to confidentially send and receive letters without censure are respected in line with the international human rights standards.

#### 2-2 Contact with the Outside World (Personal Correspondence)

##### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

##### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

As one of the provisions characterizing the Penal Detention Facilities Act, contact with outside persons is guaranteed through the allowance of correspondence within certain limits and clear

stipulation of the requirements for imposing restrictions.<sup>149</sup>

### (3) Current Situation

Article 126 of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees stipulates that the warden of a penal institution “shall permit a sentenced person to send and receive letters to and from another person”, except in cases where it is prohibited to do so by any specific provision. In addition Article 127(1) provides that “in cases where it is deemed necessary for the maintenance of discipline and order in the penal institution or for adequate pursuance of correctional treatment for a sentenced person, or for any other reasons, the warden of the penal institution may have a designated staff member examine the letters the sentenced person sends and receives.” The intention of the provision is to limit the examination of sent and received letters to the occasions where it is necessary and in principle to make letters free from examination. The notification issued by the Director of the Correction Bureau, Ministry of Justice, No.3350, titled, “Implementation of instructions about a sentenced person’s contact with the outside world (notification issued in response to an order)” confirms the intent of the Act and mentions that “since letters shall be examined ‘in cases where it is deemed necessary’ (Article 127(1) of the Act), attention should be paid to ensure that letters are assessed for necessity of examination in the light of the resulting workload of the officers and that letters are not indiscriminately examined.”

The obsolete Prison Act had, in principle, prohibited correspondence with persons other than family members and censored any sent or received letters. These practices lagged far behind international standards, and the necessity and importance to change them had been voiced in order to facilitate the reform of sentenced persons and their smooth re-entry to society. The aforementioned provision was introduced in response to such criticism. (See Article 110 of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees.)

However, even after the new Act has come into force, the same practices still continue; almost all the letters sent and received by sentenced persons are read by officers for the purpose of examining the same. In particular, letters sent to and received from counsels for the purpose of legal assistance are systematically and thoroughly examined by reading their contents. Even the letters written by sentenced persons to describe their treatment in their respective penal institutions are read and examined. Applications for human rights relief in relation with this practice have been filed with the JFBA and various bar associations. Article 127(2) of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees stipulates that “the letters a sentenced person sends to or receives from an attorney who discharges the duty prescribed in paragraph (1) of Article 3 of the Attorney Act with regard to the treatment that the sentenced person receives shall only be examined within the limit necessary to ascertaining that the letters are as such.” However, letters of this kind are also examined by reading their contents.

The practice of reading almost all the letters sent out and received by sentenced persons for the purpose of examination may compromise their reformation and rehabilitation or smooth re-entry to

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149 para 178

society and go counter to the purpose of the new Act, which aims to keep the restriction of outside contact to the minimum necessary. It also may infringe Article 21 of the Constitution and Article 19 (2) of the ICCPR, which guarantee the right to freedom of expression.

In particular, free and confidential communication with counsel in regard to legal matters must be guaranteed in light of the sentenced persons' legal right and right of access to court (prescribed in Article 32 of the Constitution and Article 14 (1) of the ICCPR. These rights have been internationally confirmed (See Article 8 of the Basic Principles on the Role of Lawyers adopted in the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990). On the contrary, the practice in Japanese penal detention facilities appears to challenge such rights; and thorough efforts appear to be encouraged to ensure that all the correspondence between the sentenced persons and their counsel are examined. Not only that, the practice of the penal detention facility authorities that do not hesitate reading and examining even the letters describing their treatment practices is highly unreasonable and lacks consideration of equality in the way that complaints to be filed by the sentenced persons are brought to the knowledge of the opposing party, i.e. the penal detention facility authorities.

The existing practice followed by the penal detention facility authorities should, therefore, be changed in such a manner as to keep the examination of letters sent and received by sentenced persons and the restriction on correspondence to the minimum necessary. In particular, in order to protect the legal right of sentenced persons, correspondence with counsel should not be examined, except where there are specific circumstances such as a real and concrete risk of disturbing discipline or order in the penal detention facilities suggested by considerations other than the letters.

#### (4) Proposed Recommendations for the Concluding Observations

- 1) The State party should respect the spirit of the law, which stipulates that “[i]n cases where it is deemed necessary” the letters the detainee who is not an unsentenced person sends and receives may be examined and change the ongoing practice in such a manner to make examinations exceptional.
- 2) The State party should ensure that the letters that the sentenced detainee sends to or receives from his/her counsel are in principle exempted from examination unless there are evident circumstances that justify the examinations.

### 2-3 Medical Care

#### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

#### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Government only mentions that “[c]lothing and bedding, meals, hygiene and medical care (bathing, physical exercise, health examinations, and medical care), and order and discipline for

*inmates are as previously reported.*"<sup>150</sup>

(3) Current Situation

1) Uprising in Tokushima Prison

On November 16, 2007, an uprising occurred among the inmates of Tokushima Prison. In such penal institution, a medical doctor had continued several inappropriate practices for a number of years, including frequent digital rectal palpation and "pinch tests" conducted by pinching inmates on the thigh and other body parts. The same medical doctor had left an inmate untreated despite his request for medical consultation, leading to the suicide of such inmate through despair. Anger against the medical doctor had widely spread among the inmates and the competent Penal Institution Visiting Committee had been very concerned about the development and recommended decisive measures including the dismissal of the medical doctor. The prison authorities, however, had failed to take any serious corrective measures. Instead, they had tried to transfer the inmates who had provided the relevant information to outsiders to another institution. The uprising by inmates occurred on November 16 against this backdrop.

The uprising triggered an investigation by the Ministry of Justice in 2007. A task force was set up and developed a report "The Tokushima Prison Task Force Report." The report confirmed that there had been some tendency toward frequent rectal palpation and recognized that practices of pain sensation tests (pinch tests) may have been misunderstood as provocation or punishment. The investigation was very limited in its scope. The task force interviewed only the medical doctor and personnel in the medical service division and asked a medical doctor not employed by the prison to review the medical records. The report expressed the commitment to "continue necessary investigations as part of the efforts to fulfill the administrative responsibilities." No subsequent investigation has been made public.

2) Relations between medical service and treatment section

3) One of the most important backdrops of the uprising in Tokushima Prison was the status of the medical service section that was not independent of the treatment section. The Correctional Administration Reform Council expressed concerns about the practice that had allowed a prison officer (assistant nurse) to determine whether or not medical consultation was necessary for individual inmates. It also noted that in practice greater considerations were paid to the ability of the security section to make the officers available to escort the inmates who needed outside medical consultation or treatment than purely medical needs. It noted that "given that a questionnaire survey among correctional medical officers revealed that roughly half of them had received some opinions from officers in other sections about their medical evaluations, it would be difficult to deny the possibility that different requests from other sections may influence medical evaluations." This practice stems from the ministerial instruction that requires a nurse or assistant nurse to evaluate medical consultation requests for urgent need before they report the accepted cases to the medical doctors, except where medical doctors can immediately understand the details in relation with the

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150 Paragraph 204.

requests.<sup>151</sup> Such practice was the origin of the inmates' complaints about their urgent medical needs being left unmet.

#### Chronic shortage of full-time medical doctors

In total, 227 full-time medical doctors are officially required to meet the medical needs present in 188 penal institutions. As of April 2013, 178 medical doctors worked on a full-time basis at such institutions (an availability of 83%). 12 institutions had no medical doctors. 19 institutions had vacant medical doctor posts.<sup>152</sup> The shortage of medical doctors in penal institutions is nothing short of horrifying.

To address the chronic shortage of full-time medical doctors, the Ministry of Justice contracted out local governments and other organizations to provide medical care to inmates within several penal institutions including Mine, Kitsuregawa, and Shimane Asahi Rehabilitation Program Centers as a part of the preferential measures prescribed in the Act on Special Districts for Structural Reform. The surveys conducted among inmates on the outsourced medical care services indicate a high level of satisfaction.<sup>153</sup>

The JFBA has recommended that outsourcing medical care to independent medical institutions should be further extended. The Ministry of Justice has limited the outsourcing initiative to Asahikawa and Nagano Prisons, claiming budget difficulties. Apparently there is no likelihood that such initiative will prevail in the penal institutions across the nation.

#### 4) Inadequate provision of medical information to inmates

Article 14(1) of The Ministerial Instruction, titled, "Instructions on the treatment of medical records and information of detainees" dated February 14, 2007, stipulates that medical information should be provided to inmates. Subsection (2) of the same article at the same time, stipulates that medical information may not be provided to inmates when the provision of such information may physically or mentally harm the patients, when a patient has an extremely poor ability to determine whether his own deed is or not proper, or when there are other reasons. In practice, the provision of information is extremely inadequate.

Article 15 of the aforementioned Ministerial Instruction only stipulates that "medical information shall be orally provided. If any specific necessity is identified, taking into consideration the information's difficulty level and patient's ability to understand the information, relevant information shall be given not only orally but also in writing." The instruction does not allow medical information to be given through disclosure of medical records."

#### 5) Inadequate cooperation with outside medical institutions

The Ministerial Order No.15, titled "Regulations for Insurance-covered medical care institutions and medical and health care professionals" and dated April 30 1957, provides that insurance-covered medical doctors must take appropriate measures including referral to other insurance-covered medical care institutions if their patients have diseases or injuries that are

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151 Instructions on the treatment of medical records and information of detainees" Instruction No.3293 issued by Director of the Medical Care Division, Ministry of Justice

152 Minute No.18 of Committee on Judicial Affairs on June 14, 2013 at the 183rd ordinary session of the Diet

153 Future Outsourcing of Operations at Penal Institutions (Ministry of Justice, August 18, 2008)

beyond their own specialties. The medical practice rendered at penal institutions is not covered by medical insurance and therefore the aforementioned ministerial order are not applicable. Referral to other outside specialists is not required and outside medical institutions have little chance to monitor or criticize the medical practice inside the penal institutions.

6) Recommendations made by the Experts' Working Group

In July 2013, the Ministry of Justice set up an Experts' working group on future medical service at correctional facilities to address the issues including recruitment and better employment conditions for medical officers and medical service. The working group released its recommendations on January 21, 2014.

(4) Proposed Recommendations for the Concluding Observations

- 1) The State party should develop the scheme in the penal institutions that enables physicians affiliated with the neighboring hospitals, both government and private, to deliver medical services at the institutions and interact with medical officers there, and provides the medical officers with training opportunities for improving their medical expertise.
- 2) The State party should ensure that detainees have access to medical service in principle whenever they apply for it unless evidently they have no needs for medical treatment.

2-4 Solitary Confinement and Confinement in a Protection Room

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Refer to the paragraph 21 mentioned above.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

If an inmate is likely to commit self-injurious behaviour, shouts in a loud voice or continues to makes noise in violation of a prison officer's order to cease doing so, is likely to inflict injury on others, or is likely to damage or defile facilities, equipment, or any other property of the penal institution, and besides, if it is especially necessary in order to maintain discipline and order in the penal institution, the inmate may be confined in a protection room pursuant to applicable laws.

When an inmate is confined in a protection room, or when the confinement period is extended, the warden of the penal institution must seek an opinion from the in-house physician about the health condition of the inmate.<sup>154</sup>

(3) Current Situation

Although the Act on Penal Detention Facilities and Treatment of Inmates and Detainees stipulates that confinement in a protection room should not last beyond seventy-two hours, it also allows the warden of the penal institution to continue and renew the confinement every forty-eight hours thereafter. The Act only requires the warden only to obtain the opinion of a medical doctor, not to

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154 Paragraph 206.



have a medical doctor examine the confined inmate.

The Act establishes strict requirements that justify isolation (confinement in an inmate's room throughout the day and night) of sentenced persons (Article 76 (1)) and provides that complaints may be filed against such isolation. The actual practice is that a new form of confinement in an inmate's room throughout the day and night (operational isolation) has been widely introduced. Some inmates have been confined in an isolated condition for several to more than ten years. They have been largely denied access to collective detention without any official isolation procedures being undertaken. The regulations on the treatment of detainees by penal detention facilities were amended on June 1, 2011 and introduced a provision that the warden is to make efforts to provide inmates with the opportunity to receive collective detention during physical exercise. In other detention settings, however, those inmates continue to experience isolation treatment in effect. Nonetheless, the availability of means for making a complaint against the effective isolation is limited, and there is no limitations period or requirement to obtain the opinion of a medical doctor.

In its Concluding Observations on the 5th periodic report submitted by Japan, the CCPR was *“concerned about reports that inmates may be confined to protection cells without prior medical examination initially for a period of 72 hours, which is indefinitely renewable, and that a certain category of prisoners are placed in separate ‘accommodating blocks’ without the opportunity to appeal against this measure,”* and recommended the Japanese Government to *“introduce a maximum time limit and require the prior physical and mental examination of an inmate for confinement in protection cells and discontinue the practice of segregating certain inmates in ‘accommodating blocks’ without clearly defined criteria or possibilities of appeal.”*

It should be noted that on January 21 2013, the Wakayama Bar Association found that an inmate had been subjected to confinement in an inmate's room throughout the day and night for 1,736 days (90.75%) of the overall sentence period of 1,913 days between March 9, 2005 and June 6, 2010, and decided that such treatment was a human rights abuse as it infringed upon and humiliated his personality and human dignity, and thus they issued a recommendation that the practice of “effective isolation” should be eliminated. In addition, five bar associations issued recommendations in relation to six cases that criticized such significantly long operational isolation as constituting infringements of the inmates' fundamental human rights. The JFBA also issued a similar recommendation against the Yokohama Prison on June 18, 2009.

#### (4) Proposed Recommendations for the Concluding Observations

- 1) The State party should ensure that the inmates consult with a physician timely when they are confined to protection cells.
- 2) The State party should ensure that inmates, who are confined in protection cells, are encouraged to adapt to group treatment by providing counseling and offering opportunities for collective bathing, physical exercises and recreations in order to avoid unjustifiably prolonged effective confinement.

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

*20. The Committee is concerned that the Penal Institution Visiting Committees, the Detention Facilities Visiting Committees established under the 2006 Act on Penal Detention Facilities and Treatment of Inmates and Detainees, the Review and Investigation Panel for Complaints from Inmates of Penal Institutions reviewing complaints that have been dismissed by the Minister of Justice, and the Prefectural Public Safety Commissions responsible for reviewing complaints, petitions for review and reports of cases submitted by detainees lack the independence, resources and authority required for external prison or detention monitoring and complaint mechanisms to be effective. In this regard, it notes the absence of any verdicts of guilt or disciplinary sanctions against detention officers for crimes of assault or cruelty during the period from 2005 to 2007 (art. 7 and 10).*

*The State party should ensure (a) that the Penal Institution and Detention Facilities Visiting Committees are adequately equipped and have full access to all relevant information in order to effectively discharge their mandate and that their members are not appointed by the management of penal institutions and police detention facilities; (b) that the Review and Investigation Panel for Complaints from Inmates of Penal Institutions is adequately staffed and that its opinions are binding on the Ministry of Justice; and (c) that the competence for reviewing complaints submitted by detainees is transferred from the Prefectural Public Safety Commissions to an independent body comprising external experts. It should include in its next periodic report statistical data on the number and nature of complaints received from prisoners and detainees, the sentences or disciplinary measures imposed on perpetrators and any compensation provided to victims.*

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

As one of the provisions that characterizes the Penal Detention Facilities Act, “(t)he transparency of correctional administration shall be secured by, among others, the establishment of the Penal Institution Visiting Committee, comprised of third parties.”<sup>155</sup>

(3) Current Situation

Already seven years have passed since the penal institution and detention facilities visiting committee system started. The committees have contributed to more transparent administration of penal institutions and promotion of public monitoring. The Ministry of Justice has been reluctant to set up a nationwide organization that allows the committee members to exchange opinions and share their experiences probably because of the budgetary limitations. It is not interested in the committees’ voluntary training, education, study efforts or, experience building or sharing.

Committees’ recommendations and measures taken by the institution authorities in response are published in the Ministry of Justice’s website. In April 2012, the regulations on penal detention facilities treatment of detainees were amended and a provision that “the Warden shall make efforts to

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155 Paragraph 212.

make necessary measures so as to reflect the recommendations delivered by the committees to a maximum extent” was added.

As above mentioned, in November 2007, several inmates collectively assaulted an officer in Tokushima Prison. The JFBA investigation found that inappropriate and abnormal “medical” practice by a medical doctor to inmates in the institution was behind the incident.

The penal institution and detention facilities visiting committee for the institution had been receiving many complaints from inmates. Some inmates demanded to install a surveillance video for watching the medical doctor’s practice and others refused the doctor’s consultation. The committee recommended the institution authorities to take remedial measures, although they did nothing. The committee continuously received more complaints about medical care in the institution, and presented specific cases to the authorities and stepped up its recommendations to train the medical doctor and to dismiss him if he was unlikely to change his practice. The authorities, however, took no actions.

If the authorities had accepted the committee’s recommendation and taken remedial measures to improve medical care and doctor’s behaviors, the incident would not arguably have happened.

In Paragraph 20 of its Concluding Observations on the 5th periodic report submitted by Japan, the CCPR recommended that “[t]he State party should ensure (a) that the Penal Institution and Detention Facilities Visiting Committees are adequately equipped and have full access to all relevant information in order to effectively discharge their mandate and that their members are not appointed by the management of penal institutions and police detention facilities.”

#### (4) Proposed Recommendations for the Concluding Observations

- 1) The State party should provide adequate budgetary and other assistances for the penal institution and detention facilities visiting committees to ensure that their members actively participate in training and educational studies, and build and share experiences.
- 2) The State party should take to require the penal institutions and detention facilities to respect the recommendations presented by the relevant visiting committees through legislative or administrative measures.
- 3) The State party should ensure that the penal institution and detention facilities visiting committees have adequate access to the relevant information, as necessary.

## 2-6 Complaint Mechanisms

### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Refer to the paragraph 20 mentioned above.

### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

When an inmate is dissatisfied with a measure decided by the warden of the penal institution (e.g. prohibition on the delivery of correspondence, disciplinary punishment, etc.), the inmate may file a claim for review or a reclaim for review to seek the rescission of such measure, etc. and when dissatisfied with an act actually performed by a staff member of the penal institution (e.g. illegal

physical assault against the inmate's body, etc.), the inmate may report the case for which he/she intends to request confirmation; and in either case, the initial filing or reporting must be made to the Superintendent of the Regional Correction Headquarters, and if dissatisfied with the Superintendent's decision, a complaint may be submitted to the Minister of Justice. When an inmate is dissatisfied with any kind of treatment he/she has received, he/she has may file an appeal with the Minister of Justice, the Inspector, or the warden of the penal institution.<sup>156</sup>

### (3) Current Situation

The Minister of Justice must consult the Review and Investigation Panel for Complaints from Inmates of Penal Institutions (the "Panel") before it can reject a request for review, and must make decisions on individual cases by respecting the recommendations delivered by the Panel, to the maximum extent possible.

The Panel, however, has no dedicated secretariat staff. Instead, staff of the Secretarial Division of the Secretariat for the Minister of Justice serves concurrently as such secretariats. They are almost incapable of investigating cases if there are any disputes on factual matters and they lack the guarantee of independence.

Under the current complaint filing procedures counsels cannot represent the claimant in the complaint. Further, the procedures have no mechanism in place to suspend disciplinary actions. When the complaint about a disciplinary action is filed with the panel, therefore, the action has already been executed. Many complaints about disciplinary actions have been rejected under the pretext that they are not able to bring about any benefit in regard to executed actions.

### (4) Proposed Recommendations for the Concluding Observations

- 1) The State party should enhance the Panel's investigative capability by allocating dedicated staff to help Panel members effectively address specific complaints
- 2) The State party should give a solid legislative framework to the Panel, which lacks legislative foundation at present. It should also appoint independent experts as Panel members and legally commit the Ministry of Justice to the Panel's recommendations.
- 3) The State party should make efforts to shorten the time window from filing complaints until their review at the panel.

## 3 Substitute Detention System (*Daiyo Kangoku*)

### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Refer to the paragraph 18 mentioned above.

The CCPR first addressed the Substitute detention system (*Daiyo Kangoku*) in 1988. The Committee discussed the system as one of the major concerns in its subsequent considerations in 1993 and 1998. The term "*Daiyo Kangoku*" has been internationally used to designate the system specific

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156 Paragraph 207.

to the Japanese penal system.

The Concluding Observations of the CCPR in 2008 first recommended the abolishment of the system. The salient recommendation mentions the Japanese Government's persistent negligence in positively addressing the concerns that the Committee had repeatedly expressed.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

1) The following is a summary of Paragraph 181 and the following parts of the Government's report;

*D. Substitute detention system*

*1. Substitute detention system*

*215. In Japan, detention facilities are set up within the Prefectural Police Headquarters and the police stations. While the Code of Criminal Procedure (art. 64, para. 1) requires that suspects be detained in penal institutions, the Penal Detention Facilities Act (art. 15, para. 1) stipulates that suspects may be detained alternatively in detention facilities, instead of penal institutions. This system, which allows suspects to be detained in detention facilities, is called the "substitute detention system."*

*216. For the details about this system, refer to paragraph 5 of Comments by the Government of Japan on the Concluding Observations of the Human Rights Committee (CCPR/C/JPN/CO/5).*

*2. Detention Facilities Visiting Committee*

*217. A Detention Facilities Visiting Committee is an organ composed of external third parties. It is established in each Prefectural Police Headquarters in order to increase the transparency of the operational status of detention facilities and ensure the appropriate treatment of detainees.*

*220. The Committees have submitted wide-ranging opinions to detention services managers thus far, including opinions on the installations at the facilities, the treatment of detainees, and the working environment of detention officers. Through measures that have been taken by the detention services managers in response to these opinions, a more appropriate treatment of detainees has been achieved.*

*221. These opinions and the measures that have been taken by the detention services managers are open to public view on the website of each Prefectural Police Headquarters.*

*3. Appeal system*

*222. The Penal Detention Facilities Act sets up three appeal systems relating to detention facilities, specifically, Claim for Review of an act of disposition, etc., Report of Cases for illegal use of physical force against the body, and the Filing of Complaints with regard to treatment in general.*

*4. Review by Prefectural Public Safety Commission*

*224. (omitted) A review of appeals by Prefectural Public Safety Commissions is implemented in an objective and fair manner from a third party standpoint.*

*5. Appeals by detainees*

*226. In addition to the appeal system explained above, a detainee or anyone else dissatisfied with the execution of duties by a police official may file a complaint with the Prefectural Public*

*Safety Commission in accordance with the Police Law. The number of complaints filed by detainees and other persons with regard to detention service was 14 in 2006, 5 in 2007, 10 in 2008, 18 in 2009, and 17 in 2010, and all these complaints were adequately addressed.*

6. *Disciplinary action imposed on detention officers; compensation provided to victims*

227. *Looking into the cases involving a final and binding judgment of conviction for the crimes of assault and cruelty by special public officers and the crimes of assault and cruelty causing death or injury by special public officers for the period from the beginning of 2006 to July 2011, there were two cases of crimes of assault and cruelty by special public officers (one in 2008 and the other in 2011, each case involving an indecent act against a female detainee) and disciplinary dismissal was imposed on both of the detention officers concerned.*

228. *The total amount of compensation provided to the victims for the period from 2006 to 2010 was approximately 72.55 million yen. This was the compensation paid to the bereaved family in 2009 based on a final and binding judgement in a case where a claim for damages was filed because the detainee had died in 2004 while a gag had been used.*

- 2) The Japanese Government has merely explained the complaint filing system that Prefectural Public Safety Commissions have put in place.<sup>157</sup> It has not described the decisions about the complaints filed under the Act on Penal Detention Facilities and Treatment of Inmates and Detainees.<sup>158</sup> It has also failed to disclose the details of decisions on complaints filed against affairs of the detention facilities.

(3) Current Situation

1) Concluding Observations of the CAT (CAT/C/JPN/CO/1)

In its first consideration of the initial report on Japan, issued in 2007, the CAT mentions “15. *The Committee is deeply concerned at the prevalent and systematic use of the Daiyo Kangoku substitute prison system for the prolonged detention of arrested persons even after they appear before a court, and up to the point of indictment. This, coupled with insufficient procedural guarantees for the detention and interrogation of detainees, increases the possibilities of abuse of their rights, and may lead to a de facto failure to respect the principles of presumption of innocence, right to silence and right of defence.*” The Committee then identified 12 issues of concerns and recommended as follows;

***The State party should take immediate and effective measures to bring pre-trial detention into conformity with international minimum standards. In particular, the State party should amend the 2006 Prison Law, in order to limit the use of police cells during pre-trial detention. As a matter of priority, the State party should:***

***(a) Amend its legislation to ensure complete separation between the functions of investigation and detention (including transfer procedures), excluding police detention officers from investigation and investigators from matters pertaining to detention;***

***(b) Limit the maximum time detainees can be held in police custody to bring it in line with***

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157 paragraph 185

158 paragraph 186

*international minimum standards;*

*(c) Ensure that legal aid is made available to all detained persons from the moment of arrest, that defence counsel are present during interrogations and that they have access to all relevant materials in police records after indictment, in order to enable them to prepare the defence, as well as ensuring prompt access to appropriate medical care to persons while in police custody;*

*(d) Guarantee the independence of external monitoring of police custody, by measures such as ensuring that prefectural police headquarters systematically include a lawyer recommended by the bar associations as a member of the Board of Visitors for Inspection of Police Custody, to be established as of June 2007;*

*(e) Establish an effective complaints system, independent from the Public Safety Commissions, for the examination of complaints lodged by persons detained in police cells;*

*(f) Consider the adoption of alternative measures to custodial ones at pre-trial stage;*

*(g) Abolish the use of gags at police detention facilities.*

- 2) Reasons why the Japanese Government maintains the *Daiyo Kangoku* substitute prison system (Comment).

In response to the Committee's recommendations, the Japanese Government commented that "Under the Japanese criminal justice system, a decision on whether or not to indict a suspect is required through comprehensive and careful investigations within a relatively limited detention period of 20 days maximum. Therefore, it is necessary to detain the suspect 1) in a location easily accessible to the investigating bodies and 2) in a place with appropriate interrogation rooms and related facilities. It is also necessary that the location should be easily accessible for the detainee's defense counsel and family members." The Japanese Government has suggested that the abolishment of the *Daiyo Kangoku* substitute system is unjustifiable by mentioning the limited number of penal institutions, the measures taken to increasing the convenience of interviews, and the thorough separation between the investigation and detention sections within each police station.

- 3) The Japanese Government's comments fail to justify the continued existence of a system that violates the international human rights law.

The Japanese substitute system, which allows detention in a police station to last over 20 days, has no comparable system anywhere else in the world. The international community has expressed concern about such system for more than 30 years. The Japanese Government's claim that there are many difficulties in adding detention centers has no sufficient justification.

Many cases of false confessions extracted in police detention facilities have been reported during the past five years since the last consideration by the CCPR. Among them, a person was arrested on a false charge of sending threatening e-mails. The e-mails had been sent by another person who had remotely controlled the falsely charged person's computer. This case was widely publicized in 2012.

The true perpetrator was later identified and the case proved to be a perfectly false charge. Of the four wrongly arrested and innocent people, two persons were forced to submit false confessions. One person, who was a minor, reported that he had been threatened by Kanagawa Police Department officers. He said he had received different forms of intimidation, including words such

as “if you continue to deny your responsibility, you will be sent to a juvenile reformatory,” “if your case is sent to the prosecutor’s office, your case will be brought to the court. Many people will come to see you, and your true name will be reported by the mass media,” and “Produce evidence showing your innocence.” A counsel reported that his client, who was falsely charged on a similar suspicion but eventually did not falsely confess, had been interrogated by Osaka Prefectural Police Department officers in a manner designed to impose psychological pressure without listening to his claims of innocence. Mie Police Department officers acknowledged that they had interrogated a suspect over a period of 12 days, amounting to roughly 50 hours of interrogations, despite his denials of responsibility for the offence. They said that they had conducted 24 interrogation sessions and that the longest session had lasted roughly eight hours.

As consistently recommended by the JFBA, there is an urgent need for the visualization of interrogations, i.e., videotaping the entire process of the interrogations for the purpose of avoiding “the risk of prolonged interrogations and abusive interrogation methods with the aim of obtaining a confession.” The JFBA does not insist on the immediate and full abolishment of *Daiyo Kangoku*. Rather, the detention of suspects who deny their charges, as well as juvenile suspects, should firstly be abolished because of the possible grave consequences in such cases. The Japanese Government claims that this selective abolishment is impossible, which strongly suggests its intention to continue to operate *Daiyo Kangoku* to obtain confessions, true or false, from the detainees.

While the use of gags, which the JFBA has been strongly demanded be abolished, has progressively decreased as more protection rooms have been constructed, such practice has not completely come to an end. As mentioned in the Government report, a detainee died while a gag was used. The liability of the Government was confirmed by a final and binding judgement. It is strongly desirable to develop measures to reduce the use of gags and set forth the timeline for the abolishment of such practice.

#### (4) Proposed Recommendations for the Concluding Observations

- 1) The State party should revise the 2006 Prison Act in a direction of complying with the international minimum standards for the custody at pre-trial stage. It should limit a period of police detention within 24-48 hours and abolish the substitute detention system (*Daiyo Kangoku*), which allows the law-enforcement agency to continue to detain suspects in detention facilities operated by the police after the court rules for longer detentions.
- 2) The State party should take the urgently-needed corrective measures:
  - [1] Revise the relevant laws in a direction toward completely separating investigation function from detention one by excluding detention officers from investigation activities and excluding investigators from detention activities including escorting.
  - [2] Define the maximum period during which suspects may be detained in police detention facilities in a manner to be consistent with the international minimum standard.
  - [3] Ensure that suspects have access to counsel for legal assistance immediately after they are arrested and detained to prepare for defense, allow counsel to attend the interrogations on the detained suspects, ensure that detained suspects and their counsels have access to the police



records once they are prosecuted, and ensure that adequate medical service are quickly delivered to detained suspects during the detention.

- [4] Ensure that each prefectural police detention facility visiting committee includes, as a member, a counsel who is recommended by a relevant prefectural bar association to enhance the independency of the said committees whose mission consists in monitoring the police detention practices at the police stations under the relevant Prefectural Police Departments.
- [5] Establish a complaint review mechanism that is independent of the prefectural public safety commissions to effectively address the complaints filed by the suspects detained in the police detention facilities.
- [6] Review the ongoing practices followed by the law-enforcement agency before the cases are brought to trial in order to adopt different practices.
- [7] Abolish the use of gags in the police detention facilities

## 1 Re-Entry Permit System under the Immigration Control Act

### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

Paragraph 18 of the Concluding Observations issued by the Committee on the Japanese Government's Fourth Periodic Report (CCPR/C/79/Add.102) recommended as follows;

*18. Article 26 of the Immigration Control and Refugee Recognition Act provides that only those foreigners who leave the country with a permit to re-enter are allowed to return to Japan without losing their residents status and that the granting of such permits is entirely within the discretion of the Minister of Justice. Under this law, foreigners who are second- or third-generation permanent residents in Japan and whose life activities are based in Japan may be deprived of their right to leave and re-enter the country. The Committee is of the view that this provision is incompatible with article 12, paragraphs 2 and 4, of the Covenant. The Committee reminds the State party that the words "one's own country" are not synonymous with "country of one's own nationality". The Committee therefore strongly urges the State party to remove from the law the necessity to obtain a permit to re-enter prior to departure, in respect of permanent residents like persons of Korean origin born in Japan.*

### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Under the Immigration Control Act amended in 2009, a new system of residence management is scheduled to be launched in July 2012, including a special re-entry permit system that will, in principle, allow a foreign national having a valid passport and a valid residence card (or special permanent resident certificate, in the case of a special permanent resident) to re-enter Japan within one year (or two years, in the case of a special permanent resident) without having to obtain a re-entry permit.<sup>159</sup>

### (3) Current Situation

A foreign national who is to depart from Japan and stay abroad for more than two years with the intention of re-entering Japan has to get re-entry permission and special permanent residents have no guaranteed right to return to Japan as a right of repatriation. South and North Korean residents of Japan who have special permanent resident status and who have no passports issued by their own nation or who have only North Korean passports are deemed not to have a valid passport and thus cannot enjoy exemption from the requirement to get a re-entry visa to temporarily leaving Japan during their permitted period of residence. (Article 26(2) of the Immigration Control Act and Article 23(2) of the Special Act on the Immigration Control of, Inter Alia, Those Who Have Lost Japanese Nationality Pursuant to the Treaty of Peace with Japan)

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159 Paragraph 231.

## 2 Refugee Policies in Japan

### 2-1 The 2005 Amendment of the Immigration Control Act

#### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Refer to the paragraph 25 mentioned above.

#### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The amended Immigration Control Act entered into force on May 16, 2005, aiming to: add permission for a provisional stay system; stabilize the legal status of those who are recognized as refugees; and review the system for filing an objection.<sup>160</sup>

Under the refugee examination counselors system launched in May 2005, the Minister of Justice is required to seek opinions from refugee examination counselors before making any decision with regard to any case of objection against a disposition denying refugee status.

Refugee examination counselors are selected from persons with extensive experience or academic standing who are acting in a neutral position in broad-ranging areas, based on the recommendation of the JFBA, the UNHCR, NGOs experienced in refugee support, and others. As a neutral and fair third party organization, these counselors are responsible for the examination of refugee cases. Up to the end of July 2011, there have not been any cases in which the majority opinion submitted by the refugee examination counselors has not been accepted. The number of refugee examination counselors is being increased in phases (from 28 to 56), in order to expedite objection filing procedures.

Refugee-related administration by the Government of Japan, therefore, is being implemented with respect for the opinions raised by the third-party organization established under the refugee examination counselor system to examine and double-check the applications of those seeking protection from a neutral and fair position. Regardless of whether or not an objection has been filed under the refugee examination counselor system, an applicant dissatisfied with a disposition may use administrative litigation to seek a judicial remedy.<sup>161</sup>

#### (3) Current Situation

##### 1) Provisional stay

The amended Immigration Control Act stipulates that provisional stays should, in principle, be granted to foreign nationals who have filed an application for recognition of refugee status. The Act, however, includes numerous barriers that may allow the Government to exclude the applicant from such basic principle. Specifically, it will not grant the stay (a) if the applicant filed an application for recognition of refugee status after more than six months elapsed from the date they landed in Japan, (b) if the applicant did not enter Japan directly from a territory where they had a

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160 Paragraph 233.

161 Paragraph 246.

well-founded fear of being persecuted; and (c) if there are sufficiently good reasons to suspect that they are likely to escape. (Article 61.2.4.1)

These exclusion criteria are very extensively applied or as a result, the grant rate has remained as low as approximately 10% since 2005, when the amended act came into force. In 2011, 71 applicants were granted a provisional stay, while 618 refugee status applicants were denied. Of 618 rejected applicants, 455 applicants were rejected a provisional stay on the ground that they had applied for refugee status after more than six months had elapsed from the dates on which they landed and 337 applicants were rejected because deportation orders had already been issued against them. (It should be noted that the different rejection grounds overlap in such cases.) Once a provisional stay has been denied, the applicants for refugee status face the same deportation procedures and detention as undocumented foreigners.

A provisional stay will not be renewed once the refugee status determination procedures have led to a negative decision. The refugee status applicants who are denied protection after administrative procedures will face the same treatment as undocumented foreigners once their provisional stay expires, regardless of their need to prepare for and/or be involved in a judicial review.

## 2) System for filing objections to negative decisions on refugee status applications

The amended Act launched new objection examination procedures involving the Refugee Examination Counselors. Despite the implementation of the system, there has been, however, no substantial increase in the number of cases whose original negative decisions were revoked and which have subsequently been granted refugee status. Rather, the Ministry of Justice rejected several objection cases despite the fact that the counselors who reviewed those cases recommended that these cases should be granted refugee status in 2013. Indeed, the minister did not respect the counselors' opinions.

The number of applicants for refugee status who were granted the requested status at the objection instance was 15 in 2005, compared with 6 in 2004. The figures, however, decreased later, being 12 in 2006 and 4 in 2007. No constant increase in accepted cases has been achieved. In 2011, 14 refugee status applicants were granted the requested status at the objection instance, although the number of decisions at the objection instance also increased up to as many as 880 cases in the same year, as compared with 195 cases in 2005. The numbers of applicants for refugee status who were granted the requested status in the objection instance have been largely at the same level, while the decisions on the refugee status applications at the second administrative instance have significantly increased. Rather, the reality is that more and more refugee status applicants are drastically losing their chance of their claims being accepted under the objection procedures.

Under the Refugee Examination Counselors system, immigration officers continue to be responsible for administrative activities including the provision of documentation to the Counselors. There is always possibility of an immigration officer's views influencing the Counselors. The details related to the process for assigning Counselors have not been disclosed. Many Counselors, who have some experience or academic standing, have no relevant experience for determining eligibility for refugee status in the past. It should be noted that at least 20 cases that were rejected by the Counselors were found eligible for refugee status in the subsequent judicial review.

The protracted nature of the objection review procedures is also problematic. A 6-month requirement for the first administrative instance for refugee status determination has been set up and largely respected. No specific period requirement, on the contrary, has been established for the second instance. The backlog of objections against the original negative decisions has remarkably increased against the background of the recent increase in the numbers of objection cases. In effect, of the 5048 cases that have been brought to the second instance since 2005, only 2578 cases have received decisions. In 2011 alone, 880 decisions were made on objection cases, while 1719 objections were filed against negative first instance decisions.

Eventually, decisions on objection cases often require prolonged periods, which may reduce many applicants for refugee status to a vulnerable situation without access to employment or medical insurance.

## 2-2 Humanitarian Protection

### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Even in the case where a foreign person does not fall under the category of a refugee as defined in the UN Refugee Convention, etc. and is not recognized as a refugee, if it is difficult for such person to return from Japan because of the circumstances in his/her homeland or for other reasons, or if it is appropriate to permit a stay in Japan because of special circumstances, the Government finds that such circumstances require humanitarian consideration and therefore grants special permission to stay in Japan. The numbers of foreign nationals who were granted special permission to stay in Japan through this approach were 53 in 2006, 88 in 2007, 360 in 2008, 501 in 2009, and 363 in 2010. In 2010, the Japanese Government in essence provided shelter to 402 foreign nationals, including 39 persons recognized as refugees. As for the treatment of applicants for refugee status, please refer to the paragraphs for article 13.<sup>162</sup>

### (3) Current Situation

In 2011, 248 foreign nationals were granted special permission to stay in Japan on humanitarian grounds, showing a declining trend in comparison with the record high of 501 persons in 2009. On the other side, the recent numbers of refugee status applications have remained at almost the same level or somewhat increased, with 1,388, 1,202 and 1,867 foreigners applying for refugee status in 2009, 2010 and 2011, respectively. The percentages of applicants for refugee status who were granted humanitarian permission to stay have significantly reduced.

Only 7 and 14 applicants were granted refugee status at the first and second instances, respectively in 2011. The scarcity of accepted applicants strongly suggests that many potentially eligible refugees

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162 Paragraph 234.

may not have been duly recognized as such, but instead have been protected purely on humanitarian grounds.

As opposed to the criteria to determine eligibility for refugee status applicants, the potential beneficiaries and eligibility criteria for humanitarian protection are not well defined. Procedural guarantees are not established for humanitarian protection. Specifically, the objection examination procedures are operated in a manner so as to ensure that the Minister's decisions reflect the opinions delivered by refugee examination counselors. Eligibility for humanitarian protection may be determined independently of, or contrary to, the counselors' opinions.

Myanmarese nationals have accounted for an overwhelming majority of the humanitarian protection beneficiaries, with 87.9 and 79.0% for 2010 and 2011, respectively.

The immigration statuses granted to humanitarian protection beneficiaries are greatly different from those for the recognized convention refugees.

Recognized refugees are typically granted "long-term resident" status, while humanitarian protection beneficiaries are usually granted a status on the grounds of "designated activities," except for those beneficiaries who have proven a preceding residence period of ten or more years. The status on the grounds of designated activities does not allow the status holder to reunite his/her family members in Japan. Recognized refugees have access to support programs provided by the Refugee Assistance Headquarters (hereafter, "RHQ"), an affiliated organization of the Ministry of Foreign Affairs, while humanitarian protection beneficiaries have no access to such assistance.

## 2-3 Refugees under the UN Refugee Convention

### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Refer to the paragraph 25 mentioned above.

### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Japan recognized 577 foreigners as refugees for the period from 1982, when the refugee recognition system was established, to the end of 2010. During the same period, the Government received refugee status applications from 9,887 persons, and among them, 887 applications were withdrawn and 7,438 were denied.<sup>163</sup>

### (3) Current Situation

The recent numbers of first instance decisions (positive decisions) per year<sup>164</sup> have been 1,848 (22), 1,455 (26), 2,199 (7) and 2,198 (5) for 2009, 2010, 2011 and 2012, respectively. The recognition rates, defined as positive first instance decisions divided by the total number of first instance decisions per year, were 1.2, 1.8, 0.3 and 0.2%, respectively.<sup>165</sup>

Similarly, the recent numbers of second instance decisions were 308 (8), 451 (13) and 880 (14) for

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163 Paragraph 235.

164 Press release issued by MOJ. The decision cases include the withdrawn cases.

165 Published by the Ministry of Justice. The decisions include withdrawals.

2009, 2010 and 2011, respectively. The corresponding recognition rates were 2.6, 2.9 and 1.6%, respectively.

Almost all the refugee status applicants who have been determined as refugees were those who came from Myanmar. In fact, Myanmarese asylum seekers accounted for 94.9 and 85.7 % of the combined refugee status applicants determined as refugees at the first and second instances in 2010 and 2011, respectively. To the contrary, no Turkish asylum seekers, including Kurds, have been successful in achieving refugee status despite a total of 1,489 applications being filed.

## 2-4 Resettlement

### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Japanese Government reached a Cabinet understanding, titled “Concerning the Implementation of Pilot Cases relating to the Acceptance of Refugees by Resettlement to a Third Country” on December 16, 2008. Based on this Cabinet understanding, the Government decided to admit approximately 30 people once a year for three consecutive years from 2010. For this purpose, the Government of Japan will carry out the selection process for Myanmarese refugees who are temporarily protected in Thailand and who are determined by the United Nations High Commissioner for Refugees (UNHCR) as being in need of international protection and recommended by the UNHCR as refugee candidates to Japan. In 2010, 27 Myanmarese were permitted to enter Japan for settlement.<sup>166</sup>

### (3) Current Situation

Although the pilot case initiative had an objective of hosting 30 persons a year, 27 people (five families), 18 people (four families) and 0 people came to Japan in 2010, 2011 and 2012, respectively. In 2011 eight people declined resettlement in Japan just before their intended departure to Japan, and in 2012 all of the persons (three families) who had been accepted for resettlement eventually declined.

A total of 45 resettled refugees who came to Japan in 2010 and 2011 were expected to undergo a 180-day long resettlement assistance program including linguistic and cultural orientation training and employment assistance and participate in job orientation training in some locations across Japan. However, under the job orientation training, which was financed by the Japanese Government, they merely performed work without any additional skill development aspects being part of the training. They were expected to be employed by their host corporations. In the end, two families finally refused to conclude employment contracts with their host agricultural corporations and declined assistance from the RHQ.<sup>167</sup>

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<sup>166</sup> Paragraph 236.

<sup>167</sup> “Achievements and Future of Refugee Resettlement Program in Japan” (March 29, 2010, Inter-Ministerial Coordination and Liaison Meeting on Refugee Matters, Cabinet Secretariat)

The Cabinet Secretariat decided to extend the Pilot Case Scheme for a further period of two years because the number of the resettled refugees did not reach the initially planned size of 90 people. It also decided to set up an advisory panel comprising academics and experts with extensive knowledge and experience in refugee issues and assistance for refugee settlement, known as the “Resettlement Experts’ Council,” which reported to the Inter-Ministerial Coordination and Liaison Meeting on Refugee Matters.

#### 2-5 Proposed Recommendations for the Concluding Observations

The recommendations given in Paragraph 25 of the Concluding Observations on the 5th Periodic Report should be maintained with the following recommendations added.

“The State party should revise the 2006 Immigration Control and Refugee Recognition Act in a direction toward implementing procedural safeguards against deportation of asylum seekers to any countries where they is a risk of torture other abuses. The State party should ensure that all the asylum seekers have access to legal assistance and aid and interpretation service. It should provide them social assistances or access to employment throughout all the refugee protection. A completely independent objection review mechanism should be established to examine the objections from asylum seekers, including those who are suspected to be possibly terrorists by the government. The State party should ensure that any asylum seekers whose refugee application is rejected at the first instance are not immediately deported before they file objections.”



## 1 Filing an Objection to Decisions to Reject Application for Extension of Stay or Change to Status of Residence

### 1-1 Legal Assistance to Foreign Nationals Who Are Determined as Falling under Any of the Grounds for Deportation

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

A system for filing an objection has been established for foreign nationals who are determined as falling under any of the grounds for deportation. A foreign national who is subjected to deportation procedures may receive financial assistance for legal representation in a hearing under the objection system, if he/she has little money.<sup>168</sup>

(3) Current Situation

The Government report's description regarding legal assistance is not wrong. However, it should be noted that the assistance is 100% funded by us, the JFBA which is an NGO, and its members. To protect foreigners' rights to be represented before the competent authority, prescribed in Article 13 of the Covenant, the Government should finance an assistance scheme for legal representation.

### 1-2 Interpretation and Translation

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Refer to the paragraph 25 mentioned above.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

When carrying out deportation procedures for those who cannot understand Japanese well, languages that they can understand, or interpreters, are used in the course of examinations and other procedures, in accordance with the instructions concerning the procedures prescribed by the Immigration Control Act and other applicable rules.

Immigration officers and professional interpreters proficient in foreign languages serve as interpreters. When selecting interpreters, immigration bureaus pay due consideration to ensure their competency and aptitude.

Immigration bureaus maintain a list of interpreters in dozens of foreign languages in order to ensure

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168 Paragraph 237.

their prompt response.<sup>169</sup>

To prepare a record of statements or other documents for examination, etc. conducted in a foreign language, a written statement is drafted and then its contents are read aloud in the same foreign language as spoken by the foreign person, in order to allow them to verify its contents.<sup>170</sup>

### (3) Current Situation

No specific qualifications are required for any prospective interpreters to be included in the interpreter list. The process to select interpreters is not transparent. There is no ethical code for interpreters. Therefore, there exists no independent system to assure the competence and fairness of interpreters involved in deportation procedures.

The person who has the authority to determine whether an interpreter would be necessary or not is an immigration officer, there are more than one judicial ruling has totally nullified an immigration procedure on the grounds that the immigration officer had not arrange a necessary interpreter for such procedures (decisions rendered on January 21, 2005, and on February 19, 2010, at the Tokyo District Court).

Statements made through examinations are prepared only in Japanese. Copies of such statements are not automatically given to the foreign persons in question. They may obtain such copies after the relevant immigration procedures through other paid administrative procedures, however immigration officers will not advise the foreigners about such procedures.

There exists no scheme for the recording or videotaping of the questioning process.

## 1-3 Lawsuits Regarding Deportation of Foreigners

### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

Refer to the paragraph 7 mentioned above for direct reference to the provisions of the Covenant and professional training for judges.

### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

As a means for filing an objection for disposition of disapproval, an action to seek revocation of such disposition may be filed with the court. From 2006 to 2010, 79 actions were filed to seek revocation of a disposition of disapproval. Among them, the Government was the winning party in 32 cases and was defeated in two cases; 44 actions were withdrawn, and one action is still pending (as of the end of August 2011).<sup>171</sup>

### (3) Current Situation

Japan has overwhelmingly fewer administrative lawsuits as a whole against the Immigration

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169 Paragraph 240.

170 Paragraph 241.

171 Paragraph 242.

Bureau, including ones regarding residence periods, than other countries. The number of administrative lawsuits per capita in Japan is lower than that of other countries by several tens of percentage points. This situation has remained unchanged since after the Immigration Control Law was revised.

Judges are insufficiently trained about the International Human Rights, they rarely pay serious attention to claims made by a party that are supported by the Covenant. In addition, the Japanese Government has not ratified the Optional Protocols of the Covenant, and judgements will be never exposed to international critical review.

## 2 Treatment of Applicants for Refugee Status

### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Refer to the paragraph 25 mentioned above.

Refer to the paragraph 19 from the Concluding Observations issued by the CCPR on the Japanese Government's Fourth Periodic Report.<sup>172</sup>

### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

In order to ensure opportunities for all applicants seeking protection to access attorneys, legal assistance, interpreters, and social support or employment offered by appropriate countries at all times during the application processing period, a refugee support liaison desk is set up in each of the regional immigration bureaus and major airports. In addition, signs showing the contact information of refugee support organizations are provided in major airports. In the case of applicants for refugee status who are legitimate residents, the status of residence with qualification for employment is granted after the lapse of a specified period from the filing of the application.

To bring administrative litigation, foreign nationals who satisfy the specified requirements, including having a limited income, can utilize the legal assistance system for refugee recognition operated by the Japan Legal Support Centre entrusted by the JFBA and gain financial aid for attorney costs. In FY 2010, the Japan Legal Support Centre received 570 requests for legal assistance (including legal representation) for refugee recognition.

The Immigration Control Act requires that deportation be suspended while an application for refugee status is pending. If the detention continues over a long term in such a situation, provisional release may be permitted flexibly when it is found necessary to do so from a humanitarian perspective as a result of considering the health condition of the applicant, the detention period, and other circumstances on a case-by-case basis.<sup>173</sup>

### (3) Current Situation

#### 1) Status of refugee status applicants

As mentioned above in the context of Article 12, a provisional stay is granted to a limited

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172 CCPR/C/79/Add.102

173 Paragraph 247.

number of asylum seekers.

An asylum seeker, who declares his/her intention to seek protection at the airport where his/her airplane has arrived, will be guided to the procedures for landing permission for temporary refuge, rather than the ordinary landing permission procedures, if he/she declares his/her intention to seek protection at the airport where his/her airplane has arrived (Article 18-2 of the Immigration Control and Refugee Recognition Act). The requirement is very demanding, for example, an asylum seeker has to be found likely to be a refugee to obtain such permission (Article 18-1(i) of the Act requires that the potential applicant be “[a] person who has entered Japan on the grounds prescribed in Article 1, paragraph A-(2) of the Refugee Convention or other equivalent grounds thereto after fleeing from a territory where his/her life, body or physical freedom was likely to be endangered”). Therefore, applicants granted such permission are very limited and such permission is likely granted annually in only a few cases.

If the asylum seeker is not granted the permission, he/she will be denied landing. In addition, when that asylum seeker who has denied landing refuse to leave, he/she would be order deportation in the deportation procedure. The application for landing permission for temporary refuge is considered as a different procedure from that for refugee status. The *non-refoulement* principle, therefore, does not apply to applicants for temporary landing permission. The concern is that many asylum seekers were and are repatriated to their own country of origin before they can apply to the refugee status recognition procedures. Those failed applicants for landing permission for temporary refuge are not reflected in the Japanese Government’s official statistics on refugee status applicants. The failed applicants for landing permission for temporary refuge who do not go back to their countries of origin and apply for refugee status will not be granted regular status.

On the contrary, asylum seekers who successfully enter Japan by declaring fake purposes of entry including tourism and later apply for refugee status may enjoy regular status until their refugee status determination procedures come to an end. In addition, they may be granted qualification for employment after a certain period.

As mentioned above, a limited percentage of asylum seekers are allowed to work under their regular immigration statuses. In reality, only a very low percentage of asylum seekers who express their intention for protection are actually granted work permission.

## 2) Realities of legal assistance

The legal assistance system for refugee recognition is 100% financially supported by the JFBA, a non-governmental organization, and its members. The Japan Legal Support Center is just a contractor for administrative works. The Japanese Government has not provided any financial contribution to our assistance initiative.

The refugee support liaison desks at regional immigration bureaus have extremely low visibility and their achievements remain unknown.

## 3) Provisional release system

Article 54 of the Immigration Control and Refugee Recognition Act stipulates a provisional release system, although the requirements for detainees to obtain such release are not clearly set forth. Detainees have no access to the reasons as to why their application for provisional release

have been accepted or rejected. The regulatory upper limit of the deposit, which is specified when a provisional release is granted, is 3,000,000 yen, although no requirements or criteria for provisional release have been disclosed.

## 1 Legal Framework – Revision of the Juvenile Act

- (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)  
Not mentioned.

- (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)  
The revised provisions of the Juvenile Act in May 2007 and June 2008 were reported. Japan's Juvenile Act firmly adheres to the basic policy of promoting the sound development of juveniles.<sup>174</sup>

- (3) Current Situation

The Committee on the Rights of the Child (hereafter, "CRC") noted the following concerns and recommendations in the Concluding Observations of the Japanese second periodic report.<sup>175</sup>

*53. While noting that the State party has undertaken a reform of the juvenile justice law since the Committee's consideration of its initial report, it is concerned that many of the reforms were not in the spirit of the principles and provisions of the Convention and international standards on juvenile justice, in particular, with regard to the minimum age of criminal responsibility, which was lowered from 16 to 14 years, and pre-trial detention, which was increased from four to eight weeks. It is concerned that an increasing number of juveniles are tried as adults and sentenced to detention, and that juveniles may be sentenced to life imprisonment. Finally, the Committee is concerned at reports that children exhibiting problematic behaviour, such as frequenting places of dubious reputation, tend to be treated as juvenile offenders.*

*54. The Committee recommends that the State party:*

*(a) Ensure the full implementation of juvenile justice standards, in particular articles 37, 39 and 40 of the Convention, as well the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), in light of the Committee's 1995 day of general discussion on the administration of juvenile justice;*

*(b) Amend legislation so as to abolish life imprisonment for juveniles;*

*(c) Strengthen and increase the use of alternatives to detention, including pre-trial detention, in order to ensure that deprivation of liberty is used only as a measure of last resort;*

*(d) Review the existing possibility for Family Courts to transfer a case against a child of 16 years or older to a criminal court for adults with a view to abolishing this practice;*

*(e) Provide legal assistance to children in conflict with the law throughout the legal proceedings;*

*(f) Ensure that children with problematic behaviour are not treated as criminals;*

*(g) Strengthen rehabilitation and reintegration programmes.*

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174 Paragraphs 248, 249.

175 CRC/C/15/Add.231

In addition, the CRC's Concluding Observations of the Japanese third periodic report noted as follows:<sup>176</sup>

83. *The Committee reiterates its previous concern (CRC/C/15/Add.231) expressed upon consideration of the State party's second report (CRC/C/104/Add.2) in February 2004 that the revision of the Juvenile Law in 2000 has adopted a rather punitive approach and has restricted the rights and judicial guarantees of juvenile offenders. In particular, the lowering of the age of criminal responsibility from 16 to 14 years reduces the possibility for educational measures and exposes many children between 14 and 16 years of age to detention in correctional centres; children over 16 years of age committing serious offences can be sent to criminal courts; the length of pretrial detention has been extended from four to eight weeks; and the new Saiban-in system, which is a lay judge system, constitutes an obstacle to the treatment of child offenders by a specialized juvenile court. 84. Moreover, the Committee is concerned at the notably increasing number of juveniles referred to adult criminal courts and regrets that procedural guarantees due to children in conflict with the law, including the right of access to legal counsel, are not systematically implemented, resulting, inter alia, in coerced confessions and unlawful investigative practices. The Committee is also concerned at the levels of violence against detainees in juvenile correctional facilities and at the possibility of keeping juveniles in pretrial detention with adults.*

84. *Moreover, the Committee is concerned at the notably increasing number of juveniles referred to adult criminal courts and regrets that procedural guarantees due to children in conflict with the law, including the right of access to legal counsel, are not systematically implemented, resulting, inter alia, in coerced confessions and unlawful investigative practices. The Committee is also concerned at the levels of violence against detainees in juvenile correctional facilities and at the possibility of keeping juveniles in pretrial detention with adults.*

85. *The Committee urges the State party to review the functioning of the juvenile justice system with a view to fully bringing it in line with the Convention, in particular, articles 37, 40 and 39, and with other United Nations standards in the field of juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the Havana Rules) and the Vienna Guidelines for Action on Children in the Criminal Justice System taking account of the Committee's general comment No. 10 (2007) on children's rights in juvenile justice. In particular the Committee recommends that the State party, in particular:*

- (a) Take preventive measures, such as supporting the role of families and communities in order to help eliminate the social conditions leading children to enter into contact with the criminal justice system, and take all possible measures to avoid subsequent stigmatization;*
- (b) Consider reviewing its legislation in relation to the minimum age of criminal responsibility by raising it to the previous age of 16 years;*
- (c) Ensure that children under the age of criminal responsibility are not treated as criminal*

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176 CRC/C/JPN/CO/3

*offenders or sent to correctional centres and that children in conflict with the law are always dealt with within the juvenile justice system and not tried as adults in non-specialized courts and, to this end, consider reviewing the Saiban-in court system;*

*(d) Ensure that all children are provided with legal and other assistance at all stages of the procedure, including through the expansion of the existing legal aid system;*

*(e) Implement alternatives to the deprivation of liberty, such as probation, mediation, community service orders, or suspended deprivation of liberty sentences, wherever possible;*

*(f) Ensure that deprivation of liberty (pretrial and post-trial) is applied as a measure of last resort and for the shortest possible period of time and that it is reviewed on a regular basis with a view to withdrawing it;*

*(g) Ensure that children deprived of liberty are not detained together with adults and have access to education, including in pretrial detention;*

*(h) Ensure that all professionals involved with the system of juvenile justice are trained in relevant international standards.*

The above Concluding Observations recommended a review of the juvenile justice system in line with international standards and rules; however, not only has no such review been conducted, but also the revised provisions of May 2007 and June 2008 violate international standards.

In addition, an Official Attendant Program has been introduced; however, this system only covers cases in which a prosecutor is involved. If a juvenile who has committed a certain serious crime (i.e. crimes with criminal intent resulting in the death of a victim or crimes whose statutory penalties are the death penalty, imprisonment for life, or imprisonment for not less than 2 years), has no attendant who is an attorney at law, the family court may, by its own authority, appoint an attendant who is an attorney at law. However, the scope of this system is very limited, and thus, this program is insufficient.

On December 8, 2013, the Legislative Council of the Ministry of Justice presented a legislative outline that includes an increase in the upper limit of indeterminate sentences (for more severe punishments) and an expansion of the scope of cases that enable the court to involve a prosecutor and appoint an attendant by its own authority.

#### (4) Proposed Recommendations for the Concluding Observations

- 1) The State should implement the recommendations of the 2nd and 3rd Concluding Observations by the CRC. The recommendations are; [1] Reviewing legislation in relation to the minimum age of criminal responsibility (that is, the age of referral to a public prosecutor) by raising it to the previous age of 16 years; [2] Ensuring that all children are provided with legal and other assistance at all stages of the procedure; [3] Ensuring that deprivation of liberty as pretrial detention is applied as a measure of last resort and for the shortest possible period of time; [4] Ensuring that children under the age of criminal responsibility are not treated as criminal offenders or sent to correctional centres; [5] Ensuring that children in conflict with the law are always dealt with within the juvenile justice system and not tried as adults in non-specialized courts and, to this end, considering a review of the Saiban-in court system (lay judge trial system); [6] Ensuring that juveniles in pretrial



and post-trial have access to education during detention.

- 2) The State party should intrude the Official Attendant Program to all juveniles deprived of their liberty.

## 2 Disclosure of Evidence to Defense Counsels

- (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Refer to the paragraph 18 mentioned above.

- (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Government gives a general account of the system on the disclosure of evidence. For pre-trial conference procedures, the report only suggests referring to the previous periodic reports. The Government is not willing to accept a system requiring full and complete disclosure of all the evidence retained by prosecutors. It explains that some of the investigation records may be irrelevant to the issues in dispute for the case, and others may refer to matters that would cause detriment to the privacy or reputation of a relevant person if disclosed, making it difficult to gain cooperation in future investigations.<sup>177</sup>

- (3) Current Situation

In pre-trial conference procedures, the disclosure of evidence of a certain type and of evidence related to assertions has been systematically adopted; however, its scope has certain limitations. Not only full and complete disclosure of the entirety of the evidence but also even the provision of a list of the evidence that prosecutors are holding is not allowed. Defense councils are suffering from a lack of information as to the evidence existing in relation to their cases.

In addition, for a case that is not subject to a pre-trial conference procedure, disclosure of evidence is not available before the trial. Defense councils only expect voluntary disclosure of evidence as a favour on the part of the prosecutors.

In retrial procedures, there are similar problems since it does not have a provision for the disclosure of evidence. Recommendations for the disclosure of evidence by the court to the prosecutor are subject to court's discretion, thus the gap is caused depending on judicial panels.

The Japanese Public Prosecutor's Office has refused disclosure of evidence even in cases of serious crimes and contested cases in which the disclosure of evidence is crucial. Thus, there are some false accusations made. A typical example is a murder case of a female employee working at TEPCO (Tokyo Electric Power Company). In this case, when an appeal for retrial was made, disclosure of evidence was recommended by the court. Thanks to the evidence disclosed, which was in favour of the accused, he was acquitted.

The JFBA has demanded full and complete disclosure of the entirety of the evidence held by prosecutors. In the Fundamental Policy by the Subcommittee on the Criminal Justice System for a

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177 Paragraphs 254-256.

New Era under the Legislative Council as mentioned above, the subcommittee decided to discuss whether to introduce a system for issuing a list which includes headings showing the evidence held by public prosecutors. It also decided to examine whether to introduce a system for granting the right to request for conducting a pretrial arrangement proceeding to the accused or the counsel on the assumption of using the procedures for disclosure of evidence. The JFBA makes a commitment toward its realizing further reform of the system for disclosing evidence.

In May 2007, the CAT also expressed its serious concerns in its Conclusions and Recommendations as follows, by stating that there were problems with “[t]he limited access to all relevant material in police records granted to legal representatives, and in particular the power of prosecutors to decide what evidence to disclose upon indictment.”<sup>178</sup> The CAT also recommended in its Concluding observations in May 2013, to “[g]uarantee all fundamental legal safeguards ..., including the right of confidential access ... to all police records related to their case.”<sup>179</sup>

(4) Proposed Recommendations for the Concluding Observations

The State party should introduce the full disclosure of evidence as a system.

### 3 Protection of the Rights of Crime Victims

The Government report discusses the issue of crime victims in the section of Article 19 of the Covenant; however, we will examine it in this section because the assertions they have made are clearly relevant to the matter of fair trials.

#### 3-1 Establishment of Government Funded Legal Aid for Crime Victims by Attorneys Immediately after the Occurrence of the Crime

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

A victim participation system and other systems were established in June 2007. In this connection, in April 2008, a state-appointed attorney service for participating victims was established.<sup>180</sup>

(3) Current Situation

In order to respect the dignity of crime victims and guarantee their honor and privacy, legal support services toward crime victims by attorneys are indispensable.

The victim participation system stated in the Government report is based on the premise of prosecution of the perpetrator. The state-appointed attorney service for participating victims only

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178 CAT/C/JPN/CO/1, Paragraph 15 (i).

179 CAT/C/JPN/CO/2, Paragraph 10 (c)

180 Paragraphs 268, 269.

applies to the participating victims who would like to delegate the act stipulated on Article 316-34 to 38 in the Code of Criminal Procedure to attorneys.

However, the need for legal assistance by attorneys for crime victims is not limited to victim participation after indictment. It is also necessary to establish a system which enables crime victims who are short of financial resources to receive a wide range of legal support services immediately after the occurrence of the crime.

In this regard, the current legal aid systems for crime victims provide financial support of lawyer's fee for filing an offense report, filing a complaint/bringing charges, accompanying crime victims to the police for voluntary questioning and to the court hearings, and negotiating for settlement in criminal proceedings immediately after the occurrence of the crime.

However, the legal aid activities are currently entrusted by the JFBA as a NGO to the Japan Legal Support Center. It is operated by the JFBA's membership fees, so that the Center always has financial difficulties as the amount of access increases.

"Government funded appointed attorneys" was one of the main concerns in the first Basic Plan for Crime Victims. "The Study Panel on Economic Assistance" set up based on the Basic Plan published its final report concluding, in view of the importance of its role, that, "Legal aid programs for crime victims should be well informed and appropriately managed and promoted. It should be promoted further for the support of crime victims."

In view of the significance and need of legal aid programs for crime victims, a government funded legal aid system to enable crime victims who are short of financial resources to have legal assistance by attorneys from immediately after the occurrence of the crime for filing an offense report, filing a complaint/bringing charges, accompanying crime victims to the police for voluntary questioning and to the court hearings and to juvenile proceedings, and negotiating for settlements in criminal proceedings. The JFBA released its "Provisional Legislative Proposal for the Realization of Government-Funded Legal Aid for Victims of Crime" on March 15, 2012 to propose the establishment of free legal consultations within the current legal aid program for victims, and moreover, the establishment of a government funded legal aid system for crime victims in order to enable them to have easy access to attorneys, and ensure the appropriate management of legal aid programs.

#### (4) Proposed Recommendations for the Concluding Observations

In addition to the victim participating system, the State party should establish a government funded legal aid system for victims, which enables attorneys to support crime victims immediately after the occurrence of a crime.

### 3-2 Disclosure of Records to Victims

#### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Regarding disclosure of the records of non-prosecution cases to victims, since November 2008, the disclosure of objective evidence to victims of offences that would be applicable to the victim participation system has been flexibly implemented such that it is disclosed, regardless of the irreplaceability of the evidence.<sup>181</sup>

(3) Current Situation

The Government reports on the disclosure of criminal records of non-prosecution cases to victims; however, the victim participation system is not available if the case is not prosecuted. Therefore, the premise that this section is based on is faulty.

Under the current situation, for victims who are able to use the victim participation system, disclosure of evidence including the records of non-prosecution cases has been flexibly implemented based on Article 47 of the Code of Criminal Procedure.

(4) Proposed Recommendations for the Concluding Observations

The State party should establish legislation on disclosure of criminal records in order to enhance the availability and access to victims in addition to the current operation.

### 3-3 Benefit System for Crime Victims

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The benefit system for crime victims has been gradually enhanced. In particular, survivor benefits for bereaved families and disability benefits were raised in July 2008.<sup>182</sup>

(3) Current Situation

The current benefit system for crime victims is not sufficient in terms of the amount of payment. The system also fails to ensure respect for the dignity of crime victims in respect of the claiming procedure as well as from the viewpoint of the nature of rights for criminal victims.

In terms of economic assistance for crime victims, there is a substantial need not only for cash benefits, but also in-kind services such as the provision of medical care and counseling expenses. However, the currently available measures are not sufficiently adequate.

(4) Proposed Recommendations for the Concluding Observations

The State party should provide further economic assistance for victims of crime, such as expanding the benefits system for crime victims, the establishment of a new compensation system, or State

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181 Paragraph 272.

182 Paragraph 275.

coverage of medical expenses.

## 1 Surveillance Cameras

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Not mentioned.

(3) Current Situation

1) Increased installments of surveillance camera

In Japan, increasing numbers of surveillance cameras has been rapidly installed. Surveillance cameras are those which continuously record and distribute indiscriminately, not only pictures of a person who is committing a crime, but also pictures of a number of unspecified persons. These pictures are clear enough to identify each person.

Numerous public and private surveillance cameras are set in public streets, parks, public facilities, stores, and stations, enabling to tape and record features and behaviour of passersby before the camera. Also the police alone are willing to promote placing surveillance cameras on the public roads and to tape and record directly citizen's features and behaviour.

In 2011, the National Police Agency published a final report, titled "A Study Group on Police Installation of Security Cameras in Streets." This report proposed promoting further installation of security cameras not only by the Police, but also by local governments and private organizations.

2) Potential infringement of the right to privacy

Recordings by surveillance cameras cannot be managed by individuals; there are insufficient controls in place for who, when and for what purposes these video pictures taken would be used. In this regard, the right to privacy stipulated in Article 17 of the Covenant may be seriously infringed.

It is possible to recognize individual behaviour if the data from each surveillance camera is connected in terms of places and times. Moreover, if connected with a face scanner, a huge amount of thus accumulated picture data could be easily used to search and cross-check for a specific person. By networking data kept in each place makes possible accumulation of data in details on individuals and compiling records of every citizen's features, behaviour and expressions in public spaces; that will make up for endangering citizen's right to privacy.

Connecting a specific place with the personal features of a specific person makes it possible to assume hobbies, tastes and thoughts of individuals. This may infringe upon the right to freedom of thought and conscience under Article 18 and give a chilling effect to freedom of expression under 19 of the Covenant.

3) Need for regulation

No nationwide legislation is now available on the matter of installing and managing surveillance cameras in open spaces. Only some local governments stipulate ordinances or guidelines for

managing surveillance cameras.

As seen above, an increase in the use of surveillance cameras also leads to higher risks of encroaching upon individual privacy and other rights. The Government should develop legislation on the installation and management of surveillance cameras. Such legislation should stipulate standards and procedures for places to install such cameras, standards for the functioning of its equipment, and regulations on the collection and usage of the video pictures, and the rights of individuals to access personal pictures. It should also establish an independent body that has the authority to investigate and supervise whether there has been any unjust constraint against individual rights such as the right to privacy with regard to the installation and management of surveillance cameras, and that has also the authority to give directives and correction orders.

4) Guidelines for surveillance cameras under control of police

Many surveillance cameras are now installed and managed under police control. The following regulations are necessary for their use in criminal investigation and criminal procedure before the court.

[1] Obtained information should not be used for any purpose other than a criminal procedure against criminal charges.

[2] When using the obtained information, the Police should keep all video pictures (including the data from other surveillance cameras) possibly related to a specific criminal charge until the criminal procedure on this charge comes to an end, while having them available for disclosure to the defense.

[3] If the relevant video picture is arbitrarily saved in violation of the above-mentioned obligation or a request for its disclosure to the defense is refused, the picture should be ruled inadmissible as evidence.

[4] The Police should not provide the video pictures taken by surveillance cameras to any other organizations, institutions or individuals. Except for the above-mentioned case [3] on the obligation to keep video pictures in regard to a relevant criminal procedure, the pictures concerned should be deleted within a short period.

(4) Proposed Recommendations for the Concluding Observations

1) In order to regulate surveillance cameras, the State party should establish legislation on the installation and operation of surveillance cameras. The legislation should;

[1] Specify the standards for installation places and procedures. These standards allow the installation of surveillance camera in the public area only when there is highly probable occurrence of crime or a high-crime-rate area, and that no less restrictive alternatives on privacy is available.

[2] Prohibit installing a camera so as to identify specific individuals and to record voices.

[3] Stipulate that when a camera installed, the installer should specify on the site whether recording by the camera is going on, what is its purpose, and who installs it; prohibit using the video data for any other purpose than the one specified by the law; the data should be deleted as soon as possible when it becomes no longer necessary for the set purposes; and prohibit offering

the data voluntarily to the investing authority without a search warrant unless the data taken by the camera were related to a crime committed on sight.

[4] Accept a request for disclosure by an individual concerned.

2) Guidelines on surveillance cameras under police control

The State party should establish the regulations on the usage of police controlled surveillance cameras from the premise of criminal investigations and criminal court procedure. The regulations should include the following contents

[1] Obtained information should not be used for any other purpose than a criminal procedure against a criminal charge.

[2] When using the obtained information, the Police should keep all video pictures (including the data from other surveillance cameras) possibly related to a specific criminal charge until the criminal procedure on this charge comes to an end, while having them available for the disclosure to the defense.

[3] If the relevant video picture is arbitrarily saved in violation of the above-mentioned obligation or a request for its disclosure to the defense is refused, the picture should be ruled inadmissible as evidence.

[4] The Police should not provide the video pictures taken by surveillance cameras to any other organizations, institutions or individuals. Except for the above-mentioned case [3] on the obligations to keep video pictures in regard to a relevant criminal procedure, the pictures concerned should be deleted within a short period.

3) The State party should establish independent third party bodies to supervise the guideline on the installment and operation of surveillance cameras. The State party should also give to the bodies the authority to investigate, make recommendations and issue correction orders vis-à-vis the person who installed the camera.

## 2 National Identification Number System and Independent Organization

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Not mentioned.

(3) Current Situation

1) National identification number system

The Japanese Government brought a bill known as the “National Identification Number Act” to the Diet in March, 2013 with the aim of implementing a “national identification number system,” which is to allocate unique numbers to all the Japanese nationals as well as foreign nationals with mid- and long-term residence status, and that is for the purpose of integrating and maintaining relevant different personal information under the individual numbers and using it for a broad range



of purposes.

The system would pose serious challenges to the right to privacy by allowing the Government to control vast personal information in a centralized manner. Centralized control itself may infringe on the right to control personal information, but also leaking or spoofing the relevant information is most likely to cause irreparable damages of vast dimensions.

The bill envisages that the centrally managed information will be extensively circulated among governmental and industrial actors, but risks of privacy abuse would be further increased. Despite the grave concerns, the Japanese Government has failed to justify the system and demonstrate potential benefits stemming from it.

2) Independent organization

The bill proposes to set up an independent organization to reduce privacy abuse risk associated with the National ID program.

The proposed organization will only monitor the personal information allocated to the ID numbers, and it will be able to address the concern. An independent organization should be established, however, with a mandate of monitoring use of personal information in general in order to protect more effectively the right to privacy, regardless of the national identification number system.

### 3 Deportation Decisions in Violation of Article 17 of the Covenant

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Not mentioned.

(3) Current Situation

The CCPR has been repeating its position that if the Immigration authorities of the State party to the Covenant may exercise on a non-Japanese resident any discretionary powers, which might infringe his/her right to protection from arbitrary interference in his/her private and/or family life, the decision would go encounter against the Covenant.<sup>183</sup> The Japanese Government, however, has been adhering to the view that the Supreme Court expressed in its ruling in the case of Ronald McLean v the Minister of Justice on October 4, 1973. Its ruling says that “any rights and benefits stemming from the Constitution and the ICCPR are granted to aliens only within the Japanese immigration program and therefore their specific provisions may be one of the considerations when determining whether special residence permission is appropriate for specific cases, but cannot go beyond the limitation or interpreted as normatively binding toward the discretion of the Minister of Justice and the like.” The Government has been relying on the ruling to deny by any means that its decisions not to renew

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183 UN Human Rights Committee (HRC), CCPR General Comment No. 15 (5) and other clauses

residence status or to grant special residence permission constitute violation of the Covenant.

With the view of promoting the human rights of foreigners in Japan, a counsel produced the CCPR' view on "Winata et al. v. Australia" (Communication No. 930/2000), to the court claiming that a foreigner whose spouse or child cannot depart Japan should be granted legal status for living together. The Japanese court has not been paying slight consideration to the leading case law.

#### 4 Special Residence Permission System

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Not mentioned.

(3) Current Situation

The Immigration Control Act prescribes that at the final stage of deportation procedures it may be determined whether residence may be specially permitted for an individual foreigner subject to deportation.

The Government argues that it is left to the broad discretion of the Minister of Justice whether residence may be specially permitted, and that there are no specific criteria for determining whether the permission may be granted.

Recently, the Ministry of Justice has published the "Guidelines for Special Residence Permission" and made public some positive elements in favor of special permission and some negative elements in discouraging it. The guidelines contain several elements that are in line with Article 17 of the Covenant, including a fact of having been living with, supervising and caring for his/her biological child who has been staying in Japan during a substantial period and that goes to primary or secondary school.

The Government argues, however, that the guidelines just represent some considerations to be referred to in making a decision on each special residence permission case, not generic criteria binding those decisions. In fact, a number of cases have been reported where the permission is not denied despite some of the positive elements recognized. Many lawsuits have been filed seeking revocation of the decision not to grant the special residence permission. A few court rulings recognized that the fact that the cases had fallen under some of positive elements identified in the Guidelines had not been considered and overturned the Government's decisions. Many rulings, however, did not accept their legal binding power.

The JFBA argues that the cases that should be granted special residence permission on the grounds of human rights covenants or conventions should be enshrined in relevant regulations. In addition, it argues that individual special residence permission cases should be reviewed by an independent board comprising experts with extensive experience and insights into those international instruments.

## 5 Alien or Non-Japanese Residence Control System and Privacy of Foreign Nationals

Alien or non-Japanese residence control system, which was founded in 2007, and alien or non-Japanese employment reporting system, which was founded in 2005, may infringe on foreign nationals' right to privacy, as discussed in this Report, Article 2 of the Covenant.

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Article 18: Freedom of Thought, Conscience and Religion (Issues Related to the National Flag (*Hinomaru*) and the National Anthem (*Kimigayo*))

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- (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)  
Not mentioned.
- (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)  
Not mentioned.

(3) Current Situation

1) *Hinomaru* and *Kimigayo*

*Hinomaru* and *Kimigayo* were regarded as the Japanese national flag and national anthem before World War II. As confirmed by a ruling made by the Tokyo District Court on September 21, 2006, from the beginning of the Meiji Era to the end of World War II, *Kimigayo* was interpreted as a song to call for the eternal reign by the emperor, who was the supreme ruler holding by himself the sovereignty under the Meiji Constitution or the 1889 Constitution of the Empire of Japan. Along with *Hinomaru*, *Kimigayo* was used as a symbol of the emperor's sovereignty and as a "psychological pillar to support Japanese imperialism and militarism."

After World War II, *Hinomaru* and *Kimigayo* continued to be used as the national flag and national anthem despite the transfer of sovereignty to the Japanese people. However, many Japanese people are hesitant to show respect to *Hinomaru* and *Kimigayo*, and are also hesitant to stand up to sing *Kimigayo*, as they remember the time when such flag and anthem symbolised the emperor's supremacy and militarism before and during World War II.

In 1999, the Act on National Flag and Anthem was signed into law. The act officially made *Hinomaru* the national flag and *Kimigayo* the national anthem. As the act was being considered in the Diet, senior officials repeatedly stated that the Government would be mindful of various sentiments held by the Japanese people toward the flag and the song and would not make it obligatory for anyone to display the flag or sing the song. They also stated that there would be no change in the professional duties for school teachers who would be involved in teaching students about such flag and the anthem.

2) Enforcement of display of *Hinomaru* and singing of *Kimigayo* in public schools

However, students and teachers have recently been strongly requested to stand up for *Hinomaru* and to sing *Kimigayo* in matriculation and graduation ceremonies at public schools, at all three grade of elementary, and junior or senior high schools. Teachers refused to do so, and have been subject to disciplinary actions.

[1] Cases in Tokyo Metropole

In 2003, the Tokyo Board of Education instructed teachers to stand up and to sing *Kimigayo* in face of *Hinomaru* at matriculation and graduation ceremonies at public schools. Since then, more than 400 teachers have received disciplinary measures such as warnings, salary reductions or suspensions from office. These measures have been taken clearly against teachers who refused to

stand up and thus acted against the Board's instruction.

[2] Cases in Osaka Prefecture

Osaka Prefecture passed a prefectural ordinance in 2011 which makes it mandatory for teachers to stand up and to sing *Kimigayo* at school events. Teachers were ordered by their superiors to stand up and to sing, and many teachers have been reprimanded for not doing so. The basic ordinance for Osaka Prefectural Employees states that it is according to the standard practice to reprimand and dismiss employees who have acted against orders more than twice. It is therefore for teachers who repeatedly refuse to stand up and to sing *Kimigayo* to be dismissed in the future.

3) Court rulings

A number of law suits have been filed by teachers who received disciplinary measures for acting against orders and refusing to stand up or to play the piano for the singing of *Kimigayo*.

On September 21, 2006, the Tokyo District Court ruled that ordering teachers to stand up and sing *Kimigayo* violated their constitutional freedom of thought and conscience.

Other rulings include the Supreme Court's ruling on June 6, 2011 which stated that such orders indirectly restrict freedom of thought and conscience because standing up and singing *Kimigayo* has an element of expressing respect towards the national flag and anthem while it is also an act of courtesy. However, they ruled the orders were constitutional because the restriction is necessary and reasonable in order to maintain orderliness in ceremonies.

However, on January 16, 2012, the Supreme Court considered that punishment more than salary reduction needs careful consideration because the act of not standing up during the playing of *Kimigayo* reflected the teachers' view of history and the world, and struck down measures such as salary reductions and some suspension measures as they amounted to an abuse of executive authority.

4) Violation of articles 18 and 19 of the Covenant

[1] Violation of the freedom of thought, conscience and religion

People's views on *Kimigayo* and *Hinomaru* vary as it historically symbolised the emperor's supremacy and was used to promote imperialist interpretation of history and militaristic education. The act of standing up for *Hinomaru* while singing *Kimigayo* cannot be separated from the expression of respect towards *Hinomaru* and *Kimigayo*. Therefore, ordering teachers to stand up or taking disadvantageous measures against teachers who refuse to stand up constitutes a violation of the freedom of individual's thought, conscience and religion. They are also forceful acts which infringe upon people's religions and beliefs in violation of article 18.

[2] Infringement on opinion and freedom of expression

Paragraph 1, article 19 of the Covenant states that everyone shall have the right to hold opinions without interference. Harassment or intimidation against certain opinions, including opinions on politics and history, is prohibited. All kinds of acts seeking to impose certain opinions or to force people not to hold certain opinions are also prohibited.

Moreover, in General Comment No. 34, the CCPR "expresses concern regarding laws on such matters as, ...disrespect for authority, disrespect for flags and symbols" and argues that laws

should not provide for severe penalties for these reasons.<sup>184</sup>

As the aforementioned Supreme Court decision in 2011 states, the act of standing up and singing *Kimigayo* in face of *Hinomaru* has an element of expressing respect to *Kimigayo* and *Hinomaru*. Therefore, forcing the act by issuing orders or reprimanding those who refuse to stand up violates the individual freedom to hold certain historical and political opinion regarding *Hinomaru* and *Kimigayo*. Such acts violate article 19 of the Covenant not only because they force individuals to show support for and respect to *Hinomaru* and *Kimigayo* but also because they are enforced by disadvantageous measures against “disrespect towards a flag and a symbol.”

(4) Proposed Recommendations for the Concluding Observations

Proposed Recommendations for the State party must not reprimand teachers who do not stand up to *Hinomaru*, sing *Kimigayo* or play an accompaniment to *Kimigayo* for other people’s singing at ceremonies including matriculation and graduation at public elementary schools, junior high schools and senior high schools

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1 Enactment of the Act on the Protection of Specially Designated Secrets and the danger of freedom of expression and the public's right to know

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)  
Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)  
Not mentioned.

(3) Current Situation

1) Introduction

On December 6th, 2013, the Bill on the Protection of Special Designated Secrets (hereafter cited as “the Special Secret Bill”) has been passed in the Diet.

The Special Secret Bill has fundamental flaws on the guarantee of freedom of expression as seen in the following. The flaws cannot be resolved by a partial amendment.

[1] It does not define what can be designated as secrets. Furthermore, it does not prohibit either the Government from designating wrongdoings as secrets.

[2] Not only public officials but also journalists and citizens would be punished in earlier stage than present on charge of solicitation, conspiracy and incitement to know the secrets.

[3] The maximum sentence can be severe as going to be 10 years of incarceration.

[4] It does not incorporate a system which protects whistleblowers, journalists and civil activists who disclose wrongdoing by the Government.

Two United Nations Special Rapporteurs, Mr. Frank La Rue and Mr. Anand Grover, and also the U.N. High Commissioner for Human Rights, Ms. Navi Pillay, expressed serious concerns about the problems of the Bill.

2) Deliberation process on the Bill

The Government submitted the Special Secret Bill to the extraordinary session of the Diet in autumn 2013. The deliberation of the bill started on October 25, 2013.

Abolishment of the Bill was requested from every sector of the society such as the JFBA, the media such as newspaper and broadcast, a broad range of researchers, writers, persons who express themselves in various fields such as film, international human rights NGOs, peace organizations and environment protection organizations.

However, the Government and the ruling parties ignored the voices of the majority of people who demanded for sufficient deliberation. They did not spend sufficient time in deliberation in both Houses of the Diet, and made the bill passed by steamrolling.

In particular, at a Diet hearing held in Fukushima where nuclear accidents occurred, every person including persons recommended by the ruling parties expressed opposing opinions and asked for sufficient time in deliberation. These statements were made based on the fact that the Government

did not properly disclose important information on the occasion of the Fukushima nuclear accidents. However, on the very next day after the hearing, the ruling parties steamrolled the bill through the House of Representatives.

In the Diet, a part of the bill was amended, but as stated in the following, the danger in the bill has not been removed in the amendment.

In the process of legislation, necessary documents on the bill made by the Government were not fully submitted to the Diet deliberation.

The JFBA severely criticized that “the process does not suit for deliberating important bills and lose confidence of the Diet by itself.”

### 3) Contents in the legislation

#### [1] Problems of the Government Proposed Draft

The scope of the bill is broad and vague. Illegal secrets and false secrets (the secrets for self-protection by public officials) are not prohibited to be designated by the bill.

There is danger of invading privacy of the subject in aptitude evaluation.

Punishment has become tougher. Proactive punishment has been expanded to include such as conspiracy, independent solicitation and incitement.

In designating secrets a head of administrative institutions provides conditions which are apparently looser for foreign governments and international institutions than the one for the Diet members. In the latter case, the heads of administrative institutions could enjoy broader discretion.

In addition, it is also unclear how the Diet members are able to use a secret provided to the Diet even for a purpose of their legislative activities.

#### [2] The first Amendment within coalition parties, LDP and New Komeito before submitting the bill.

The original draft was amended twice before passing to the Diet.

The first amendment was made after a discussion between coalition partners, LDP and New Komeito.

The draft articles on designing secrets were amended in such a manner as “The Government shall specify standards required for uniform operation in implementation of the designation of the secrets, its revocations, and appropriate evaluations.” (Article 18-1) and “The Prime Minister shall hear opinions from persons who have excellent knowledge and experience ... at the time of formulating and revising the guidelines.” (Article 18-2) However, such a wording as opinions from “persons who have excellent knowledge and experience” is nothing but an abstract guideline. The amendment did not establish a monitoring system on each designated secret.

Extension of the valid time limit for period of the designation was amended to, “An approval of the Cabinet shall be obtained when the term of designation exceed 30 years in total.” (Article 4-3) This article was later amended again.

As for the right to know, it was amended to, “Due consideration be given to freedom of the press and news gathering that contributes to guaranteeing the public’s right to know,” (Article 22-1) and “News gathering by those engaged in publishing and the press shall be lawful as long



as it is intended exclusively to serve the public interest and should not be regarded as violations of laws or grossly unreasonable means.” (Article 22-2) However, the provision stipulating due consideration to freedom of the press and news gathering is just an advisory and discretionary provision and does not ensure guarantee of the freedom of the press and news gathering.

[3] The second amendment by four parties

The draft was amended again after having it discussed in the House of Representatives among four parties, LDP and New Komeito from the ruling parties and Your party and Japan Restoration Party from the opposition parties. It was the second amendment before passing the bill.

This time, the following amendments were added to the supplementary provisions in the bill; the Prime Minister monitors the designation and revocation of secrets independently; the designated secrets shall be disclosed after 60 years in principle (Article 4-4. However, law stipulates broad 7 exception); and an independent body shall be established.

4) Article 19 and the Tshwane Principles

Article 19 of the CCPR stipulates the Public’s right to know in a clear form. The exercise of the right to know may be subject to the protection of national security or public order. However, these restrictions “shall only be such as ... are necessary”. Scope of the necessary restriction is to be strictly construed.

Freedom of expression may be restricted on the basis of its contents, only when the government shows the existence of legislative and social facts that legitimate the restrictions, and the restriction is the least restrictive means to further the articulated interest (The Principles of the Least Restrictive Alternative). The Principles explain judging standards on the necessary restriction prescribed in the Covenant. Any legislation which restrains freedom of expression should not be tolerated unless it fulfills the requirements, even though it is based on legitimate state purposes.

Full disclosure of the information held by the state is a core principle. The secrets of the state restrain the public’s right to know. It is indispensable for the legislation protecting the state secrets to establish a systematic safeguard which is compatible with the guarantee of the public’s right to know.

The Tshwane Principles are the principles that formulate a compatible balance for the state and the public in relation with the concrete issues on national security legislation.

The Tshwane Principles are formally called “The Global Principles on National Security and the Right to Information.” The Principles were developed on the basis of Article 19 of the CCPR and Article 10 of the European Convention on Human Rights, in order to provide guidance to strike a balance between the public’s right to access information held by the state and rational measures on national security in legislating national security issues. United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue expressed his opinion that the Principles should be adopted by the Human Rights Council. In light of Article 19 of the CCPR and the following Tshwane Principles, there are serious concerns on the Special Secret Act. They are as follows:

[1] The Act does not stipulate that the burden of proof of designating secrets rests on the state.

The Tshwane Principle is based on the premise of the existence of state secrets. On the other hand, Principle 1 (a) stipulates, “Everyone has the right to seek, receive, use, and impart information held by or on behalf of public authorities, or to which public authorities are entitled by law to have access,” and Principle 4 (a) stipulates, “The burden of demonstrating the legitimacy of any restriction rests with the public authority seeking to withhold information.” These basic views are derived from Article 19 of the CCPR.

However, these principles are not reflected in the Special Secret Act.

[2] The Act does not specify what secrets shall not be designated by the state.

Secondly, in the Tshwane Principle, following Principle 9, Principle 10 (A) to (F) specifies in detail what secrets shall not be designated by the state. These secrets correspond to the list of the information that should be disclosed in Principle 37. Whistleblowers who disclose the listed information shall be exempted. Principle 37 prescribes that every public personnel who disclose the information of the following categories should be protected: “(a) criminal offenses; (b) human rights violations; (c) international humanitarian law violations; (d) corruption; (e) dangers to public health and safety; (f) dangers to the environment; (g) abuse of public office; (h) miscarriages of justice; (i) mismanagement or waste of resources; (j) retaliation for disclosure of any of the above listed categories of wrongdoing; and (k) deliberate concealment of any matter falling into one of the above categories.”

The Act does not have any provisions of what categories of information should not be classified.

[3] The Act does not prescribe the valid time limit.

Principle 16 stipulates; “(a) Information may be withheld on national security grounds for only as long as necessary to protect a legitimate national security interest. Decisions to withhold information should be reviewed periodically in order to ensure that this Principle is met.” “(b) The classifier should specify the date, conditions, or event on which the classification shall lapse.” “(c) No information may remain classified indefinitely. The presumptive maximum period of the classification on national security grounds should be established by law.”

On the other hand, the original draft of the Act did not stipulate the maximum term of designation. The amended Paragraph 4 of Article 4 stipulates that the designated secrets shall be disclosed after 60 years in total in principle except for the 7 cases stipulated in Paragraph 4 of the article 4. However, the 60 years is too long and the exceptional cases are too broad.

[4] The Act does not specify the procedures for revoking the designated secrets.

Principle 17 states; “(d) National legislation should identify fixed periods for automatic declassification for different categories of classified information. To minimize the burden of declassification, records should be automatically declassified without review wherever possible.” “(e) National legislation should set out an accessible and public procedure for requesting declassification of documents.” “(f) Declassified documents, including those declassified by courts, tribunals or other oversight, ombuds, or appeal bodies, should be proactively disclosed or otherwise made publicly accessible (for instance, through harmonization with legislation on national archives or access to information or both).”

Article 4-7 of the Special Secret Act stipulates that a head of administrative organs shall “revoke the designation before the expiration date” “as soon as the designated information is found to no longer meet the requirements for designation.” However, revocation of the designation solely depends on the discretion of the head of organs themselves. We cannot find any procedures that allow citizens and the publicly selected independent body to take the initiative in revoking the designation in the Act.

[5] The Act does not guarantee to argue over the content of the designated secrets at the open court in criminal trials.

The Tshwane Principles require the following guarantee in judicial procedures on the secrets.

Principle 29 on criminal proceedings states, “(b) In no case should a conviction or deprivation of liberty be based on evidence that the accused has not had an opportunity to review and refute.” “(c) In the interests of justice, a public authority should disclose to the defendant and the defendant’s counsel the charges against a person and any information necessary to ensure a fair trial, regardless of whether the information is classified, consistent with Principles 3-6, 10, 27 and 28, including a consideration of the public interests.” “(d) Where the public authority declines to disclose information necessary to ensure a fair trial, the court should stay or dismiss the charges.”

The Special Secret Act stipulates in its Article 10-1(a) and 10-2 in camera proceedings in which a court can see the designated secrets in civil and criminal trials. However, we cannot find any provision which guarantees a trial based on the disclosure of the designated secrets in the open court in the Act. In fact, there are lacks of provisions which prohibit closed trials, partial access to the secrets, -- only to judges, but not to counsels, and the treatment that allows counsels to face criminal responsibility over the disclosure of the designated secrets in open trails.

[6] The Act does not have an independent oversight bodies that have the authority to access to any information and to revoke the designated secrets.

The Tshwane Principles state that independent oversight bodies should be established to oversee security sector entities. Oversight bodies are supposed to have access to all information necessary for conducting effective oversight (Principle 6, 31 – 33).

Article 18-1 of the Special Secret Act stipulates uniform guidelines for the designation of the secrets, its revocation, and appropriate evaluation. Paragraph 2 obligates to hear persons who have excellent knowledge and experience for the protection of information on national security, disclosure of the information held by the government, management of public documents and archives, etc. at the time of formulating and revising the guidelines. Then the Council for the Protection of Information comprised of 7 members was established. However, it is questionable if all of members are experts on information protection, information disclosure and management of public documents and archives, etc. and they might be strongly directed by the secretariat like other existing expert panels. In any case, these members can only express an opinion, and they cannot play a monitoring function as an independent third party.

The government has also announced during the Diet session to establish three “independent bodies,” that are, the Committee for the Protection and Oversight, the Independent Public

Records Management Secretary, and the Information Security Oversight Division. In addition, it stated to establish a standing committee in the Diet.

The Committee for the Protection and Oversight is supposed to be established in the Cabinet Secretariat. The Chief Cabinet Secretary gathers high ranking government officers such as administrative vice-ministers from the Ministry of Foreign Affairs, the Ministry of Defense and the National Police Agency. They will check the legitimacy of the designated secrets and revocation of the designation each other. The gathering of vice-ministerial-level high ranking officers is actually the government itself, and lacks independency and impartiality.

The Independent Public Records Management Secretary which will be established in the Cabinet Office is a councilor-level post of the Cabinet Office. According to the response to a question in the Diet, it will be established “to check so there will be no wilful destruction” and “to transfer the control smoothly to the National Archives of Japan.”

The Information Security Oversight Division will be established in the Cabinet Office. It will be composed of some 20 staffers who are below the level of division chief from the Ministry of Foreign Affairs, the Ministry of Defense and the National Police Agency. The office will support the above Management Secretary.

Article 9 of the supplementary provisions of the Act which was added by the four parties’ amendment stipulates, “The Government is to verify whether the standards on special secrets which are designated or revoked by a head of the administrative organs truly contribute to national security on an independent and impartial ground, examine necessary measures which ensure an establishment of the new institution with the authority to inspect, and fair designation and withholding of the other special secrets, and take necessary measures based on its result.”

According to a response to a question in the Diet, “the new institution” stipulated in the Article 9 of the supplementary provisions refers to the Information Security Oversight Office. However, government officials in the Information Security Oversight Office are the people those who drafted the original bill and will designate secrets. Officials on loan from the Ministry of Defense, the Ministry Foreign Affairs, and the National Policy Agency which designate secrets cannot be “on an independent and impartial ground” just because they belong to the Cabinet Office. This institution just cannot be called an independent body.

Furthermore, the ruling parties are examining the establishment of a standing committee in the Diet and are supposed to submit a revised bill of the Diet Act later. After the passage of the Act, the Diet members carried out study in the U.S.A., the U.K., and Germany. It is necessary to examine many points such as ways to design its institution and fund salaries for members, scope of provision of the information and a way to manage it before establishing the standing committee in the Diet.

[7] The Act does not stipulate that whistleblowers shall be exempt from criminal charges.

37 of the Tshwane Principles states, “Disclosure by public personnel of information, regardless of its classification, which shows wrongdoing that falls into one of the following categories should be considered to be a “protected disclosure” if it complies with the conditions set forth in Principles 38–40. A protected disclosure may pertain to wrongdoing that has occurred,

is occurring, or is likely to occur,” and lists the information on 11 categories. It also states that whistleblowers should be protected from retaliation when the public interest in having the information revealed outweighs the public interest in keeping it in secret.

The above points are almost identical to the ones in Japanese Whistleblower Protection Act. However, the Special Secret Act does not explain what kind of relation the civil protection for whistleblowers in the Whistleblower Protection Act has to an exemption from criminal charges on disclosure of the designated secrets in the Act. The Act lacks a provision which legally guarantees to exempt whistleblowers from criminal charges.

[8] The Act does not specify that it prohibits punishing journalists and civil activists and asking them to disclose information sources.

The Tshwane Principles do not deny punishment of public personnel, but denies that of persons who are not public personnel (ex. journalists and civil activists). Principle 47 states, “(a) A person who is not a public servant may not be sanctioned for the receipt, possession, or disclosure to the public of classified information.” “(b) A person who is not a public servant may not be subject to charges for conspiracy or other crimes based on the fact of having sought and obtained the information.” However, a note attached to this provision states, “This Principle intends to prevent the criminal prosecution for the acquisition or reproduction of the information. However, this Principle is not intended to preclude the prosecution of a person for other crimes, such as burglary or blackmail, committed in the course of seeking or obtaining the information.” This principle explains that it is enough to punish journalists for committing a crime in the process of obtaining the information.

According to Article 23 of the Special Secrets Act, journalists and civil activists are subject to criminal charges as their act of obtaining the information will be regarded as “acts that obstruct the management by administrator of the designated secrets.” There are no guarantees in the Act to prevent asking journalists and civil activists to reveal sources of the information. The Act clearly violates the guarantee stated by the Principles.

#### (4) Proposed Recommendations for the Concluding Observations

The State Party should make a full revision of the Special Secret Act, including the systems on secret security laws, information disclosure, public records management, and whistleblower protection regarding the existing National Public Service Act, Self-Defense Forces Act, Japan-US Security Treaty, based on freedom of expression and the rights to know guaranteed under Article 19 of the CCPR and the internationally recognized Tshwane Principles, towards disclosing more information and ensuring the public’s right to know. Some review points are as follows:

- 1) Stipulate that the burden of proof of designating secrets rests on the state.
- 2) Specify what secrets shall not be designated by the state.
- 3) Shorten the 60-years-valid time limit in the Act.
- 4) Specify the procedures for revoking the designated secrets for citizens.
- 5) Guarantee to argue over the content of the designated secrets at the open court in criminal trials.
- 6) Establish an independent oversight bodies that have the authority to access to any information

and to revoke the designated secrets.

- 7) Stipulate that whistleblowers shall be exempt from criminal charges in the Act.
- 8) Specify that the Act prohibits punishing journalists and civil activists and asking them to disclose information sources.

## 2 Restrictions under the Public Offices Election Act

### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

*26. The Committee is concerned about unreasonable restrictions placed on freedom of expression and on the right to take part in the conduct of public affairs, such as the prohibition of door-to-door canvassing, as well as restrictions on the number and type of written materials that may be distributed during pre-election campaigns, under the Public Offices Election Law. It is also concerned about reports that political activists and public employees have been arrested and indicted under laws on trespassing or under the National Civil Service Law for distributing leaflets with content critical of the Government to private mailboxes (art. 19 and 25).*

***The State party should repeal any unreasonable restrictions on freedom of expression and on the right to take part in the conduct of public affairs from its legislation to prevent the police, prosecutors and courts from unduly restricting political campaigning and other activities protected under articles 19 and 25 of the Covenant.***

### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Government reports that as the prohibition of election campaigns using door-to-door canvassing and the prohibition of political literature and illustrations under the Public Offices Election Law are solely intended to ensure the fairness of elections, the Supreme Court's ruling states that these restrictions are not in violation of the provision of article 21 of the Constitution of Japan which guarantees freedom of expression.<sup>185</sup>

### (3) Current Situation

The Government has not worked on revising the legislation to abolish these provisions regarding restrictions on election campaigning under the Public Offices Election Law since the last Concluding Observations by the CCPR. Revision of the legislation in the Concluding Observations on the 5th review was made considering the fact that unreasonable restrictions under the Public Offices Election Law enable the court to allow excessive restrictions. The statement in the Government's report that "the Supreme Court's ruling states that these restrictions are not in violation of the provision of article 21 of the Constitution of Japan which guarantees freedom of expression" does not give a sincere response to the Committee's recommendation.

In addition to the concern about the above unreasonable restrictions on election campaigning by the Public Offices Election Law at the 5<sup>th</sup> review the CCPR expressed its special concern in General

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185 Paragraphs 261-263.

Comment No. 34 about the prohibition of door-to-door canvassing, restrictions on the number and type of written materials that may be distributed during election campaigns.<sup>186</sup>

(4) Proposed Recommendations for the Concluding Observations

The State Party should abolish the unreasonable restrictions on election campaigning by the Public Offices Election Law

### 3 Restrictions on Political Activities by National Public Employees

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Refer to the paragraph 26 mentioned above.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The National Public Service Act and National Police Agency Rule 14-7 impose restrictions on political acts likely to be detrimental to the political neutrality of national public employees. Therefore, it is considered that the making of house-to-house visits by such employees with the intention of supporting or disapproving any specific candidate or political party, or to distribute documents or drawings with a political purpose conflicts with such restrictions. The Government considers, as these restrictions are the minimum necessary restrictions to maintain the political neutrality of national public employees who are engaged in public administration as the public servants of all citizens, that these restrictions are considered not to cause a violation of the Covenant.<sup>187</sup>

(3) Current Situation

Since the last concluding observations and up to the present, the Government has not revised these laws or the National Civil Service Law which unjustly constrains public officers' political activities.

However, a new progressive change has been observed in the Supreme Court on this matter. On December 7th, 2012, the Supreme Court rendered decisions on two criminal cases of national government employees (the Horikoshi Case and the Ujibashi Case) that the JFBA had reported on the 5th Japanese Periodic Report review. The Supreme Court ruled that the provisions of the National Civil Service Law and the National Personnel Authority Regulations themselves are not in violation of Article 21 of the Constitution of Japan which guarantees freedom of expression, but the political acts banned in the National Personnel Authority Regulations must be interpreted as being limited to those acts that practically impair the political neutrality necessary for fulfilling the duties of public officers. The ruling said that in deciding whether any acts actually impaired political neutrality, it is reasonable to take into account various factors such as the positions of the public officers in question, their job descriptions and authority, the way they conduct the acts, etc. As a result, the Supreme Court found Mr. Ujibashi, a deputy section chief of the Ministry of Health, Labour and Welfare, guilty and Mr. Horikoshi, a general clerk of the Social Insurance Agency, not guilty.

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186 CCPR/C/GC/34

187 Paragraph 266.

This ruling changed the previous decisions that allowed for a uniform and total ban on political activities by national public employees, and declared political activities engaged in by public officers who engage in clerical, non-managerial work to be exempt. This ruling can be evaluated as being progressive. However, it is not necessarily fair that the court can find public officers in managerial positions to be automatically guilty. Political activities that public officers engage in on their holidays as a citizen apart from their work should be freely admitted regardless of their position at work.

The Concluding Observations of the 5th review recommended revisions to the legislation, based on the concerns that the court decisions have made excessive restrictions based on unjust restrictions in the legislation. The Government should therefore revise the legislation to make it impossible to punish public officers for engaging in political activities on their holidays, separate from their work regardless of their position at work.

(4) Proposed Recommendations for the Concluding Observations

The State party should revise the legislation to make it impossible to punish public officers for engaging in political activities on their holidays, separate from their work regardless of their position at work.

#### 4 Protection of the Rights of Crime Victims

With regard to this issue, refer to the section regarding Article 14.



## 1 Public Figure's Remarks Which Promote Discrimination

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)  
Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)  
Not mentioned.

(3) Current Situation

1) In Japan, there have been endless cases of people in public positions, especially politicians and high-level government officials making discriminatory remarks. There have been discriminatory remarks made by public figures where the head of a local government - who should primarily take the lead in abolishing discrimination – pointed out certain ethnic groups or nationalities as if they were criminal groups. Remarks made by high-level government officials have a strong influence on citizens and raise the fear of promoting discrimination or prejudice against foreigners. This is absolutely intolerable and appropriate measures should be taken for the prevention thereof.

2) Examples of discriminatory remarks made by public figures

[1] On 8 May 2001, the Governor of Tokyo referred to a case of a murder committed by a Chinese national and stated to the press that “There is a fear that the nature of the Japanese society as a whole may be transformed by the proliferation of crime indicating this ethnic DNA.” and that “there are around 10,000 illegal residents coming to Japan annually, out of which little less than 40% are Chinese. As they are illegal residents, they cannot lead honest lives and inevitably become criminal elements.”<sup>188</sup>

[2] On 12 July 2003, the former Minister for the Management and Coordination Agency commented on illegal foreign residents at the regular LDP branch meeting in Fukui City: “They come in thousands by boats when there is trouble in the Korean Peninsula. In this country, there are 1 million illegal residents who have committed theft or murder. They invoke riots within the country,” “Take a look at Kabukicho in Shinjuku. They are lawless areas ruled like a third-country. Recently, groups of illegal residents from China, Korea and other countries have been committing thefts.” In 2003, the total number of foreigners arrested was 20,000, and the number of criminal offenders was 8,725 and the above comments go against these facts.

3) The view of the CERD

In its review of the first and the second government report based on the ICERD, the Government is urged by the CERD “to provide appropriate training of, in particular, public officials, law enforcement officers and administrators with a view to combat prejudices which lead to racial

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188 A report on the front page of the morning edition, *the Sankei Shimbun*, 8 May 2001

*discrimination.*”<sup>189</sup>

Furthermore, in the summary remarks of the review of third and 4th government reports, “*the Committee reiterates its concern from previous concluding observations (2001) that discriminatory statements by public officials persist*” and “*reiterates its recommendation that the State party strongly condemn and oppose any statement by public officials, national or local, which tolerates or incites racial discrimination and that it intensify its efforts to promote human rights awareness among politicians and public officials. It also recommends with urgency that the State party enact a law that directly prohibits racist and xenophobic statements, and guarantees access to effective protection and remedies against racial discrimination through competent national courts. The Committee also recommends that the State party undertake the necessary measures to prevent such incidents in the future and to provide relevant human rights education, including specifically on racial discrimination to all civil servants, law enforcement officers and administrators as well as the general population.*”<sup>190</sup>

Thus, the Government should immediately provide appropriate educational training to people in public positions to eliminate discriminatory remarks towards foreigners and ethnic groups. In addition, care should be taken so that public organizations do not proliferate images of foreign crimes which would deteriorate the security of and promote discrimination against foreigners.

#### (4) Proposed Recommendations for the Concluding Observations

- 1) The State party should immediately provide appropriate educational training to people in public positions to eliminate discriminatory remarks towards foreigners and ethnic groups.
- 2) The State party should implement legislation to prohibit racial discrimination, and establish a human rights institution that would be independent from the Government, as well as provide thorough human rights education to prohibit discrimination and promote multicultural understanding.

## 2 Hate Speech

### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Please refer to the 5th report regarding the legislation laws and efforts against the spread of discriminatory remarks. As for issues concerning the internet, the Government supports the dissemination of guidelines established by telecommunications company groups.

### (3) Current Situation

A demonstration by Zaitokukai against First Primary Kyoto Korean School is reported in

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189 CERD/C/58/Misc.17/Rev.3, Paragraph 13.

190 CERD/C/JPN/CO/3-6, Paragraph 14.

above-mentioned Article 2, 1-5-3(3).

On 31 March, 2013, a demonstration manifesting discriminatory and xenophobic slogans such as “Koreans should go back to Korea” was conducted in Okubo, Shinjuku, Tokyo, where many foreigners of Korean nationality reside. It is reported that similar demonstrations are repeatedly occurring in other parts of Japan.

The CERD recommended in the summary remarks of the third and the 4th government review reports that plans should be implemented to “(a) *Remedy the absence of legislation to give full effect to the provisions against discrimination under article 4; (b) Ensure that relevant constitutional, civil and criminal law provisions are effectively implemented, including through additional steps to address hateful and racist manifestations by, inter alia, stepping up efforts to investigate them and punish those involved; (c) Increase sensitization and awareness-raising campaigns against the dissemination of racist ideas and to prevent racially motivated offences including hate speech and racist propaganda on the Internet.*”<sup>191</sup>

Regarding the articles 4 (a) and (b) of the ICERD, the Japanese Government has made a reservation and stated that “obligations based on these regulations will be implemented as long as they don’t contradict with the guarantee of the rights to assemble, form an association and express oneself under the Constitution of Japan.” As of the time of writing, no legislation in line with the above recommendation or Article 20 of Civil Liberties has been implemented.

(4) Proposed Recommendations for the Concluding Observations

- 1) The State party should implement legislation against racial discrimination.
- 2) The State party should provide thorough human rights education to prohibit racial discrimination and promote multicultural understanding.

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191 CERD/C/JPN/CO/3-6, Paragraph 13

- (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)  
Not mentioned.
- (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)  
Not mentioned.
- (3) Current Situation

- 1) Restriction on use of Hibiya Park

A liaison office of groups and individuals organizing a protest movement or demonstration march in the Metropolitan area in opposition to the reopening of nuclear power plants planned to lead a demonstration march from Hibiya Park to the Diet on 11 November 2012. They asked the Tokyo Metropolitan Government for permission to use the space around Kasumi Gate within Hibiya Park as a gathering and starting point of the demonstration march temporarily between 1 pm and 3 pm. In Hibiya Park, there are two assembly facilities, namely the Hibiya Public Hall and the Hibiya Music Bowl. Until then, it was widely permitted to use the garden path or public spaces as a gathering and starting point for demonstration marches, even in cases where these assembly facilities were not used. In fact, the office used Hibiya Park as a gathering and starting point of demonstration marches twice on 11 March and 29 July 2012 by submitting an application for permission to use the park temporarily. In both cases, they only used the garden path and not the Hibiya Public Hall or Hibiya Music Bowl.

However, since mid-August 2012, the Tokyo Metropolitan Government announced that it is not possible to use only the garden path as a gathering/starting point of a demonstration march unless rental fees for Hibiya Public Hall or Hibiya Music Bowl are also paid. On 31 October 2012, the Tokyo Metropolitan Government decided not to permit the use of the park as a gathering/starting point of demonstrations due to the difficulty of managing the same.

The judicial decision regarding this case stated that “the demonstration was not organized by a certain group but was targeting the general public and that it is not easy to grasp the number of participants beforehand in high accuracy”. It ruled that the open space in Hibiya Park on 11 November did not have the capacity to hold the 10,000 participants of the demonstration as it would create competition and confusion with other park users leading to concrete danger and that the requirement of “the presence of a clear reason” was not met (Clause 1 of Article 37-5 of the Administrative Case Litigation Act).

However, Hibiya Park is a typical public goods and its use by the general public should rightfully be allowed. In the first place, such park is a typical public forum traditionally used as a gathering/starting point of assembly meeting or demonstration marches. As a general rule, its use should be approved and any restriction thereof without a justifiable reason is a restriction on the freedom of expression and gathering guaranteed by the Constitution of Japan.

Furthermore, these judicial decisions lack the important perspective that protest movements or

demonstration marches conducted after the Great East Japan Earthquake in opposition to the reopening of nuclear power plants were implemented in an orderly and peaceful manner with the voluntary participation of large numbers of citizens.

2) Excessive intervention by the police towards collective action

On 9 December 2012, the Security Department of the Osaka Police arrested an associate professor and others who were engaging in propaganda activities against accepting “earthquake debris” on 17 October 2012 in front of Osaka Station, based on the charges of forcible obstruction of business (Article 234 of the Penal Code) and unlawful trespass (Final paragraph of Article 130 of the Penal Code).

This propaganda activity was made to express the individual’s own political views to passersby regarding the treatment of debris by Osaka City, and it was an activity of expression which should be fully protected by the Constitution. Even if the propaganda activities were considered to have been conducted within Osaka Station, they were nowhere near the ticket gates or other places where they may have been an obstacle to passersby, but were instead just within the site where the separation from the public road was vague. This kind of space should be considered a public forum traditionally used as a space for activities regarding the freedom of expression.<sup>192</sup>

The associate professor was not prosecuted, but another arrestee was prosecuted and is currently under criminal trial.

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192 Statement made by the researchers on the Constitution against the application of the charges of forcible obstruction of business to the propaganda activity in front of the JR Osaka Station (17 December 2012).

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Refer to the paragraph 11 mentioned above.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The bill for the Act for Partial Revision of the Civil Code and the Family Registration Act (tentative name), which includes provisions for separate family names for married couples, shortening the prohibition period during which women cannot remarry and harmonizing the minimum age of marriage for men and women, was not submitted to the Diet because it was so controversial in the ruling party that it was not decided on in the Cabinet.<sup>193</sup>

(3) Current Situation (including replies to the list of issues 5)

The Japanese Government has not submitted any such bills to the Diet and, therefore has failed to fulfill its obligations to create a legal system in which married women can have the choice to keep their own maiden names, to shorten the prohibition period during which women are restricted from remarrying and to harmonize the minimum age of marriage for men and women at 18 years old in domestic legislation.

According to the Third Basic Plan for Gender Equality (2010), it only states that “amendments to the Civil Code in order to equalize the minimum legal age for marriage of men and women, to create a system allowing married men and women to have the choice to keep their own surname respectively or to share a common surname either of a husband or a wife, and so forth are continued to being considered in light of diverse ways that family and a couple work and the Concluding Observation of the CEDAW. Issues of family law in accordance with the diverse ways that family works associated with the increase in the number of remarriage, the changes in the times as the low birth rate and so on also discussed widely.” However, no concrete measures with respect to these issues have been taken yet.

Furthermore, the CEDAW has noted the same point in the Concluding Observations concerning the 6th periodic report submitted by Japan<sup>194</sup>, and it determines in its follow-up procedure that its observations are not followed, because the amendment bill to the Civil Code was not submitted and the government has demanded further discussion of this topic with public.

In the procedure, the CEDAW requests additional information regarding the measures taken to draft and adopt a law so that the law which stipulates a prohibition period only for women forbidding remarriage for 6 months will be abolished. The state party responds that the amendment to the Civil Code includes the shortening of the prohibition period. Nevertheless, the CEDAW determines that its observations are not followed, because the recommendation by the Committee is not shortening the period but abolishment or amendment of the provision.

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193 Paragraph 284.

194 CEDAW/C/JPN/CO/6, Paragraph 18.

(4) Proposed Recommendations for the Concluding Observations

The State Party should amend the Civil Code with a view to setting the minimum age for marriage at 18 for both women and men, to adopt a system to allow married couples to choice of surnames in accordance with Article 16(g) of the CEDAW, and to abolish the law which stipulates the six-month waiting period required only for women but not for men before remarriage.

## 1 The Convention on the Rights of the Child and Two Optional Protocols

- (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)  
Not mentioned.

- (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

In April 2008, the Japanese Government submitted a report on the Convention on the Rights of the Child and two Optional Protocols which was reviewed by the CRC in May 2008. In accordance with the points of the final view, the Government is making efforts to implement the above Convention and the two Optional Protocols.

In March 2010, the Ministry of Foreign Affairs, together with the UNICEF Tokyo Office and the Japan Committee for UNICEF, co-hosted the “Symposium on the Convention on the Rights of the Child – Future Challenges” and received practical proposals from experts and practitioners such as lawyers, pediatricians, private companies and NGOs on the future challenges and roles to be fulfilled from the perspective of promoting international cooperation to achieve “respect and protection of the rights of the child” indicated in the Convention on the Rights of the Child and the two Optional Protocols.<sup>195</sup>

- (3) Current Situation

- 1) On 19 December 2011 (New York time), a new draft of the optional protocol (hereafter, “Third Optional Protocol”) of the Convention on the Rights of the Child was adopted at the UN General Assembly.

The Third Optional Protocol aims to establish several important systems to secure the effectiveness of the Convention such as an individual complaint mechanism to the United Nations Children’s Rights Committee. Through these systems, it is expected that national policy measures will be strengthened according to the Convention, and that the rights of Japanese children will be protected in line with the international human rights standards.

However, even though the Third Optional Protocol was adopted at the UN Human Rights Council on 17 June, 2011 and adopted unanimously at the UN General Assembly as above, Japan has still not yet ratified it, although Japan was one of the countries who made the joint-proposal.

- 2) The basic law on the rights of the child stipulating the rights to develop or rights to manifestation where the child is the subject of rights, has not been enacted.
- 3) The Child Welfare Act, Basic Act on Education, School Education Act and Juvenile Act are listed as national acts contributing to the implementation of the rights of the child. However, these national acts are not the rights-based acts requested by the Convention. In addition, the maintenance of facilities and establishments for children and the distribution of resources thereto

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195 Paragraph 287.



have been immensely lacking, and the fact that there are various challenges from the viewpoint of child protection is being ignored.

- 4) There is a need for a substantive discourse between the Government and the NGOs, to share common perceptions, and to draw up concrete programs to promote the Convention. However, no such initiative has been taken.
  - 5) There is the possibility that children who had been employed by the military or armed groups, or who has been engaged in hostile acts, are currently among the applicants for refugee status or the pool of immigrant workers.
- (4) Proposed Recommendations for the Concluding Observations
- 1) The State party should ratify the Third Optional Protocol.
  - 2) The State party should enact a basic law on the rights of the child.
  - 3) The State party should draw up concrete programs for the promotion of the Convention together with NGOs.
  - 4) 3) The State party should develop effective means for ensuring the protection of children who had been employed by the military or armed groups, or who have been engaged in hostile acts, and who are currently among the applicants for refugee status or the pool of immigrant workers.

## 2 Child Protection

- (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Refer to the paragraph 27 mentioned above.

28. *The Committee reiterates its concern that children born out of wedlock are discriminated against with regard to the acquisition of nationality, inheritance rights and birth registration (art. 2 (1), 24 and 26).*

***The State party should remove any provisions discriminating against children born out of wedlock from its legislation, including article 3 of the Nationality Law, article 900 (4) of the Civil Code, and article 49 (1), item 1, of the Family Registration Law prescribing that birth registration forms shall indicate whether or not a child is “legitimate”.***

- (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Based on the Comprehensive Measures to Eliminate Child Pornography enacted in 2010, the Government, in cooperation with people, business entities, and related bodies, is making efforts such as strengthening control, in achieving the abolition of child pornography.<sup>196</sup>

Child abuse can gravely affect the mental and physical development as well as character building of a child. The Government will maintain and enhance the non-stop and complete support system which provides coverage from “prevention of abuse” and “early detection and management” of abuse to “protection and self-support” of children who have suffered from abuse.<sup>197</sup>

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196 Paragraph 289.

197 Paragraph 304.

Physical punishment is strictly prohibited under Article 11 of the School Education Act, and the Ministry of Education, Culture, Sports, Science and Technology is giving instructions to educational organizations to this effect.<sup>198</sup>

(3) Current Situation

- 1) The Government maintains that it prohibits prostitution for all children under the age of 18 under the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children ('Child Prostitution and Child Pornography Prohibition Act'). However, this Act is for punishing the conduct of prostitution by providing compensation or the promise of compensation, and if the case in question doesn't involve compensation, it will be punished under the Child Welfare Act or the Prefectural Ordinance on Juvenile Protection.

The punishment for the crime involving a child in sexual misconduct was strengthened by the amendment of the Child Welfare Act in 2003. In addition, due to the increase in child prostitution through the use of online dating websites, the Act on Regulation on Soliciting Children by Using Opposite Sex Introducing Service on Internet was enacted in September 2003, and in December 2008, part of the Act was amended.

However, in reality, there were a total of 792 (2008) victimized children under the Child Prostitution and Child Pornography Prohibition Act, who were victimized using sites other than online dating websites but an online profile introducing service. The reality is that children are sexually victimized through various means so the Government policy is hugely insufficient.

So as to protect the rights of sexual self-determination of children who are in the process of their development and to protect them from sexual exploitation, the age of sexual consent should be raised uniformly by the law.

Under the Child Prostitution and Child Pornography Prohibition Act, the act of buying sex and the act of abduction and kidnapping, or taking a child outside the country, are all the objects of punishment. However, the act of bringing a child into Japan under consent and involving the child in prostitution is not subject to punishment thereunder.

- 2) Under parental authority, the right to perform a disciplinary act is permitted (Article 822 of the Civil Code). One can value the fact that the part regarding the place for disciplinary acts was deleted and that certain restriction were imposed on the exercise of the right to perform disciplinary acts from a child's point of view. However, the right to perform a disciplinary act itself was not deleted.
- 3) Under the School Education Act, physical punishment is prohibited. However, physical punishments towards children and students in schools have not yet ceased.

Regarding physical punishment in schools, the Government reports that it is strictly prohibited under Article 11 of the School Education Act, and that it is instructing educational organizations to this effect.

However, in February 2007, the Ministry of Education, Culture, Sports, Science and Technology

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198 Paragraphs 311, 312.

issued a notice stating that ‘resolute instruction towards children engaging in troubled acts’ such as bullying etc. is necessary, and that “disciplinary punishment which has been conducted using physical force (visible and physical force) towards children” are “not always unacceptable as physical punishments.” This can be seen as relaxing the standard of “physical punishment.”<sup>199</sup> It is fundamentally wrong to permit the attempted prevention of troubled acts by children through the use of physical force (violence), and contradicts the above governmental report that proclaims to be giving instructions prohibiting physical punishment.

In addition, there are cases where children have committed suicide after being troubled by abusive words and oppressive and excessive instructions/reprimands. For example, there have been cases in which a child committed suicide by jumping out of the school window when a teacher was chastising him (Junior High School in Nagasaki in March 2004); a child committed suicide just after being suspected and chastised for cheating during an examination (High School in Saitama in May 2005); and a child committed suicide after being scolded using physical force and abuse for causing trouble among the children (Elementary School in Fukuoka in March 2006).

- 4) On September 4, 2013, the Grand Bench of the Supreme Court held that the conditional clause in Article 900 clause 4 of the Civil Code, which provided that the share in inheritance of a child born out of wedlock shall be one half of the share in inheritance of a child born in wedlock, was unconstitutional as it violated Article 14 paragraph 1 of the Constitution, which provides for equality under the law. On December 5 of the same year, the draft Bill for the Partial Amendment of the Civil Code deleting the clause in question was adopted with the approval of the Plenary Seating of the House of Councillors, thereby removing the discrimination in inheritance shares against children born out of wedlock.

(4) Proposed Recommendations for the Concluding Observations

- 1) The State party should raise the minimum age of sexual consent from 13.
- 2) Corporal punishment at home or in institutions should be explicitly prohibited by legislation.
- 3) An awareness-raising campaign on the harms of corporal punishment as well as on non-violent forms of discipline should be carried out.
- 4) Although an act of buying or selling a child for the purpose of child prostitution, or of transporting within or outside of the country of residence, a child, who has been kidnapped, bought or sold for the same purpose is subject to punishment, a provision to punish an act of bringing a child into Japan under consent for the purpose of child prostitution should be created.
- 5) Article 822 of the Civil Code (right to discipline) should be deleted.
- 6) Discriminatory provisions, such as Article 49 paragraph 2 clause 1 of the Family Register Act, Articles 750, 733 and 731 of the Civil Code should be promptly amended.

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199 The Head of Elementary and Secondary Education Bureau of the Ministry of Education, Culture, Sports, Science and Technology ‘Notice on the instruction towards children who make problematic behavior’ 5 February 2007

## 1 Foreigners' Right to Vote

### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Government quotes the previous report, and additionally observes that the Supreme Court's ruling shows that articles 129 and 138 of the Public Offices Election Act are not in violation of the Constitution of Japan.<sup>200</sup>

It also states that the right to vote is provided for all Japanese over 20 years old, regardless of their gender, in section 2, "Legislative branch" of Part B, "Constitutional, political, and legal structure of the State" of the common core document.

### (3) Current Situation

In Japan, the right to vote and the eligibility for elections are limited to Japanese nationals and foreigners are not entitled to vote or to run for elections in the Diet and local elections under the Public Offices Election Act.

According to the Supreme Court, in the case where Zainichi Korean people who have obtained permanent resident status requested right to vote in elections for the heads of local governments and local assembly, the relevant provision of the Constitution does not guarantee such kind of rights to vote to foreigners, however, it does not prohibit recognition of the rights of permanent resident-status foreigners in local elections through legislation, which should be considered in the Diet.<sup>201</sup>

Seeking to build a harmonious multiethnic and multicultural society, the JFBA adopted the declaration in Convention on the Protection of Human Rights in October, 2004 in order to request the government to enact a law or local ordinances which entitle permanent foreign residents to vote in local elections.

Regarding this issue, the Liberal Democratic Party, which returned to power after the general election in December, 2012, insists in its proposed constitutional amendment which was announced in April, 2012, that the right to vote, even in local elections, is limited to people who possess Japanese citizenship.

It seems difficult to realize the voting right of foreigners in Japan under current political situation where the above-mentioned party is in power. The Government should address this issue and revise the laws, in order for the permanent resident-status foreigners to be entitled to vote in local elections.

### (4) Proposed Recommendations for the Concluding Observations

The State Party should amend a law in order to entitle permanent resident-status foreigners rights to

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200 Paragraphs 313, 314..

201 February 28th, 1995.

vote in local elections.

## 2 Right to vote of Prisoners under Sentence

- (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)  
Not mentioned.
- (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)  
Not mentioned.

### (3) Current Situation

On September 27th 2013, the Osaka High Court adjudged that Article 11(1)(2) of the Public Offices Election Act, which bans convicted prisoners from voting automatically and indiscriminately until finishing their sentence, is against the Constitution of Japan. The details about this case are explained below.

#### 1) Summary of the case

The plaintiff, who could not vote in the House of Councilors election on July 11th 2010, because he was in prison serving his dues then, brought an action to the court in order to request it to acknowledge that Article 11(1)(2) of the Public Offices Election Act is contrary to the Constitution of Japan, because it prohibits convicted prisoners from voting in Japan automatically and indiscriminately until finishing their sentence, and that his right to vote will be exercised in the next House of Representatives election. He also demanded, based on Article 1(1) of the Act concerning State Liability for Compensation, to be paid 1 million yen in compensation for emotional distress due to the deprivation of his right to vote, and delayed damages calculated based on legal interest of the Civil Code from the above-mentioned election day to the date when it will be paid.

#### 2) Summary of the Judgment of the First Instance

[1] The Claim for Acknowledgement of Unconstitutionality of Article 11(1)(2) of the Public Offices Election Act

With respect to the plaintiff's request of acknowledgment of unconstitutionality of Article 11(1)(2) of the Public Offices Election Act, the court dismissed the plaintiff's argument, because the plaintiff completed his prison term on January 29th 2011, and he was, therefore, already out of the scope of this article. As a result of that, the court considered that there is no concrete legal dispute between parties, and the plaintiff's request in this context raised an abstract issue.

[2] The Claim for Approval of the Plaintiff's Right to Vote in the next House of Representatives Election

The request of approval of the plaintiff's right to vote in the next House of Representatives Election was dismissed due to the fact that he agreed that he had completed his prison term, and he, thus lacked standing for this point.

[3] The Claim for Damage based on the Act concerning State Liability for Compensation (the

Unconstitutionality of Article 11(1)(2) of the Public Offices Election Act and illegality under the Act concerning State Liability for Compensation of legislation and omission to abolish the article)

a) The legal framework to determine the constitutionality

Considering the constitutional complaint in terms of the standard of reasonableness and admitting a certain level of the discretionary power of the Diet, the court would determine the disqualifying provision for prisoners at issue is against the Constitution of Japan if it was regarded as the abuse of the Diet's discretionary power and it lacked the reasonableness.

The court also observed that the judgment of the Supreme Court of Japan in 2005, in which the person concerned did not have an address in Japan, was different from this case, and the issue raised in this case was whether disqualification for voting was contrary to the Constitution of Japan or not.

The court mentioned that Article 25 of the ICCPR did not prohibit the State Party from limiting the right to vote on rational grounds.

b) The Constitutionality of Article 11(1)(2) of the Public Offices Election Act

The court determined that Article 11(1)(2) of the Public Offices Election Act was not against the Constitution of Japan, because the automatic and indiscriminate deprivation of the right to vote of convicted prisoners during penal servitude, falls within reasonable scope on the grounds that [1]there are outrageous violations of law by prisoners, [2]criminals who are sentenced to certain period in prison are forced to be isolated from society, [3]it is necessary to establish unified standards for disqualification for voting, and [4]the term when prisoners' right to vote was deprived was limited to the term of penal servitude.

c) Conclusion

The claim for damage based on the Act concerning State Liability for Compensation was dismissed, because Article 11(1)(2) of the Public Offices Election Act did not contradict the Constitution of Japan.

3) The Judgment of the High Court

[1] Plaintiff's Argument

The judgment on constitutionality of limitation of the rights to vote should be determined based on strict standards, and the rights to vote should not be deprived of if there is no inevitable reason for deprivation of prisoners' right to vote.

Article 11(1)(2) of the Public Offices Election Act is against the Constitution of Japan, as it stipulates that the right to vote of convicted prisoners is deprived automatically and indiscriminately during penal servitude without considering any factors such as types of crimes and length of prison term. Even though the standard of reasonableness is applied to the case, the provision is too broad and oppressive since it does not allow courts to consider and decide within the criminal procedure, and should be regarded out of reasonable restraintff.

[2] The Judgment of Appeal Court

a) With respect to legality of plaintiff's claim for the acknowledgement of unconstitutionality of Article 11(1)(2) of the Public Offices Election Act and the approval of the plaintiff's right to

vote in the next House of Representatives election, the court dismissed the plaintiff's appeal for the same reason of the original judgment.

b) The Constitutionality of Article 11(1)(2) of the Public Offices Election Act

Concerning the unconstitutionality of deprivation of eligibility for election by Article 11(1)(2) of the Public Offices Election Act, the court stated that there were inevitable reasons for deprivation of prisoners' eligibility for election, based on the grounds that the plaintiff provided no specific basis for his argument, and it was difficult for prisoners to campaign for elections in prison based on their eligibility for election, and hence the article was constitutional.

Regarding the unconstitutionality of limits on prisoners' right to vote, the right is one of important rights which are directly related to democracy under the Constitution of Japan, and therefore, its deprivation and limits are not allowed except in the case of certain limits on the rights of those who threatened the fairness of elections (the strict scrutiny). "Inevitable reasons" are, thus required for [1]deprivation of the right to vote or [2]limits on its exercise, except for limitation of a certain extent for criminals who committed election violations.

In order to determine whether there were inevitable reasons for deprivation of and limits on prisoners' voting right or note, the court considered reasons below;

- It is not possible to consider that, only because they are sentenced to be in prison, prisoners do not have law-abiding spirit at all and do not exercise their voting right justly.
- Criminals who are sentenced to certain period in prison can exercise their right to vote in the same way as absentee ballot. It is technically possible for prisoners to exercise their voting right even in prison, since people in detention pending trial can vote by absentee ballot, and prisoners are entitled to vote for national referendum for the amendment of the Constitution.
- There are no rational grounds for disenfranchising prisoners automatically and indiscriminately only because they are sentenced to be in prison.
- It is not difficult for prisoners to obtain necessary information in order to exercise their right to vote.

For these reasons, the court observed that there is no inevitable reason to deprive or limit on prisoners' voting right automatically and indiscriminately and Article 11(1)(2) of the Public Offices Election Act contradicted Articles 15(1)(3), 43(1) and the provisory clause of Article 44 of the Constitution of Japan.

c) The Claim for Damage based on the Act concerning State Liability for Compensation due to the Unconstitutionality of Article 11(1)(2) of the Public Offices Election Act and Illegality of Legislation and Omission to Abolish the article

The Court dismissed plaintiff's claim for damage based on the Act concerning State Liability for Compensation, because legislation or omission to abolish certain articles of the Diet members was not directly assumed to be illegal even though law as a result of legislation or omission was against the Constitution. Illegality of legislation or omission of the Diet members should be determined based on narrow interpretation of Article 1(1) of the Act

concerning State Liability for Compensation. As far as the present case concerned, [1]it was not clear at the time of 1950 that automatic and indiscriminate deprivation of prisoners' right to vote was a violation of the civil rights protected under the Constitution of Japan, and [2]there had been no evidence that it was the common belief or majority opinion among constitutional scholars that automatic and indiscriminate deprivation of prisoners' right to vote was contrary to the Constitution until the election in July 11th 2010. For these reasons, the claim for damage of the plaintiff was rejected.



## 1 Treatment of Children Born Out of Wedlock

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Refer to the paragraph 28 mentioned above.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Cabinet could not submit the bill for the Act for Partial Revision of the Civil Code, which includes provisions for inheritance in equal shares for both children born in and out of wedlock.<sup>202</sup>

(3) Current Situation (including replies to the list of issues 5 and 25)

In September, 2013, the Supreme Court ruled that the provision for inheritance in unequal shares for children born in and out of wedlock is unconstitutional, and a legislation to make shares of inheritance of children born in and out of wedlock equal was passed and enacted in December, 2013.

However, the above-mentioned legislation submitted by the Cabinet did not include deletion of the article 49 of Family Registration Act which obligates people to write whether a child was born in or out of wedlock in registration of birth because of opposition in the discussion inside the ruling party.

As a result of that, there still are discrimination against children born outside of marriage at birth registration, social discrimination against them, and the legal terms, “legitimate” and “illegitimate” to differentiate children whose parents are married or not married, concerning legitimacy of children. Unmarried single-parent families are excluded from the scope of tax exemption for widows - although it is virtually applied to them in some local bodies - and they are, therefore, disadvantaged in terms of income taxes and social services such as childcare costs and rents of public housing. Furthermore, the discriminatory words and actions against children born out of wedlock and unmarried families spread in the society.

In addition, in exchange for the equalization of inheritance for children born in and out of wedlock, there is a movement in the ruling party to establish “a special committee to protect family ties” and the party submitted request in order to enhance the right of spouses in inheritance. These movements dilute the influence of elimination of discrimination against children born out of wedlock.

In the second cycle of the universal periodic review of Japan, the Human Rights Council recommends the Government to review or amend existing discriminatory legislation related to the children born out of wedlock in the Civil Code and Family Registration Law<sup>203</sup>, and to ensure non-discriminatory birth registration<sup>204</sup>. The Committee on Economic, Social and Cultural Rights, in the third periodic review of Japan, observes that the concerned discriminatory provisions against the children born out of wedlock should be amended<sup>205</sup>.

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202 Paragraph 315.

203 Paras. 147.38 and 42.

204 Paras. 147.78 and 81.

205 Para. 10.

(4) Proposed Recommendations for the Concluding Observations

- 1) The Japanese Government should nullify the article 49 of Family Registration Act which obligates people to write whether a child was born in or out of wedlock in registration of birth.
- 2) The State Party should take measures to abolish the term “illegitimate children” from domestic legislations, apply the tax exemption for widow to unmarried single-parent families and initiate efforts to eliminate all forms of social discrimination against children born out of wedlock..

## 2 Nationality Requirements under the National Pension Act

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

*30. The Committee notes with concern that, as a result of the non-retroactivity of the elimination of the nationality requirement from the National Pension Law in 1982 combined with the requirement that a person pay contributions to the pension scheme for at least 25 years between the ages of 20 and 60, a large number of non-citizens, primarily Koreans who lost Japanese nationality in 1952, are effectively excluded from eligibility for pension benefits under the national pension scheme. It also notes with concern that the same applies to disabled non-citizens who were born before 1962 owing to a provision that non-citizens who were older than 20 years at the time when the nationality clause was repealed from the National Pension Law are not eligible for disability pension benefits (art. 2 (1) and 26).*

***The State party should make transitional arrangements for non-citizens affected by the age requirements stipulated in the National Pension Law, with a view to ensuring that non-citizens are not discriminatorily excluded from the national pension scheme.***

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Since the nationality requirement had been introduced when the national pension system was established and that no transitional measures had been taken when the nationality requirement had been eliminated, there exist foreign people who are excluded from eligibility for pension benefits. However, the allegations on the part of the Government were accepted by the Supreme Court’s rulings in February 2009 issued after the concluding observations of the Committee. Meanwhile, the Government has the opinion that the way in which to respond to foreign nationals who are unable to receive pensions must be considered in light of the principle of social insurance, i.e. “no benefits without premium payments,” and the fact that there are also people without pensions among Japanese nationals.<sup>206</sup>

(3) Current Situation

As written before, the Government of Japan received the recommendation from the CCPR in the concluding observation concerning the 5th periodic report. Nevertheless, it has not taken such

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206 Paragraph 321

provisional measures, because the Supreme Court has concluded that such attitude of the Government has not violated the Constitution. It has also not started to consider any specific measures until now despite of the recommendation related to some articles of the Act on Provision of Special Disability Benefit to Specified Persons with Disabilities, such as article 2 thereof, to consider measures toward foreign residents in Japan who have disabilities and/or are senior citizens.

In addition to such situation, the aging of foreign residents in Japan with disabilities and/or who are senior citizens, as well as the deterioration in the socioeconomic environment as a result of the prolonged recession, have made the lives of most of such people difficult. Considering such situation, the violations of article 2, paragraph 1 and article 26 of the the ICCPR are even more serious, and the Government needs to take provisional measures for such persons immediately.

With regard to provisional measures, the public assistance benefits for foreign residents in Japan have become another problem. In many cases, the only social security which the foreign residents in Japan without pension benefits can receive may be the public assistance benefits, on the ground that provisional measures are not provided in the National Pension Act.

Regarding the problem of public assistance benefits for foreign residents in Japan, the Japanese Government has stated in the 4th periodic report that Japan ratified the Convention Relating to the Status of Refugees in 1981 and that the social security system is applied to foreigners who have stayed in Japan legitimately according to the principle of equal treatment of citizens and non-citizens. When the Government was questioned in the context of article 25 of the Constitution, it answered that “the national pension system...covers permanent residents in Japan who are experiencing difficulties in daily life and advised that they can receive the same public assistance benefits as Japanese people.”

The Government, however, takes the position inside Japan that public assistance is legally “not applied” to foreigners. It is “applied *mutatis mutandis*” only for certain types of people, for instance permanent resident foreigners and spouses of Japanese. Accordingly, foreigners are not eligible to be covered by the public assistance benefits and are not even allowed to appeal the determinations of administrative agencies or to bring a case to the courts. Therefore, the rights to appeal of foreigners are simply denied even if they are experiencing difficulties in their daily lives when their applications for public assistance benefits were dismissed or the term of such benefits were not extended.

### 3 Rights of Foreigners to Serve in Public Office

- (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)  
Not mentioned.
- (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)  
Not mentioned.
- (3) Current Situation
  - 1) The National Public Service Act does not include provisions which require Japanese nationality to work as public employees. However, the Government has taken the position that Japanese

nationality is required to work as a public employee, because such persons are involved in the exercise of public authority and public decision-making even if there has been no provision concerning nationality since 1953.

With regard to local public employees, qualifications of candidacy for employment examinations for local public servants depend on the prefectural and city governments and some of them do not require Japanese nationality to take exams. Even in such local bodies, however, Japanese nationality is often required when people take an exam to be hired as a managerial position.

- 2) In 1994, the application of a Korean woman with the status of a special permanent resident of Japan to take an exam to get a promotion to a managerial position was rejected by the Tokyo Metropolitan Government, because she did not have Japanese nationality. In its judgment made on January 26, 2005, the Supreme Court determined that the arguments of the plaintiff were groundless. According to the Court, such discrimination in question was reasonable, because it is not intended in domestic legal system in Japan for foreigners to work as local public employees with managerial position who would be involved in the exercise of public authority such as recognizing rights and obligations of residents, and in the important public decision-making.
- 3) The employment in public schools of people who have foreign nationalities had not been admitted in most prefectures for a long time. On January 10, 1991, the Japanese Government promised to direct local prefectures to admit the employment of foreign nationals in public schools as a result of negotiations between the Japanese and the Korean Governments based on the Agreement on the Legal Status and Treatment of Nationals of the Republic of Korea Residing in Japan between Japan and the Republic of Korea. On March 22, 1991, the Ministry of Education, Culture, Sports, Science and Technology issued notification in the name of director of Local Education Support Bureau and notified local governments that foreign nationals, including those with Korean nationality, were eligible to take an examination to become a teacher. These positions, however, are not “teacher” positions, which are applicable for Japanese but are instead “full-time lecturers without term limits”, which is different from an ordinary “teacher” and the people in this position cannot be promoted to principal or leadership positions such as the head teacher of each grade or instructional department though they are guaranteed a job for life.
- 4) Members of mediation committees of family and civil affairs play a role as mediators between parties in order to settle disputes and resolve problems of domestic relations or civil affairs. The lawyers who become such members are assigned by the Supreme Court based on recommendations by bar associations. Judicial commissioners play a role as assistants to courts to mediate parties in the procedures of Summary courts in order to reconcile disputes. Lawyers are assigned as commissioners by the District Courts based on the recommendations of the relevant bar associations.

In October, 2003, the Supreme Court upheld a decision of Kobe Family Court, which rejected the assignment as a member of mediation committee for family affairs of a lawyer recommended by Hyogo Bar Association who did not have Japanese nationality. After that, in March, 2006, Sendai and Tokyo Bar Associations nominated lawyers without Japanese nationality to become members of the mediation committees for family affairs or to become judicial commissioners. In 2007, four

bar associations, Sendai, Tokyo, Osaka and Hyogo nominated 5 lawyers to become members of mediation committees and since then bar associations have recommended lawyers without Japanese nationality to courts every year, but they have been rejected by the courts in question until 2013. The Supreme Court has not exercised its authority over such situation. However, the Supreme Court itself had assigned a lawyer with foreign nationality for a member of mediation committees of civil affairs of the Summary Court in Nishiyodogawa, Osaka from 1974 to 1988.

The rejection of the nominations of lawyers with foreign nationality as members of the mediation committees and judicial commissioners merely because of their nationality is not prescribed by domestic laws and it does not abide by the principles of law. Especially, with regard to lawyers, they are qualified as specialists to solve legal disputes. Considering the precedent above-mentioned, too, the nationality of such person should also not be a concern.

In the Concluding Observations of the CERD concerning the 3rd to 6th periodic reports submitted by Japanese Government, the CERD recommended that Japanese Government should review its position so as to allow competent non-nationals to be nominated.<sup>207</sup>

- 5) There is no reasonable reason for a nationality requirement for nomination or assignment to a mediation committee or as a judicial commissioner. In particular, there lives many foreign people in Japan such as Koreans who are from former colonies of Japan and who lost their Japanese nationality due to the Treaty of Peace with Japan, their offspring, and permanent residents as members of society of Japan. These people are also users of mediation system in Japan and there must be many cases where the involvement of members of the mediation committee with knowledge regarding the cultural backgrounds of these permanent residents is useful. Foreign nationals also often become parties to court cases in which judicial commissioner are involved.

The current treatment of foreign nationals such as teachers in public schools and non-national public employees under which they cannot gain the opportunity to get a promotion are unacceptable in terms of the freedom of choice of occupation and the principle of legal equality. It is clear that such treatment is in violation of the the ICCPR.

#### (4) Proposed Recommendations for the Concluding Observations

The State Party should not automatically limit permanent resident foreigners to be public workers only because of their nationality. Such limitation should be allowed where it is necessary in terms of job contents, and there are legal provisions to impose the limitation on them.

### 4 Gender Discriminatory Statements and Sexist Remarks Made by Public Officials

#### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

#### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

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207 CERD/C/JPN/CO/3-6, Paragraph 15.

Not mentioned.

(3) Current Situation (including replies to the list of issues 10)

- 1) In Japan, some public officers have repeatedly made discriminatory statements against women which have denigrated women and disregard of basic human rights.
- 2) For example, the then Tokyo Metropolitan Governor made statements such as “the most vicious and destructive things which civilization has given rise to are old-bags,” “it is wasteful and sinful for menopausal women to remain alive any longer” in an interview with a weekly magazine.<sup>208</sup>

A women’s representative group brought an action for damages against him and made a final appeal to the Supreme Court, but all of the courts involved rejected their claim by the reason that they did not have legal interests to make such a suit. However, the Tokyo District Court pointed out that his remarks conflicted with the fundamental principles of the Constitution, the Basic Act for a Gender-Equal Society, and the CEDAW, etc. because he had recognize women’s worth by looking at only their reproductive functions.

The JFBA claimed that his remarks devalue women’s human rights and urged him to retract such statements and to apologize, but he brushed off such criticism.

- 3) In the review of the 6th periodic report, the CEDAW stated that it “*expresses its concern at the high incidence of gender discriminatory statements and sexist remarks made by public officers and the lack of steps taken to prevent and punish verbal violence against women.*”<sup>209</sup>

The Government should immediately take measures to prevent sexist remarks by public officials.

## 5 Revision of Public Housing Law with regard to Sexual Minority

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

*29. The Committee is concerned about discrimination against lesbian, gay, bisexual and transgender persons in employment, housing, social security, health care, education and other fields regulated by law, as exemplified by article 23 (1) of the Public Housing Law, which applies only to married and unmarried opposite-sex couples and effectively bars unmarried same-sex couples from renting public housing, and by the exclusion of same-sex partners from protection under the Law for the Prevention of Spousal Violence and the Protection of Victims (art. 2 (1) and 26).*

*The State party should consider amending its legislation, with a view to including sexual orientation among the prohibited grounds of discrimination, and ensure that benefits granted to unmarried cohabiting opposite-sex couples are equally granted to unmarried cohabiting same-sex couples, in line with the Committee’s interpretation of Article 26 of the Covenant.*

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

With the revision of the Public Housing Law, there are no longer restrictions related to co-residents

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208 “Shukan Josei”(Weekly Women), November 6, 2001.

209 CEDAW/C/JPN/CO/6, Paragraph 29.

including same-sex persons who are not in a familial relationship.<sup>210</sup>

(3) Current Situation (including replies to the list of issues 8)

The revision of the Public Housing Law is as stated in the Government Report. Nevertheless, in terms of local governments, there are still some provisions in the ordinance which are almost equal to the restrictions stipulated in the Old Public Housing Law regarding the qualification to become a public housing resident. Therefore, same-sex couples continue to be excluded from the use of the public housing in many municipalities. Considering the fact that the Public Housing Law was revised in accordance with the recommendations issued by the CCPR in 2008, these local ordinances should also be abolished.

With regard to the scope of application for the protection order by the Law for the Prevention of Spousal Violence and the Protection of Victims, the law was revised in June, 2013 and now covers violence committed by a boyfriend or girlfriend who shares the same living space with the victim. However, the government does not clearly states that same-sex partners are included here. In addition, there are only limited amount of administrative documents with regard to the protection and the support for the same-sex couples, and it is difficult for victims of spousal violence who are in same-sex relationship to use shelter. The access to this system is not guaranteed sufficiently for same-sex couples.

(4) Proposed Recommendations for the Concluding Observations

With the revision of the Public Housing Law, there are no longer restrictions related to co-residents including same-sex persons who are not in a familial relationship. However, in terms of local governments, there are still some provisions in the ordinance which are almost equal to the restrictions stipulated in the Old Public Housing Law regarding the qualification to become a public housing resident. These provisions should be abolished, considering the fact that the Public Housing Law was revised in accordance with the recommendations from CCPR in 2008.

## 6 Discrimination Based on Sexual Orientation and Gender Identity

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Refer to the paragraph 29 mentioned above.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Except for the revision of the Public Housing Law stated above, there is no detailed report on the measures to address the discrimination against lesbian, gay, bisexual persons and persons with gender identity disorder in employment, housing, social security, health care, education, and other fields regulated by law, as exemplified by the exclusion of same-sex partners from protection under the Domestic Violence Prevention Act. In addition, there is no concrete report on ensuring that benefits

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210 Paragraphs 326, 327.

granted to unmarried cohabiting opposite-sex couples are equally granted to unmarried cohabiting same-sex couples.

(3) Current Situation (including the reply to the list of issues 8)

In Japan, there is no legislation which actively promotes discrimination based on sexual orientation and gender identity. However, as there is no prohibition against discrimination and exclusion based on sexual orientation and gender identity, such discrimination remains unaddressed. Due to lack of education on sexual orientation at school, sexual minorities often face bullying. They are often forced to resign or are dismissed as they are unable to adapt to the workplace due to the lack of understanding. Their access to medical services is also often hindered due to lack of understanding about gender identity and sexual orientation among medical institutions. Thus they experience difficulties in exercising their social and other rights, and are often excluded at school and workplace. Issue of sexual minorities are mentioned in social policies for measures to combat suicide, measures for social inclusion, and Basic Plan for Gender Equality. However, they only state that “consideration is necessary”, and there are no mandatory nor concrete measures. There is no comprehensive prohibition of discrimination or protection.

The special welfare system and protection of victims of domestic violence are designed for heterosexual persons, thus sexual minorities are excluded from utilizing such system. With regard to the cases of domestic violence, revised law for the prevention of spousal violence and the protection of victims (revised in June, 2013) covers violence committed by a boyfriend or girlfriend who shares the same living space with the victim. However, it cannot be said that same-sex couples are guaranteed the same protection as heterosexual couples as mentioned in section 5.

More consideration should be given to those with gender identity disorders who are confined in penal institutions, and they should be treated with due respect for their gender identity.

It is difficult to conduct research on the actual situation for sexual minorities, however, it has been recognized that “(In Japan), 65% of homosexual and bisexual males have contemplated suicide, and 15% of them have attempted suicide. This shows much higher risks of suicide compared with heterosexual persons.”<sup>211</sup> It clearly shows the difficulties that sexual minorities have to face in their lives.

Please see the previous section with regard to the Public Housing Law.

In the second universal periodic review, Japan is recommended to strengthen the protection against discrimination based on sexual orientation.<sup>212</sup>

(4) Proposed Recommendations for the Concluding Observations

- 1) We recommend that the State Party should protect people from violence and discrimination based on sexual orientation and gender identity, particularly when protecting people from violence, when dealing with people at penal institutions and in the process of refugee status application. And protection from violence and discrimination should be enjoyed regardless of sex orientation and

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<sup>211</sup> Hidaka Yasuharu, Associate Professor, Dept. of Nursing, Takarazuka University

<sup>212</sup> 147.36 and 38



gender identity, and the State Party should abolish measures which have the same effect as discrimination. In particular, we recommend that the State Party should not exclude same-sex persons from protection under the Law for the Prevention of Spousal Violence and the Protection of Victims, as stated in the previous concluding observation.

- 2) We request that the State Party should prohibit discrimination based on sexual orientation and gender identity in all fields including employment, housing, social security, education and health, and make legislation accordingly.
- 3) We recommend that the State Party should provide education and training for administrative officers, judges and teachers that they should not discriminate people based on sexual orientation and gender identity.

## 7 Establishment of a General and Comprehensive Antidiscrimination Law

- (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

The Japanese Government was required to answer a question regarding the standard of reasonable discrimination contained in section 26 of the list of issues for the review of the 5th periodic report. The CCPR stated in the paragraph 6 in the 5th Concluding Observations that it is concerned that many of its recommendations made after the consideration of the State party's 4th periodic report have not been implemented and also mentioned its recommendations in the 5th Concluding Observations which the Government is required to give effect to.

In the Concluding Observations of the CCPR concerning the 4th periodic report, considering whether the equal-protection clause in Japan is compatible with the ICCPR, stated that "*the Committee is concerned about the vagueness of the concept of 'reasonable discrimination', which, in the absence of objective criteria, is incompatible with article 26 of the Covenant*" and stated that the arguments by the Government on this concept had not changed from the consideration of the third periodic report, which the Committee found to be unacceptable.<sup>213</sup>

- (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Not mentioned.

- (3) Current Situation

There has been no movement toward establishing a general and comprehensive antidiscrimination law.

- (4) Proposed Recommendations for the Concluding Observations

It is recommended that the State Party should enact domestic legislation for prohibiting direct or indirect discrimination based on race, color, ethnicity, sex, language, sexual identity, sexual

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<sup>213</sup> CCPR/C/79/Add.102, Paragraph 11.

orientation, religion, political or philosophical opinion, economic, social, or educational status or any other grounds, while clearly stating the definition and range of discrimination.

## 8 Issues of Reservation of Japanese Nationality

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Not mentioned.

(3) Current Situation

Article 12 of the Nationality Act stipulates that a Japanese citizen who has acquired the nationality of a foreign country through birth and who was born abroad shall retroactively lose their Japanese nationality to the time of birth unless he/she indicates an intention to reserve their Japanese nationality within the first three months of his/her life.

Those who lost their Japanese nationality based on this article filed a lawsuit to request confirmation of their nationality, saying that this article is incompatible with the concept of equality under the law and violates the right not to be deprived of one's nationality against his/her will, because the difference between those who have lost their Japanese nationality based on this article and those who acquired their nationality by indicating the intention or children born out of wedlock whose paternity was only acknowledged after their time of birth and who acquired their nationality by notification is too serious. The Tokyo District Court and Tokyo High Court, however, denied the plaintiffs' claim in these judgments.

As a result of the above, there are many children who have lost their Japanese nationality because of the aforementioned period having elapsed. Such children can acquire Japanese nationality by notification if they have an address in Japan and are under 20 years of age (Article 17 of the Nationality Act). Except for this procedure, the only way to acquire Japanese nationality is through naturalization.

## 1 Current Status of Recent Policies Relating to the Ainu People

### (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

32. *The Committee notes with concern that the State party has not officially recognized the Ainu and the Ryukyu/Okinawa as indigenous peoples entitled to special rights and protection (art. 27).*

*The State party should expressly recognize the Ainu and Ryukyu/Okinawa as indigenous peoples in domestic legislation, adopt special measures to protect, preserve and promote their cultural heritage and traditional way of life, and recognize their land rights. It should also provide adequate opportunities for Ainu and Ryukyu/Okinawa children to receive instruction in or of their language and about their culture, and include education on Ainu and Ryukyu/Okinawa culture and history in the regular curriculum.*

### (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Since 2008, the Government of Japan has been implementing various efforts with the participation of the Ainu people, in addition to the measures to promote the Ainu culture, aiming to form and encourage more comprehensive and effective Ainu-related policies.

In June 2008, the Diet adopted “the Resolution Calling for the Recognition of the Ainu as an Indigenous People”. In response to this, the Government of Japan released a Chief Cabinet Secretary’s discourse showing recognition that the Ainu are an indigenous people.

In July 2009, the Advisory Council for Future Ainu Policy comprised of members including a representative from among the Ainu people, proposed directions for future Ainu policies. Based on these proposals, the Council for Ainu Policy Promotion was set up (chaired by the Chief Cabinet Secretary) and started meetings from January 2010. To embody the aforementioned proposals of the Advisory Council, the Council for Ainu Policy Promotion is continuing discussions through working groups, particularly on the three major topics: development of “the symbolic space for ethnic harmony,” nationwide policy implementation, and promotion of public understanding.<sup>214</sup>

The history and culture of the Ainu are covered in the Courses of Study of the Social Studies section for lower secondary schools. For example, the fact that Ainu people were engaged in trade with northern countries is explained.<sup>215</sup>

There are no special legislative measures for recognition of the right to land for the Ainu people alone. In Japan, however, every person is afforded the ownership of land and other property rights guaranteed by Japanese law. Such right is equally guaranteed for all Ainu people as Japanese nationals.<sup>216</sup>

### (3) Current Situation

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214 Paragraph 331.

215 Paragraph 332.

216 Paragraph 333.

- 1) As written in the 6th periodic report, in June 2008, “the Resolution Calling for the Recognition of the Ainu as an Indigenous People” was adopted in both chambers of the Diet. It observes that the Government should take the following measures immediately; [1]To recognizing the Ainu as an indigenous people who have lived around the northern part of the Japanese Archipelago, especially in Hokkaido, with a unique language as well as religious and cultural distinctiveness complying with the Declaration on the Rights of Indigenous Peoples, [2]Bearing on the adoption of the Declaration on the Rights of Indigenous Peoples, to continue to promote the policies made until now and to establish comprehensive measures in reference to the related provisions of the Declaration and views from experts at a high level.

In his discourse, the Chief Cabinet Secretary acknowledged that based on such recognition of the Ainu described in 1 above, the Government will continue to promote the previous policies towards the Ainu and engage in establishing comprehensive measures in reference to the related provisions of the Declaration.<sup>217</sup>

It does not seem, however, that the Government has directly recognized the Ainu people as an indigenous people because, even in the 6th periodic report of Japan, it stated that the definition of “indigenous” is not established in the UN declaration and in domestic law.<sup>218</sup> In the light of the discourse of the Chief Cabinet Secretary in 2008, it is rather a problem that no definition of “indigenous” has been established in a domestic law.

- 2) Regarding the culture and the history of the Ainu, the society of Japan has faced problems related to change and malification in supplementary reading material “The Ainu People: History and Present”.. The material has been released in about a hundred and fifty copies each year for 4th grade and 8th grade by the Foundation for Research and Promotion of Ainu Culture, which was established in 1997 based on “the Law for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and the Ainu Culture”. The Foundation aims to promote research into the culture and the understanding of the Ainu, and it runs on subsidies from the Government and the local governments of Hokkaido under the Ministry of Land, Infrastructure, Transport and Tourism and the Ministry of Education, Culture, Sports, Science and Technology.

Some parts of the previous descriptions and expressions of the supplementary reading material for the 8th grade student were changed or deleted. For instance, the previous text said that in 1869, the Japanese Government changed the name of the place *Ezochi* where many Ainu people had lived, to Hokkaido, and “it annexed such place as part of Japan unilaterally and officially started settlement and development.” However, the phrase “such place as part of Japan unilaterally” was removed.

Describing the indigenous nature of the Ainu and conveying such nature correctly in textbooks and supplementary reading books are important parts of school education. Nevertheless, the periodic report by Government did not mention the issues regarding the descriptions of the history

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217 Discourse of the Chief Cabinet Secretary on “the Resolution to Call for the Recognition of the Ainu as an Indigenous People” (June 6, 2008)

218 Paragraph 337.

of the Ainu in the supplementary reading material and therefore, incomplete.

- 3) In terms of the territory of the Ainu, the Japanese Government has not fully respected the rights to use traditional lands and to access resources included in the rights of indigenous people, despite the United Nations Declaration on the Rights of Indigenous Peoples (Article 27), which is referred to in the resolution adopted in April, 2008, providing for the recognition of rights related to lands, resources and territories.

The periodic report observes that these aforementioned rights “are equally guaranteed for all Ainu people as Japanese nationals.” It, however, lacks the viewpoint of compensation for the harm the Ainu people have suffered and the fact that they have been deprived.

The Government should [1] expressly recognize the Ainu’s indigenous nature in domestic laws including the Ainu culture promotion law, [2] provide appropriate compensation for past violations of their economic rights and [3] guarantee the right to traditional use of land and resources as part of the rights for an indigenous people.

## 2 Measures to Promote the Ainu Culture

- (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Refer to the paragraph 32 mentioned above.

- (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The Government notes that on the basis of the Ainu Culture Promotion Law which entered into force on July 1, 1997, the Government funds the Foundation for Research and Promotion of Ainu Culture as a central organization for the promotion and is trying to expand the measures related to the Ainu people.<sup>219</sup>

- (3) Current Situation

Including the issue as to the supplementary reading books as noted above in point 1, the manner in which to convey the history and culture of the Ainu in school education is a crucial issue. Nevertheless, the system to monitor expansion of implementation of measures is not clear.

## 3 Measures to Improve Living Conditions of the Ainu People in Hokkaido

- (1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Refer to the paragraph 32 mentioned above.

- (2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

According to the 2006 survey on the living conditions of the Ainu people conducted by the Hokkaido prefectural government, gaps between the Ainu and other people living in Hokkaido still

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219 Paragraph 334.

remain unremedied. Therefore, the Hokkaido prefectural government started the “Program for Enhancement of Living Conditions for the Ainu People (Phase 2)” in FY 2009; and the Japanese Government has been continuously cooperating with the measures implemented by Hokkaido prefectural government through adequate budgeting to facilitate such implementation.

For example, the Government subsidizes part of the expenses spent by Hokkaido to grant scholarships, make loans, or offer subsidies for school-commuting supplies to children of Ainu people having difficulty in continuing attendance at high school, etc. due to economic reasons.<sup>220</sup>

### (3) Current Situation

“The 2008 Report on the Living Conditions and Consciousness of Present-day Ainu” conducted by the Hokkaido University Center for Ainu and Indigenous Studies shows that 47.7% of the Ainu households who answered to the research questions have been or are being supported financially by the Government for high school education. Moreover, 19.5% of the Ainu, which is the majority of all the Ainu households in this survey, had an annual household income of between 2 million to 3 million yen. It also reveals that half the number of parents graduated only elementary school or junior high school. In terms of the higher education rate, including professional training colleges, around 2% of fathers and 1% of mothers had the opportunity to attend such institutions. It is, therefore, clear that economic and social poverty are serious and deep-rooted.<sup>221</sup>

In addition, it is necessary to financially support the Ainu people who live outside Hokkaido due to various reasons so that they can enroll in school more easily.

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220 Paragraph 335.

221 Hokkaido Ainu Living Conditions Survey Living Conditions and Consciousness of Present-day Ainu by Hokkaido University [Prompt report] (May 29, 2009)

## 1 The Okinawan People

In the concluding observations of the CCPR on the Fifth Periodic Report submitted by Japan, the Committee considers the issues of Ryukyu/Okinawa as problems of an indigenous people. Although people in Japan and even in Okinawa prefecture have a common view that there is structural discrimination against the people who live in Okinawa, such discrimination is not acknowledged widely as discrimination against a minority. Okinawan issues, however, are one of the extremely serious problems facing society, for example the concentration of military bases and the maintenance of their own cultural tradition.

### 1-1 Military Base Problems

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Not mentioned.

(3) Current Situation

1) Concentration of military bases

In Japan, many US military bases exist throughout the country under the “Treaty of Mutual Cooperation and Security between Japan and the United States,” and 75% of these US military facilities are concentrated in Okinawa prefecture. Because of the presence of military bases, various human rights problems and social problems have occurred specifically in Okinawa, including noise produced by landing and takeoff of aircrafts, aircraft or helicopter crashes, environmental destruction and contamination, damage to people’s daily lives, sexual assaults and traffic accidents caused by US military and civilian personnel, and hindrance of local development. Hence, the right to live in peace of the people who live in Okinawa has been violated.

Moreover, a new base has been built in Henoko, Nago, for replacement of the Futenma base in order to strengthen the Japan-U.S. alliance and realign the U.S. forces in Japan. This construction of a U.S. military facility is one of the conditions for the return of land occupied by the U.S. military.

In addition, the return of the 1987 hectares of the area used as a part of the Northern Training Area was decided as a condition for relocation of the helicopter landing zones within the Area and 6 places for such zones have been built around the Takano district, Higashino-son, Okinawa. Thus, there is a conflict between the residents of this district who oppose this construction and the people who wish to see it progress.

Furthermore, in October, 2012, MV-22 Osprey helicopters were deployed in the Futenma base

and their flight training has been conducted, repeatedly streaking over urban areas.

2) Japan-US Status-of-Forces Agreement

The issue of the Japan-US Status-of-Forces Agreement has exacerbated problems related to US military troops and bases in Japan. In particular, the fact that Japan cannot exercise primary jurisdiction substantially on crimes committed by members of the US military in Japan has been a major hindrance in securing the lifestyles and human rights of civilians in Japan.

3) Comments and recommendations issued by international treaty bodies

[1] In the Concluding Observations of the CERD concerning on the 3rd to 6th periodic reports submitted by Japan, the CERD “*reiterates the analysis of the Special Rapporteur on contemporary forms of racism that the disproportionate concentration of military bases on Okinawa has a negative impact on residents’ enjoyment of economic, social and cultural rights.*”<sup>222</sup>

[2] In the Concluding observations of the CESCR on the second periodic report of Japan, the CESCR recommended that “*the State party continue to undertake necessary measures to combat patterns of de jure and de facto discrimination against all minority groups in Japanese society, including the Buraku people, the people of Okinawa and the indigenous Ainu, particularly in the fields of employment, housing and education.*”<sup>223</sup>

[3] The CERD also issued a questionnaire in order to request Japan to provide information on the actual situation concerning the proposed constructions of a military base on the Henoko/Ours Bay and the measures taken to protect the rights of the ethnic communities living in the area, because this project might have a negative impact and add to historical discrimination against the indigenous people in Ryukyu/Okinawa. The questionnaire, moreover, noted that the proposed construction of six U.S helipads in Takae, Okinawa might violate the Convention as well and asked whether the human rights of the people in Okinawa were being violated and how the Government has dealt with people who oppose these mentioned projects.

## 1-2 Culture and History of Ryukyu/Okinawa

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Refer to the paragraph 32 mentioned above.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

The history, culture, etc. of Ryukyu and Okinawa are covered, for example, in the Social Studies section in the Courses of Study for lower secondary schools. To be more specific, the roles played by Ryukyu in the context of the relationship between Japan and China are explained as part of the topics on foreign relations during the national isolation policy of the Edo Period.<sup>224</sup>

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222 CERD/C/JAP3-6, Paragraph 21.

223 E/C.12/1/Add.67, Paragraph 40.

224 Paragraph 338.



(3) Current Situation

- 1) In Okinawa, a unified dynasty was established in the 15th century and a unique culture different from the rest of Japan developed until 1871, when the Japanese Government abolished the Ryukyu Dynasty and placed the islands under Japanese control. From around 1890, places of worship across Okinawa started to be integrated into the state Shinto religion, and were replaced with Shinto shrines and gateways. Thus, the cultural integration of Okinawa into Japan started and the unique culture of Okinawa consists of these factors.
- 2) The Concluding Observations of the CERD concerning the 3rd to 6th periodic reports by Japan stated that *“highlighting that UNESCO has recognized a number of Ryukyu languages (2009), as well as the Okinawans’ unique ethnicity, history, culture and traditions, the Committee regrets the approach of the State party to accord due recognition to Okinawa’s distinctness and expresses its concern about the persistent discrimination suffered by the people of Okinawa.”*<sup>225</sup> The Committee also recommended that *“the State party carry out a revision of existing textbooks to better reflect the culture and history of minorities and that it encourage books and other publications about the history and culture of minorities, including in the languages spoken by them. It particularly encourages the State party to support teaching in and of the Ainu and Ryukyu languages in compulsory education.”*<sup>226</sup>

(4) Proposed Recommendations for the Concluding Observations

The State Party should consider Ryukyu language education in public schools for residents in Okinawa.

## 2 The Great East Japan Earthquake and the Fukushima Daiichi Nuclear Disaster

(1) Concluding Observations on the 5th Periodic Report (CCPR/C/JPN/CO/5)

Not mentioned.

(2) Summary of the Relevant Information from the 6th Periodic Report of Japan (CCPR/C/JPN/6)

Not mentioned.

(3) Current Situation

1) Report assembled by the JFBA

In the report submitted to the CESCR, the JFBA’s comprehensive views on the Great East Japan Earthquake and the Fukushima Daiichi Nuclear Disaster were included. The report “Proposal for Human Rights Principles Pertaining to Accidents at Nuclear Power Facilities” drafted by the JFBA and submitted to Mr. Anand Glover, the UN Special Rapporteur to the UN Human Rights Council, summarizes from a human rights’ perspective what kind of rights the affected people have under International Human Rights Law and what kind of action the Government should take.

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225 CERD/C/JAP3-6, Paragraph 21.

226 CERD/C/JAP3-6, Paragraph 25.

## 2) Challenges in view of civil liberties

### [1] From the viewpoint of freedom of expression (information disclosure)

When the disaster occurred, the Government knew that there was a serious meltdown, that a huge amount of radioactive substances had proliferated into the environment, and that it had a certain directional influence according to the direction of the wind (according to SPEEDI: the System for Prediction of Environmental Emergency Dose Information). However, the Government did not inform these facts to the affected citizens and inhabitants, but instead concealed them.

This kind of Government act is against the Article 19 of the ICCPR which guarantees the access by citizens to important information.

### [2] Underestimation of the dangers of low level radiation

The dangers of low level radiation are unclear. However, the Japanese Government misleadingly disseminated information, during the crucial time of the immediate aftermath of the disaster, that there would be no health effects caused by radiation of under 100 mSv. The Government admitted its error in disseminating this kind of information, but is not doing enough in publicizing accurate information.

This kind of Government act is a threat to the Right to Life prescribed by Article 6 of the ICCPR.

### [3] Violation of the principle of equality of treatment towards evacuees and inhabitants

The Japanese Government has been implementing policies to prevent people from evacuating from low radiation area so as not to increase the aftereffects of the disaster. A Health Management Survey was implemented with regards to people living in Fukushima, but it was limited to a survey regarding the thyroid gland and its objective was to “reduce anxiety.”

In June 2012, the Statute on Protection and Support for the Children and other Victims of the Tokyo Electric Power Company Nuclear Power Plant Disaster (hereafter, “Victims Protection Law”) was enacted as a nonpartisan lawmaker-initiated bill. The Victims Protection Law admits that the dangers of low level radiation are unclear, but respects the self-determination of evacuees, inhabitants and returnees, and states that necessary support will be provided equally. This legislation is in conformity with the Guiding Principles on Internal Displacement, but the Government policy is far from conforming to the spirit of this legislation, and is instead prioritizing the policy of preventing people from evacuating from low level radiation areas.

This situation is against the Article 26 of the ICCPR which guarantees the equality under the law.

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